Testimony of Chief William Nicholas, Sr.

Passamaquoddy Tribe

Thursday, March 31, 2022, 1:00 pm EDT

Hearing Before the

House Committee on Natural Resources' Subcommittee for

Indigenous Peoples of the United States (SCIP)

H.R. 6707, "Advancing Equality for Wabanaki Nations Act"

Chair Leger Fernandez and Members of the Subcommittee, my name is William Nicholas, Sr. and I am a Chief of the Passamaquoddy Tribe ("Tribe"). It is my honor to present testimony in support of H.R. 6707, the Advancing Equality for Wabanaki Nations Act ("H.R. 6707"). H.R. 6707 is a narrow, but critical reform of the Maine Indian Claims Settlement Act, a federal law which has been a significant impediment to Passamaquoddy self-determination for over forty years now.

The Passamaquoddy People traditionally occupied the area now known as the State of Maine and New Brunswick, Canada. Our ancestors migrated seasonally throughout our territory. In the spring, we gathered plants for food and resided in villages strategically located throughout the St. Croix Watershed to provide access to migratory sea-run fish such as pollock, eels and salmon. In the late summer, we re-located to the wild blueberry barrens, where our people could easily subsist off the natural bounty of the earth. In the fall, we headed to the woods, where our hunters could harvest game such as moose, deer, and bear to sustain the people through the long winter.

The Passamaquoddy way of life has confronted and survived numerous challenges since first contact with Europeans. As early as the 1700s, there are well-documented instances of friction between the Passamaquoddy and the Europeans who settled throughout our lands without permission. Europeans and then Americans plundered our waters and forests, exporting lumber and fish to satisfy the needs of far-flung communities. In response to the pressures of colonialism, the Passamaquoddy were signatories to treaties with the British that pre-date the United States. These treaties are still recognized in Canada. We then signed the first treaty entered into by the United States following the Declaration of Independence, the 1776 Treaty of Watertown. Our warriors proudly served under General George Washington and we still celebrate our military victories over the British in defense of what is now the United States of America. Despite these facts, the Commonwealth of Massachusetts and later the State of Maine considered the Passamaquoddy People to be state wards all the way up to 1975. State Indian agents managed our natural resources for their personal gain and they administered nearly all aspects of life within our rapidly dwindling territory. The State of Maine ignored numerous U.S. Supreme Court decisions from this era establishing that the federal government, not the states, has jurisdiction to regulate affairs with tribes. In fact, the state supreme court once wrote: "[i]mbecility on their part, and the dictates of humanity on ours, have necessarily prescribed to

them their subjection to our paternal control; in disregard of some, at least, of abstract principles of the rights of man."[1]

Things changed in 1975, when the United States Court of Appeals for the First Circuit ruled that the Passamaquoddy Tribe is an indigenous sovereign nation entitled to the protection of the federal government pursuant to the Constitution and laws of the United States.[2] From 1975-1980, we established a government-to-government relationship with the United States and exercised all attributes of a sovereign nation. Also during this period, the United States filed suit against the State of Maine for illegally taking Passamaquoddy lands in violation of the federal Non-Intercourse Act, which requires that the federal government approve the sale or transfer of Indian lands. Our land claims were ultimately resolved in 1980 by the federal Maine Indian Claims Settlement Act. The federal law approved a state law that essentially allowed Maine to exert unprecedented jurisdiction over our Nations. We often refer to these laws collectively as "the Settlement Acts".

It did not take long after the ink had dried before we started to see how the lopsided nature of the settlement would suppress more than support us. While we have received federal funds to reacquire our ancestral homelands, the land acquisition process under the Settlement Act is far more costly and complex than anywhere else in Indian country and has actually inhibited us from acquiring the lands promised under the Settlement Act. At the end of the day though, the land and the money were not the most critical consequences of the Settlement Act.

The real cost was our sovereignty – our ability to govern ourselves in our territory under tribal and federal law. Parts of the Settlement Act specifically block the Wabanaki Nations from accessing federal laws passed for the benefit of Indian country. A report commissioned by the Maine Legislature concluded that Congress has passed 151 such laws since 1980.[3] Some laws enacted or amended for the benefit of Indian country in this period include the Indian Health Care Improvement Act, Indian Civil Rights Act, Safe Drinking Water Act, Indian Gaming Regulatory Act, Clean Water Act, Native American Graves Protection and Repatriation Act, Indian Tribal Economic Development and Contract Encouragement Act, Stafford Act, Esther Martinez Native American Languages Preservation Act, Tribal Law and Order Act, and the Violence Against Women Act. Congress enacted these laws to improve and enhance tribal communities. And yet time and again, the State of Maine, relying on the Settlement Act, blocked these laws from benefitting tribal communities in Maine.

