Maine Indian Tribal-State Commission

Chairperson
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April 14, 2022

The Honorable Raúl M. Grijalva
Chair
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member
Committee on Natural Resources
U.S House of Representatives
Washington, DC 20515

The Honorable Teresa Leger Fernandez
Chair
Subcommittee for Indigenous Peoples of the U.S.
U.S. House of Representatives
Washington, DC 20515

The Honorable Jay Obernolte
Acting Ranking Member
Subcommittee for Indigenous Peoples of the U.S.
U.S. House of Representatives
Washington, DC 20515

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

Dear Chair Grijalva, Ranking Member Westerman, Chair Leger Fernandez, and Ranking Member Obernolte,

The Maine Indian Tribal-State Commission (MITSC) is an intergovernmental body established under the Maine Implementing Act, 30 M.R.S.A. sec. 6212, as part of the state and federal statutes which together formed the Maine Indian Land Claims Settlement of 1980. Section 1735(b) of the federal statute created a presumptive restriction that after-enacted federal Indian laws for the benefit of Indians will not apply in Maine if they would affect or preempt the application of the laws of the State of Maine, unless specifically made applicable in Maine.

Based on its long history and experience with the impact and effectiveness of the 1980 Settlement, MITSC has developed and expressed the position that section 1735(b) has been interpreted and applied unilaterally by the State in ways that have been harmful to the Wabanaki communities, and by extension, neighboring rural Maine non-tribal communities that could otherwise have benefited from new federal laws. Such laws include but are not limited to the Violence Against Women Act, the Stafford Disaster Relief and Emergency Assistance Act, the Tribal Law and Order Act, the Indian Gaming Regulatory Authority Act, the Indian Civil Rights Act, and the Indian Healthcare Improvement Act. To use the Indian Healthcare Improvement Act

as an example, the Passamaquoddy Tribe spent $40,000 battling with the Maine Medicaid program for past due payments because services from pharmacists licensed outside of the state were being denied.

MITSC has advocated for development of a reasonable "balancing test" to limit the application of 1735(b) to only those new federal laws, or portions thereof, that would materially and negatively impair the State's jurisdiction. Prior to the Settlement, officials of the Department of the Interior expressed concern about the breadth of the proposed language. It is easy to contend that almost every new federal Indian law would somehow "affect the application of state laws", but the broad application of that "savings clause" has in numerous instances been harmful to both the Tribal communities and neighboring non-Indian communities.

Please see the following excerpts for examples of statements that MITSC has previously made on this topic:

From MITSC Testimony on LD 308, *An Act to Require the Attorney General to Consult with Federally Recognized Indian Tribes before Issuing an Opinion on Federal Legislation Affecting the Maine Indian Claims Settlement Act of 1980*, in 2013:

> *"It was the understanding that the parties to this historic agreement (MICSA) would work together to interpret, hone, and amend this agreement. It was envisioned as a "living document." You have heard Tribal members describe the hope and promise that this unique settlement agreement was to have offered.*
>
> *LD 308 is a practical step that would take the Tribes and the State a long way in understanding each other's perspectives. It mandates a very necessary and practical conversation. It simply says that when an evaluation of pending federal legislation for the benefit of Indian Tribes is requested, that the State's attorney general consult with the Tribes in order that a full understanding of the benefits and the potential problems be achieved.*

In a letter to U.S. Senator Susan Collins on 3/26/13, MITSC stated:

> *During its history as the body charged to "continually review the effectiveness of this Act," MITSC has consistently received reports that efforts to include the federally recognized tribes residing in Maine in federal legislation intended to benefit all tribes has been met with efforts to exclude them. We must remind you that section 1735 (b) of the MICSA was intended*

to limit the automatic inclusion of Maine tribes in federal Indian legislation only under certain conditions.

1735 (b) is tempered by 1725 (h) which states: the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine except that no law or regulation of the United States (1) 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, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

This section of law was crafted to provide the means to ensure that federal legislation that is not in conflict with Maine civil and criminal code would benefit the Maine Wabanaki Tribes, and thus the State of Maine. Our job, along with all who inherit the trust of all of the negotiators, is to look for the best solution to conflicts arising from different interpretations of the legislation. Finding the best solution requires hearing all of the voices. We want to work with you and other members of the Maine Congressional Delegation to practice inclusion rather than exclusion when dealing with these issues. The State of Maine and the Tribes stand to gain when the Wabanaki Tribes are included as recipients of essential federal services and benefits that accrue to all federally recognized tribes. For example, the amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act passed by the Congress in January would not have adversely affected the State of Maine in any way. In fact, the Tribes' ability to declare emergencies in their communities has the potential to draw more total dollars coming into Maine than is currently the case when only the Governor of the State of Maine can make such declarations. Likewise, applying the Tribal Law and Order Act can provide hundreds of thousands of dollars in new law enforcement resources flowing into Maine. Inclusionary language making explicit the applicability of the acts to the Wabanaki should be added to this law and to the to the Violence Against Women Act. ... We recommend that when you examine federal legislation that may benefit Wabanaki Tribal Governments you consider how that legislation might benefit both the State and the Tribes and work to include them whenever possible. We stand ready to work with you to advance this process."

In a letter to the UN Special Rapporteur on the Rights of Indigenous Peoples, on 5/16/12, MITSC stated:

> *As a result of section 1735(b) of MICSA, Maine Wabanaki Tribes have not been able to utilize the Indian Gaming Regulatory Act (25 USC §2701 et. seq.) as a possible means of economic development. This same section blocks Wabanaki utilization of "Treatment as a State" status under the Clean Air Act (40 CFR Part 49 Tribal Clean Air Authority) and Clean Water Act (40 CFR 123.31 – 123.34) to assume regulatory authority over polluters contaminating the air and water of Wabanaki territory. In addition, the non-applicability of post-1980 laws limit the impact of pre-1980 laws that supported tribal self-determination, such as the Indian Civil Rights Act, passed by Congress in 1968. Economic and legal tools available to hundreds of other federally recognized tribes are not available to the Wabanaki due to the legal limitations imposed by MICSA and MIA."*

The Maine Indian Tribal-State Commission appreciates the opportunity to share its experience and recommendations in relation to H.R. 6707.

Respectfully,

Paul Thibeault

Paul Thibeault
Managing Director

CC Congressman Jared Golden
Congresswoman Chellie Pingree
Chief Clarissa Sabattis, Houlton Band of Maliseet Indians
Chief Edward Peter-Paul, Mi'kmaq Nation
Chief Kirk Francis, Penobscot Nation
Chief Maggie Dana, Passamaquoddy Tribe at Pleasant Point
Chief William Nicholas, Passamaquoddy Tribe at Indian Township