



Muscogee (CREEK) Nation

Executive Office

July 9, 2024

The Honorable Bruce Westerman
Chair
House Natural Resources Committee
1324 Longworth HOB
Washington, DC 20515

The Honorable Raul Grijalva
Ranking Member
House Natural Resources Committee
1324 Longworth HOB
Washington, DC 20515

Re: H.R. 6180

Dear Chair Westerman and Ranking Member Grijalva:

As the Principal Chief of the Muscogee (Creek) Nation, I write to formally submit my Nation's Written Testimony for the record in opposition to H.R. 6180. The Muscogee (Creek) Nation opposes this legislation for five reasons: (1) the legislation will selectively help one Tribe to the detriment of others; (2) the legislation rewards one Tribe for conduct that is morally reprehensible and violative of the cultural code all other sister tribes collectively abide; (3) the legislation encourages other Tribes to engage in similar immoral conduct, creating a significant threat that more sacred sites will be destroyed in the homelands of forcibly removed Tribal Nations, (4) the advocacy for this legislation has been predicated on lies and falsehoods, and (5) the legislation would effectively grant a people "successor in interest" status to treaties that an entirely separate Tribal Nation signed with the United States. For these reasons, we oppose H.R. 6180. The Muscogee (Creek) Nation advocates for a clean *Carciari* fix for *all* Tribal Nations that empowers removed or displaced Tribal Nations to protect their sacred sites in their homelands.

The advocacy for the advancement of H.R. 6180 is full of falsehoods, and we are providing documentation that demonstrates the nefarious and misleading nature of Poarch's propaganda. As

detailed in this testimony, the land Poarch is asking Congress to confirm as their trust lands is the homeland of the Muscogee (Creek) Nation, including a ceremonial site and burial ground for one of Muscogee (Creek) Nation's tribal towns, Hickory Ground. Poarch is not part of the Muscogee (Creek) Nation and they are not successors-in-interest to our treaties. They descend from individuals who willfully divorced themselves from the Muscogee (Creek) Nation in the early 1800s in exchange for land in southwest Alabama, where they historically lived. Ironically, several of the treaties Poarch seeks to claim as their own are treaties the Muscogee (Creek) Nation was coerced into signing with the United States, in part, because Poarch's ancestors fought with Andrew Jackson against our ancestors. Having betrayed us, they relinquished their affiliation with the Muscogee (Creek) Nation, avoided removal, and received land grants near Tensaw, Alabama.

Poarch's attacks on the Muscogee (Creek) Nation continue today, not by use of bayonets, but by bulldozers and backroom casino deals. Their claims to our lands are both legally and morally indefensible. They are not us.

We hope that by submitting this testimony, we can give a voice to the Muscogee (Creek) Nation and Hickory Ground, urging you to seriously consider the egregious, immoral and unlawful activities that H.R. 6180 would condone.

I. The Legislation Will Selectively Help One Tribe to the Detriment of Others

First, there can be no question that the Supreme Court's decision in *Carcieri v. Salazar* has prevented many Tribal Nations from taking land into trust. While trust lands can be used for economic development, the primary purpose of the United States holding lands in trust on behalf of tribes is to protect, preserve and restore tribal homelands, including those of cultural and historical significance. The Muscogee (Creek) Nation supports a clean fix to address *Carcieri*, but opposes H.R. 6180 which singles out one Tribe at the expense of others. We have spoken to many Tribes who fear that if legislation is passed for one specific Tribe—instead of all Tribal Nations throughout Indian Country—it will set a harmful precedent that will require Tribes to get similar legislation in order to protect or restore their own tribal homelands.¹ This would not only be burdensome to Congress, it would create two classes of Tribes—those with the resources to advocate for legislation to address the negative impacts of *Carcieri* and those without. Should this proposed legislation become law, the multitude of other Tribes excluded from this legislation—whose need for a *Carcieri* fix is much greater—will be left at a significant disadvantage. A congressional policy should not be established where the wealthiest Tribes get to cut the line with a one-off piece of legislation, while the Tribes who need the most help are left stranded. Indian Country and Congress should be working together towards a solution that will help *all* Tribes affected by the Court's decision in *Carcieri*.

