SEMINOLE TRIBE OF FLORIDA

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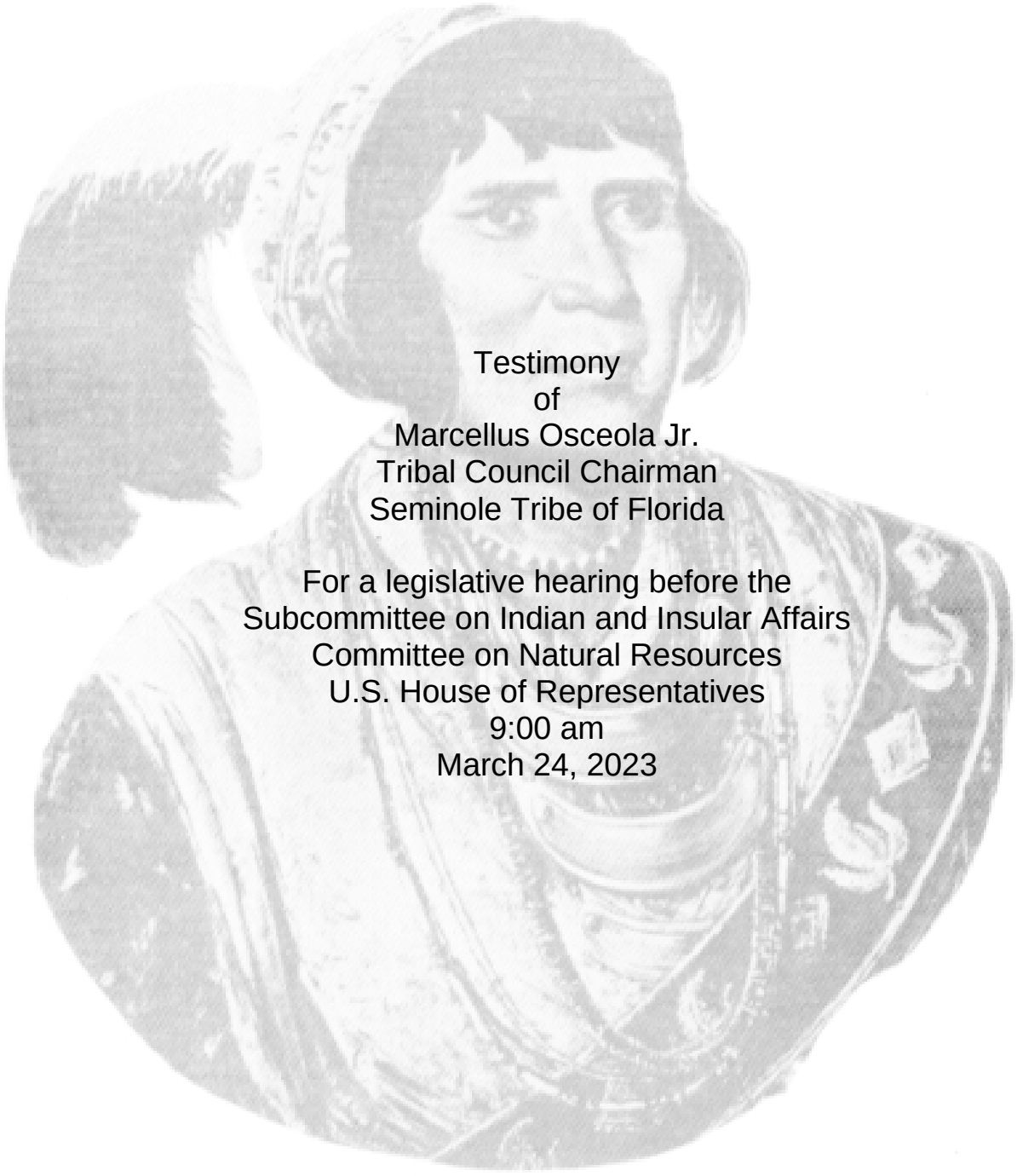

Testimony
of
Marcellus Osceola Jr.
Tribal Council Chairman
Seminole Tribe of Florida

For a legislative hearing before the
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives
9:00 am
March 24, 2023

“BUT I HAVE PROMISES TO KEEP & MILES TO GO BEFORE I SLEEP”

Chair Hageman, Ranking Member Leger Fernandez and Members of the Subcommittee, my name is Marcellus Osceola, Jr., and I am chairman of the Tribal Council of the Seminole Tribe of Florida. In 2021, this Committee advanced legislation to allow the Seminole Tribe to lease, sell, convey, warrant, or otherwise transfer real property owned by the Tribe in fee simple. On November 23rd of that year, that bill was signed into law. I am here today to provide an update on what that authority has meant for the Seminole Tribe, and to urge Congress to move quickly to enact H.R. 1532, broader legislation that will give all federally recognized tribes the authority to lease or transfer certain fee lands without requiring prior congressional approval.

