

National Indian Health Board



June 12, 2023

The Honorable Bruce Westerman
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Raul Grijalva
Ranking Member
House Natural Resources Committee
1332 Longworth House Office Building
Washington, D.C. 20515

Re: Expressing Concerns with H.R. 630, the Urban Indian Confer Act

Dear Chair Westerman and Ranking Member Grijalva:

On behalf of the National Indian Health Board (NIHB) and the 574 sovereign federally recognized American Indian and Alaska Native Tribal nations we serve, we write to express concerns with H.R. 630, the Urban Indian Confer Act. This bill would codify obligations of the United States to Urban Indian Organizations (UIOs) that exceed consultation requirements with Tribal nations on the same or similar policy. While “confer” is a definition that is intended to be distinct from Tribal consultation, the law must always be read in context of the outcome it seeks to achieve and in relation to the policy it intends to affect. By codifying a policy on UIO confer, the law would implicitly and explicitly draw parameters around the scope of Tribal consultation, and by extension, how the United States interprets Tribal sovereignty and its nation-to-nation relationship.

Access to healthcare is a treaty and trust right extended to Tribal nations’ citizens by virtue of their political status as citizens of Tribal Nations. Urban Indian Organizations are recognized in statute and receive funds for the benefit of Tribal citizens’ healthcare, but their programmatic status is not one politically derived from recognition of their sovereignty. In simple terms, UIOs exist by extension of Tribal nations’ political status with the United States. If Congress were to enact this bill, it would be granting relational rights to a programmatic entity that exceed those granted to Tribal nations. Furthermore, Tribal nations represent and advocate for and support their citizens regardless of where they reside.

NIHB is particularly concerned about policies with good intentions that may be misconstrued at a later date to erode Tribal sovereignty. Confer and Consultation are two different words, but they are inserted into a policy context where their practical application is similar, nearly identical, or difficult to distinguish. When programmatic entities are treated in parity with Tribal nations or in a way that is difficult to distinguish from U.S./Tribal relations, courts may interpret federal Indian law, the purpose or intent of a program, or the nation-to-nation relationship differently and in a way that erodes the unique sovereign status of Tribal nations.



Currently, the applicable definition of “confer” is to engage in an open and free exchange of information and opinions. There is already a federal policy mechanism for interested parties to engage in an open and free exchange of information and opinions – the Administrative Procedures Act. If H.R. 630 seeks to elevate the relationship of UIOs with the United States to equal or above that of Tribal nations, then NIHB must oppose on behalf of the rights and obligations of the 574 federally recognized Tribes it serves. If H.R. 630 seeks to codify the open and free exchange of information and opinions, then it is redundant of the Administrative Procedures Act and creates bureaucratic red tape that is not needed. Further, if this bill were enacted, it would come with an unfunded resource burden that would most likely come out of federal resources otherwise appropriated for Tribal consultation.

Additionally, NIHB is concerned by language that has been shared with this Committee through recent congressional testimony. The National Council on Urban Indian Health stated, in the June 7, 2023 Subcommittee on Indian and Insular Affairs hearing which stated: “UIOs work to provide high-quality, culturally competent care to the over 70% of American Indians and Alaska Natives (AI/ANs) living in urban settings.” This number is misleading, as according to the IHS, in FY 2021, UIOs served approximately 70,216 AI/ANs,¹ which is far below 70% of all AI/ANs. UIOs perform essential and valuable work to AI/ANs and other members of the community, but again, should not be granted in statute, rights that are above and beyond those shared with Tribal nations.

The National Indian Health Board supports the rights of all Tribal citizens to access and receive high quality, culturally informed healthcare in a time, manner, and place that is reasonable to them. Further, NIHB recognizes that UIOs serve an integral part of care for AI/ANs throughout the nation. Nonetheless, NIHB has concerns with H.R. 630 for its explicit, implicit, and latent effects on Tribal sovereignty and the nation-to-nation relationship between Tribal nations and the United States. NIHB does not support putting into statute any kind of requirements for Tribal consultation or confer except with Tribal governments.

In the future, we hope to more fully discuss this critical issue with the Urban Indian Organization community, and with Members of the Committee and your staff. Should you have any questions about this letter, please contact NIHB’s Chief Executive Officer, Stacy A. Bohlen, at sbohlen@nihb.org.

Yours in Health,

A handwritten signature in black ink, appearing to read 'W. Smith', with a stylized flourish at the end.

William Smith, Valdez Native Tribe
Chairman and Alaska Area Representative
National Indian Health Board

Cc:

¹ Justification of Estimates for Appropriations Committees for FY 2024, Department of Health and Human Services, Indian Health Service. CJ-173.

- Congresswoman Cathy McMorris Rodgers, Chairwoman, House Energy and Commerce Committee
- Congressman Frank Pallone, Ranking Member, House Energy and Commerce Committee
- Congresswoman Harriet Hageman, House Natural Resources Subcommittee on Indian and Insular Affairs
- Congresswoman Teresa Leger Fernandez, Ranking Member, House Natural Resources Subcommittee on Indian and Insular Affairs