II. The Legislation Rewards Conduct that is Morally Reprehensible

Second, even if helping one Tribe to the detriment of others could somehow be justified, Congress should never condone, legitimize, or excuse taking land into trust to desecrate the sacred site and burial ground of a separate Tribal Nation. It contradicts the primary purpose established in the

¹ Resolutions opposing the Poarch legislation and supporting a clean *Carcieri* fix are attached as an appendix to this testimony.

Indian Reorganization Act for taking lands into trust, as well as the treaty rights of numerous removed Tribal Nations. It would also undermine efforts by the rightful successors to those sacred lands and burial grounds from taking action to protect and preserve these critical sites.

The Poarch Band purchased Hickory Ground, a sacred site and ceremonial ground of the Muscogee (Creek) Nation in present-day Wetumpka, Alabama that we were forced at gunpoint to abandon during removal and were subsequently denied the right to preserve, protect, or even visit for over 150 years after. Poarch could only purchase this sacred site within our treaty territory and homeland because Poarch received a taxpayer-funded historic preservation grant. Poarch received this federal grant because they promised to protect and preserve the Hickory Ground cultural and ceremonial site on behalf of the Muscogee (Creek) Nation. In its application for federal funds to buy Hickory Ground, Poarch stated that its “[a]cquisition of the property is principally a protection measure.”² Poarch further stated that its “[a]cquisition would prevent development on the property.” Indeed, Poarch told the federal government that if the government gave Poarch money to purchase Hickory Ground, then:

The property will serve as a valuable resource for the cultural enrichment of the Creek people.... The Creek people in Oklahoma[’s] pride in heritage and ties to their original homeland can only be enhanced. There is still an existing Hickory Ground tribal town in Oklahoma. *They will be pleased to know their home in Alabama is being preserved....* The Hickory Ground site will continue to enhance their understanding of their history, *without excavation.*

Poarch proclaimed that “[d]estruction of archaeological resources in Alabama . . . destroy[s] the cultural history of Creek people.” Ultimately, Poarch told the federal government that its acquisition of Hickory Ground was “necessary to prevent destruction of the site.” Consequently, Poarch successfully bid to receive federal funding to purchase Hickory Ground.

But just as soon as the federal government placed our sacred site in trust for the Poarch, Poarch proceeded to illegally disinter our ancestors’ remains and cultural artifacts. After breaking their promise to preserve the grounds to create space for a bingo hall, they eventually ruined Hickory Ground by bulldozing the site for a 26-story multi-million dollar luxury casino hotel and resort. All in all, Poarch removed 57 of our relatives from their final resting place. Poarch placed their remains in garbage bags and sent them off to be stored at a university. Our ancestors have never been returned and many remain stored in a garden shed and in boxes at a university because Poarch refuses to allow them to be repatriated. All of this was done over the strenuous objections of the Muscogee (Creek) Nation and in violation of numerous laws, and contrary to universal principles of human decency. Poarch has yet to be held accountable for its heinous, reprehensible conduct, and now brazenly seeks to be rewarded for their behavior through a Congressional act. Although gaming is a critical component of tribal self-determination, allowing one Tribal Nation to engage in gaming on another Tribal Nation’s burial ground flies in the face of the protections afforded when lands are placed into trust.

² Poarch’s application for the federal funds used to purchase Hickory Ground is attached as an appendix to this testimony.