After long and costly litigation against the State of Maine, the Passamaquoddy Tribe litigated and lost the issue of whether the Indian Gaming Regulatory Act applied in Maine. The state also

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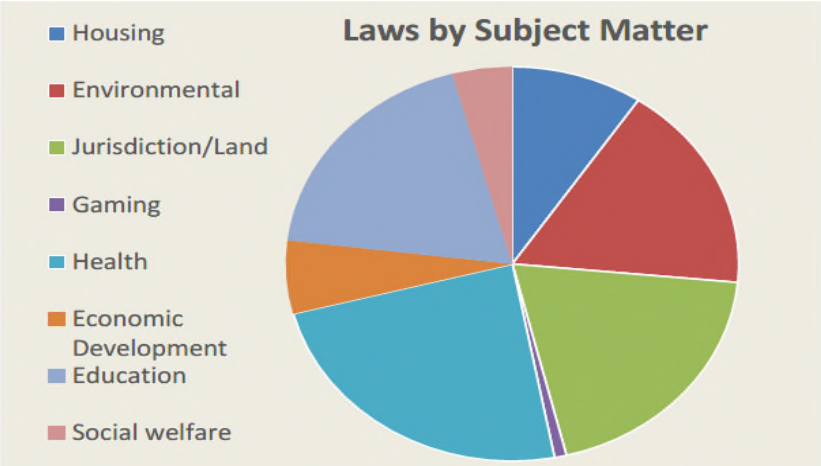
[1] *Murch v. Tomer*, 21 Me. 535, 538 (1842) (involving the question of whether a Penobscot citizen could be sued in Maine courts).

[2] *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975).

[3] "Federal Laws Enacted After October 10, 1980 For the Benefit of Indians or Indian Nations: Research Findings Requested by the State of Maine Task Force on Changes to the Maine Indian Claims Settlement Implement Act", Human Rights Indigenous Peoples Clinic, Suffolk University Law School (Dec. 2019).

blocked one of our health centers from relying on the 2010 provisions of the Indian Health Care Improvement Act to hire medical staff licensed outside of the state. And, when natural disasters hit our territory, we cannot simply contact FEMA like tribes elsewhere in Indian country can. Instead, we must work through the State of Maine because the 2013 amendments to the Stafford Act do not apply to us under the Settlement Act. As the following pie chart commissioned for the State of Maine shows, the significant majority of laws Congress passes for the benefit of Indian country fall into education or public health, criminal jurisdiction, and housing:



Federal Laws Enacted after October 10, 1980 Which May Benefit Indians and Indian Nations

Today, the Passamaquoddy Tribe has two communities in the United States: Indian Township (or *Motahkomikuk*, as we say in Passamaquoddy) and Pleasant Point (or *Sipayik*). Many Passamaquoddy People continue to sustain themselves and their families off seasonal work including, hunting, fishing, working the woods, and raking blueberries. We are a sovereign that exercises jurisdiction over more than 100,000 acres of trust or reservation land, all of which is under tribal control in one form or another. The area that Passamaquoddy police officers and game wardens work spans east to west across Maine, from the saltwater to Jackman. Whether it is enforcing our fish and game ordinances, maintaining tribal government services across two tribal communities, or working to bring economic development to Passamaquoddy territory and the surrounding areas, we are a sovereign government that is always working to protect, preserve, and improve the quality of life.

At Indian Township, we employ 175 Tribal Government employees. Our Tribal Government provides General Assistance to both tribal members and non-tribal members who reside on the reservation. We provide direct financial assistance to these non-tribal members who live in our community and yet, until very recently, the Settlement Act prevented us from holding such individuals accountable under VAWA if they broke our laws and committed acts of violence in our homes. This reality makes no sense. In 2022, it serves no purpose other than to frustrate the ability of the Wabanaki Nations to self-govern and to pursue self-determination.

In closing, H.R. 6707 would be a small first step to reform the Settlement Act. By only allowing the Wabanaki Nations to benefit from future laws passed by Congress for Indian country, the legislation would still not provide Wabanaki Nations access to the 151 laws passed by Congress since 1980. For the first time since 1980 though, we would be able to benefit from laws passed by Congress on equal footing with other tribes. We do not know what those laws might be. But, in this era of tribal self-determination, one can only hope that future legislation will aim to improve the wellbeing of Tribal Nations, their lands, and their citizens. There is no reason why the Wabanaki Nations and their citizens should not benefit from those laws. Please support H.R. 6707 and support equality for the Wabanaki Nations. Woliwon. Thank you.