Seminoles have lived in Florida for thousands of years. When President Andrew Jackson signed into law the Indian Removal Act in 1830, we resisted efforts to displace us from our native lands. Instead, we settled deep into the Florida Everglades where we maintained our ways and traditions. Since then, we have grown and prospered and today number more than four thousand Tribal members. We are a sovereign government with our own schools, police, and courts. We run one of the largest cattle operations in the United States. We own Hard Rock International, with locations in 74 countries. We still continue our traditions of sewing, patchwork, chickee building, and alligator wrestling, but the world has changed, as it always has; and we have adapted, as we always have.

A key strategy we have chosen to pursue in adapting to a changing world is diversification of our investments and revenue sources. Toward that end, in 2020 the Seminole Tribe established a sovereign wealth fund to invest in commercial real estate properties in order to create sustainable income and generational wealth for the Seminole Tribe. We set up a state chartered subsidiary entity to act as a holding company. The holding company, in turn, creates subsidiary entities to purchase and hold title to our investment properties, enter into typical mortgage financing transactions and grant lenders mortgage liens on each of the investment properties we acquire.

After identifying the first investment opportunity, this investment diversification plan stalled due to concerns raised by the lender and proposed title insurance company over the Indian Non-Intercourse Act (NIA). The NIA states in part:

> "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

The NIA dates back to the 1800's and in part was designed to prevent Indian tribes from being defrauded. Today, it is interfering with the ability to engage in normal and regular commerce and generate and diversify income streams for tribes that are eminently capable of making their own business decisions.

Here is the problem we encountered with the NIA: For the properties we acquire through the investment fund, lenders require that they be granted a first-mortgage lien on the properties financed and that the first lien position be insured with a mortgagee title insurance policy. The title insurance companies we approached for that first transaction interpreted the NIA to apply to all real estate owned by the Tribe, even non-reservation lands owned by a state-chartered subsidiary entity of the Tribe. The title companies would not insure the lien of the mortgage without an exception for the NIA. This was completely unacceptable to mortgage lenders and effectively brought our ability to finance real estate acquisitions to a grinding halt.

One title insurer eventually took the risk of insuring title. However, if that title insurer had a change of position, failed or was acquired by one of the other carriers, the Tribe would not have been able to proceed. The sustainable economic independence of the Seminole Tribe - or any other federally recognized Indian tribe - should not depend on one title company's "current" willingness to provide title insurance to lenders and buyers absent an act of Congress.

In order to address this issue and provide certainty to lenders and title insurers as well as buyers of properties that the NIA does not apply to the Seminole Tribe's real estate transactions, Representative Soto introduced H.R. 164 in January, 2021 and Senators Rubio and Scott introduced the companion bill S. 108. In November of that year, Congress approved the legislation and the President signed into law Public Law 117-65.

Prior to enactment of this law, all of the major title companies except for one had a specific policy that precluded them from insuring mortgage liens and sales undertaken by Indian tribes because of the potential application of the NIA. Only one company was willing to provide such insurance, but there is always the chance that the company could have a change of position, fail, or be acquired by another company with a different policy that prohibits insuring title to properties owned by an Indian tribe. P.L. 117-65 served to open the title insurance market to the Seminole Tribe giving us the opportunity to shop carriers and lenders and have the confidence to continue with the acquisition of real estate investments in the ordinary course of business, just like any other real estate investor, knowing that title insurance will be available

There have been other positive outcomes, as well. The Seminole Tribe previously established the Seminole Housing Authority (the "Authority"). The Authority, a sub-governmental unit of the Seminole Tribe, had authority over housing matters and had purchased certain off-reservation homes for Tribal Members, which homes are no longer needed. P.L. 117-65 has allowed the Seminole Tribe to dispose of these properties without the lengthy process of seeking an exception to the Non-Intercourse Act or explanation to the title companies.

As you can see, enactment of P.L. 117-65 has eased the path to homeownership for Seminole Tribal members and has cleared away barriers to our ability to diversify and provide for future generations through real estate investment. The law is consistent with our goals of self-determination and economic independence.

However, most tribes still face the barriers I have described. It is time for Congress to free tribes from the NIA and grant all federally recognized tribes the authority and ability to make their own decisions about managing tribal resources and generating tribal income without needing to obtain congressional approval for what otherwise are routine real estate transactions.

For all these reasons, I want to thank this subcommittee and the Congress for enacting P.L. 117-65. I further commend Subcommittee Chair Hageman for introducing in this Congress H.R. 1532, to extend authority to encumber land held by a tribe in fee simple to all federally recognized Indian tribes. I encourage Congress to act quickly to approve the bill. Your prompt action will assure that this outdated and paternalistic NIA language will no longer hinder economic opportunities for any federally recognized Indian tribe.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.

Sho-Na-Bish.