III. The Legislation Encourages Others to Follow in Poarch's Footsteps

Indeed, enacting this legislation would condone Poarch's behavior and encourage others to follow in Poarch's footsteps. The roadmap created by this legislation would be very clear to any group of people living in the historical treaty territory of a removed Tribal Nation. H.R. 6180 would encourage groups of people claiming Native ancestry to do the following:

- **Step One:** Claim to be a tribe based on the fact that current members of the group descend from one or more individuals who politically divorced themselves from a historic Tribal Nation;
- **Step Two:** Ask for federal preservation funds to buy one of the removed Tribal Nation's historic sites and burial grounds—under the pretenses that you will protect it;
- **Step Three:** Petition the federal government to make you a tribe (and thus become a federally recognized tribe);
- **Step Four:** Desecrate the sacred site and exhume the removed Tribal Nation's ancestors to build a multi-million dollar casino; and
- **Step Five:** Use the millions of dollars in revenue made from the casino built on burial grounds to lobby Congress for legislation entitling you to take more land into trust within the removed Tribal Nation's historic treaty territory with *no* provisions that protect sacred sites or Native burial grounds.

The five-step plan laid out by Poarch is immoral, to be sure. But the incentive to make money is real, and thus the roadmap laid out by Poarch is likely to be repeated by others. There is no need to allow Poarch to complete step five of their roadmap/plan. Doing so will undoubtedly encourage others to follow suit.

IV. The Advocacy for This Legislation is Based on Lies and Falsehoods

In addition to having legitimate policy, legal, and historical concerns with H.R. 6180, we have grave moral concerns that Poarch is disseminating statements that are demonstrably and purposefully false. While policy and legal disagreements are common and to be expected throughout the legislative process, we feel compelled to warn you that the papers in support of H.R. 6180 being pushed by Poarch are predicated on lies. Among them are the statements below in a white paper circulated to the members of your committee.

“Unbeknownst to the Tribe at the time of purchase, archaeological evidence later suggested the presence of a Creek ceremonial ground on property”

False. As discussed in greater detail above, Poarch knew they were purchasing a “Creek ceremonial ground” *before* they purchased Hickory Ground. When asking the federal government for funds to purchase the site, Poarch told the federal government the site was a sacred ceremonial ground, and that they would protect it. Specifically, *before* purchasing the site, Poarch told the federal government:

- “Hickory Ground (1-Ee-89) is of major importance in the history of the Muscogee (Creek) Nation.”

- “The property is in the process of being nominated to the National Register of Historic Places.”
- “In order to halt the destruction planned for the site and to insure [sic] against future destruction, funds for acquisition of fee simple title are requested.”
- “Acquisition of the property is principally a protection measure.”
- “Acquisition would prevent development on the property.”
- “The property will serve as a valuable resource for cultural enrichment of Creek people.... The Creek people in Oklahoma[’s] pride in heritage and ties to original homeland can only be enhanced. There is still an existing Hickory Ground tribal town in Oklahoma. They will be pleased to know their home in Alabama is being preserved.... The Hickory Ground site will continue to enhance their understanding of their history, *without excavation*.”
- “Hickory Grounds may also be a place where Creeks from Oklahoma may return and visit their ancestral home.”
- A trained anthropologist would “act as an advisor to the tribal councils on plans for permanent protection of the site.”
- “Destruction of archaeological resources in Alabama . . . destroy[s] the cultural history of Creek people.”
- Poarch acquisition is “necessary to prevent destruction of the site.”
- “In order to halt the destruction planned for the site and to insure against future destruction, funds for acquisition of fee simple title are requested.”

Poarch is telling this Committee that Poarch purchased Hickory Ground without the knowledge that Hickory Ground was “a Creek ceremonial ground,” but that is a blatant lie. Hickory Ground’s significant cultural status was not “*unknownst*” to Poarch. Poarch knew about Hickory Ground’s significant cultural status, and Poarch used that knowledge to convince the federal government to give it federal preservation funding on the pretense that Poarch would protect it.

“Muscoogie has chosen to ignore what sovereignty means as it works to undermine tribal sovereignty in its attacks on the Poarch Band of Creek Indians.”

False. Muscoogie (Creek) Nation is not attacking tribal sovereignty. Tribal sovereignty is the inherent right to exercise your treaty right to self-govern as a Tribal Nation. Tribal sovereignty is *not* the right to lie and destroy the sacred site of a separate Tribal Nation. Muscoogie (Creek) Nation’s fight to protect the Nation’s sacred sites and burial grounds does not violate tribal sovereignty; it affirms it. The sovereignty of Tribal Nations flows from our culture, and when we destroy it for profit—as Poarch has done—we undermine it. Indeed, Poarch’s conduct threatens the inherent sovereignty of all Tribal Nations.

“A federal district court already dismissed Muscoogie’s lawsuit.”

Misleading. While the United States District Court, Middle District of Alabama, dismissed the Nation’s lawsuit, the Court’s dismissal was not based on the merits of the Nation’s claims, and the case is currently before the Eleventh Circuit Court of Appeals. The District Court determined Poarch officials could not be held liable for their violations of federal law based on a rarely applied and questionable Supreme Court decision known as *Coeur d’Alene*—a case that most lower courts no longer follow since it allows state and tribal officials to violate federal law with impunity. There

is a good chance the Eleventh Circuit Court of Appeals will reverse the lower court's outlier of a ruling, and there is no reason to let Poarch off the hook before the Nation has had its day in court.³

"Nevertheless, the Tribe took great care to leave the ceremonial grounds undisturbed."

False. Poarch did not leave Hickory Ground "undisturbed." Poarch brought in bulldozers and razed the ground. Poarch dug up 57 of our relatives and put their bodies in garbage bags and plastic bins in a storage shed. Poarch broke the promises it made in its federal application for grant funds and instead of protecting Hickory Ground, Poarch built a 246 million dollar casino on top of it. This is not leaving Hickory Ground "undisturbed."

"Prior to the archaeological study, there was no visible evidence of a Creek ceremonial ground at the site."

False. Archaeologist David Chase of Auburn University discovered the Hickory Ground site in 1968 and due to its archaeological and historical significance, it was placed on the National Register of Historic Places on March 10, 1980. In its application to the federal government for the money Poarch needed to purchase the site, Poarch told the federal government it wanted to buy the land *because it was Hickory Ground*, and Poarch intended to protect it. Perhaps Poarch believes that constructing a narrative that the burials of Mvskoke ancestors were not visible prior to Poarch's digging will somehow exonerate Poarch for its actions, but the truth is that Poarch knew it was buying a culturally significant and historic site and used the land's status as a basis for asking the federal government for the funds Poarch needed to buy it.

"In accordance with our laws and traditions, any remains discovered outside of the ceremonial grounds were interred adjacent to the site with prayer and ceremony in April of 2013."

False. First, the entire site of Hickory Ground Tribal Town is a ceremonial site. It is not clear what Poarch means by stating that remains were "discovered outside of the ceremonial grounds" since the relatives whose remains Poarch exhumed were buried *at the Hickory Ground Tribal Town and within the ceremonial grounds*, the site Poarch used federal preservation funds to purchase. Perhaps Poarch has drawn some sort of artificial boundary line around the areas where Poarch disturbed graves, but that line has no basis in Mvskoke culture or history. Burials were disturbed in all parts of the Hickory Ground Tribal Town.

Second, less than one week prior to the "burial" Poarch refers to in April 2013, Muscogee (Creek) Nation and Mekko Thompson wrote to Poarch, asking them to hold off on "burying" Mekko Thompson's ancestors until Hickory Ground could consult and provide guidance on the proper way to rebury the ancestors Poarch wrongfully exhumed. Instead of repatriating Mekko Thompson's relatives to him, Poarch put them in the ground pursuant to what Poarch calls a "ceremony." It is hard to imagine what Poarch considers to be a "ceremony" or what kind of "prayer" Poarch offered in burying Mekko Thompson's relatives without his consent or

³ We note that the Department of the Interior (DOI) is a defendant in the lawsuit, and further, that the DOI did not mention this fact when testifying in favor of H.R. 6180, a bill that would absolve the DOI of a claim brought against the agency in a federal lawsuit.

involvement. Furthermore, Auburn University has confirmed—during the course of the current litigation—that not *all* of our relatives have been reburied by Poarch. Instead, several remain at Auburn, but Auburn won't return them to us because of active litigation and Auburn says Poarch has taken the position that our relatives should not be returned to us. Poarch has their billion dollar casino. The least they could do is release the collections at Auburn and allow us to rebury our relatives and their belongings in accordance with Mvskoke culture and ceremony.

“The Poarch Tribe voluntarily agreed, without compensation, to preserve and protect the northern 17 acres of the trust property . . .”

Misleading. The fact that Poarch, in 2017, agreed to preserve a portion of the property is misleading because, in applying for the funds to buy the site in the first place, Poarch promised to protect *the entire site*. They received federal taxpayer funds in exchange for their promise to protect the entire site. Why, in 2017, should they expect to receive compensation to do something they promised to do in exchange for federal taxpayer dollars in 1980?

“The Tribe has complied with all applicable federal, historic, and cultural preservation laws pertaining to this property.”

False. This is the subject of the current lawsuit, and no decision on the merits by a court of law has yet to be issued. But even without a court decision determining whether Poarch complied, federal agencies noted almost two decades ago that Poarch was violating federal cultural preservation laws. For instance, on November 14, 2006, the Advisory Council on Historic Preservation (ACHP) noted that “there was no Federal agency review of the archaeological investigations carried out by the Poarch Band” and “no consultation with any other Indian tribe, particularly the Muscogee Creek Nation” in violation of the National Historic Preservation Act. Indeed, the ACHP inferred that “Poarch Band’s actions were undertaken with the intent to avoid the requirements of Section 106.” This is not compliance.⁴

V. **The Legislation Seeks to Backdoor Poarch into “Successor in Interest” Status for Muscogee (Creek) Nation’s Treaties**

Despite claiming to be a successor in interest at the hearing and in its written testimony, Poarch is *not* a successor in interest to any of the treaties the Muscogee (Creek) Nation signed with the United States since, at the time of signing, Poarch did not exist as a tribe, entity, or even an organized group. The fact that a group of people claiming Creek ancestry organized themselves and asked to become a tribe in 1980 does not automatically qualify them to be a successor in interest to the treaties the Muscogee (Creek) Nation has signed.

In fact, historically, the people who today call themselves “Poarch” chose to politically divorce themselves from the Muscogee (Creek) Nation. When Andrew Jackson sought to exterminate the “Upper Creeks” (citizens of the Muscogee (Creek) Nation who had not intermarried with whites and who opposed removal and slavery), Poarch’s ancestors teamed up with General Jackson and assisted in his attempts to wipe out the full-blood Muscogee (Creek) Nation citizens. In exchange

⁴ The Letter from ACHP to National Indian Gaming Commission NEPA Compliance Officer (Nov. 14, 2006), is attached herein in the appendix.

for supporting Andrew Jackson, they were given land grants in and near Tensaw. Indeed, the Department of the Interior's acknowledgment recommendation and evaluation states that Poarch's ancestors fought on the side of Andrew Jackson during the "Creek War." See U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 13, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/013_prchcr_AL/013_pf.pdf ("many of the present group's ancestors, including Lynn McGhee, received grants for their land in the Tensaw area from the United States for their support in the Creek War."); see *id.* at 16 ("the lands they chose were . . . close to the Tensaw/Little River area"). By agreeing to stay, and by accepting these land grants, they gave up all political rights they had previously held as Muscogee (Creek) Nation citizens. To be clear, by betraying our Nation and fighting on the side of the United States against our Nation, they were allowed to avoid the violent, forced removal our Nation suffered on the Trail of Tears. Having betrayed and divorced themselves from our Nation, they have no right to claim any interest in the treaties we signed with the United States.

It is, therefore, disturbing that H.R. 6180 goes beyond simply stating that the Poarch Band shall be considered as under Federal jurisdiction in 1934 (they were not). The bill also ratifies and confirms all lands taken into trust prior to enactment, including those outside of Poarch's geographic area and within the treaty territory homelands of the Muscogee (Creek) Nation. Should Poarch ever receive legislation allowing lands to be taken into trust, the legislation should limit that authority to the geographic area their federal recognition was predicated on. When the individuals who called themselves "Poarch Creek" submitted an application to become a Tribe in 1980,⁵ they were very explicit in telling the federal government that their ancestral ties to the Southeast are limited to the areas surrounding Tensaw and Atmore in present-day southwestern Alabama. Poarch's federal acknowledgment recommendation and evaluation states that the individuals who identify as Poarch have "lived in the same general vicinity in southwestern Alabama within an eighteen-mile radius for a time period beginning in the late 1700s to the present."⁶

H.R. 6180 attempts to put land into trust for the Poarch Band *outside* of their historical territory and within the historic treaty territory of the Muscogee (Creek) Nation. Given Poarch's horrific track record and atrocious treatment of the Muscogee (Creek) Nation's sacred sites, there is no reason to give Poarch carte blanche ability to take more land into trust within our Nation's historic boundaries. Indeed, doing so would violate the treaties our Nation signed with the United States. The United States has treaty trust duties and responsibilities to the Muscogee (Creek) Nation. One of those duties is the duty to uphold, protect, and preserve the sacred sites our Nation was forced to leave behind when we were forcibly removed from our homeland on the Trail of Tears. That treaty and the trust duty the United States owes to the Muscogee (Creek) Nation supersedes the

⁵ Poarch initially submitted its application under the name "the Muscogee Nation east of the Mississippi, Inc."

⁶ U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 2, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/013_prchcr_AL/013_pf.pdf.

Poarch Band's desire to expand gaming operations within our Nation's homelands and to the detriment of our cultural history.

VI. Conclusion

Ultimately, Poarch's destruction of Hickory Ground in Wetumpka, Alabama, demonstrates why removed or displaced Tribal Nations must be empowered to protect the sacred places and ancestral burials they were forced to leave behind. The destruction at Hickory Ground is heartbreaking and demoralizing. When the law allows for a self-identified group of people to take control of the sacred sites and burial grounds that were never theirs, and empowers that group to subsequently excavate graves and desecrate those sites, it fails every removed or displaced Tribal Nation in America. Comprehensive legislation is essential to ensure all Tribes can restore their land base without concern for the destruction of their most sacred sites. We cannot afford to let the destruction of another Native, historic, sacred site to take place. Thus, any proposed legislation seeking to address *Carciari* must provide removed Tribes with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands.

The Muscogee (Creek) Nation stands ready to work with all of Indian Country and Congress to achieve a clean, comprehensive *Carciari* fix that applies to *all* Tribal Nations and empowers Tribal Nations to both restore their land base and protect sacred sites within the homelands from which they were forcibly removed.

Respectfully submitted,



David W. Hill
Principal Chief
Muscogee (Creek) Nation

Enclosures:

Poarch Federal Acknowledgement Memo., pp. 2, 3, 16, 64, 65 of 131 (1983), available at https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/013_prchcr_AL/013_pf.pdf.

Poarch Application for Historic Preservation Grant Re U.S. Department of the Interior (HCRS [Heritage Conservation and Recreation Service]) letter 712 at 2 (2/12/1980) ("Federal Preservation Grant Application").

Letter from ACHP to National Indian Gaming Commission NEPA Compliance Officer (Nov. 14, 2006).

Letter from the Coalition of Large Tribes Opposing H.R. 6180 (June 21, 2024).

United Indian Nations of Oklahoma Resolution No. 2024-02.