



POARCH BAND of CREEK INDIANS

July 15, 2024

Haig Kadian, Clerk
Subcommittee on Indian and Insular Affairs
United States House of Representatives
Washington, DC 20515
Via email: haig.kadian@mail.house.gov

Dear Clerk Kadian:

It was a pleasure to testify before the Subcommittee on Indian and Insular Affairs on H.R. 6180, "*Poarch Band of Creek Indians Lands Act*." I am appreciative of the opportunity to address the Subcommittee's additional questions.

My responses to questions from Representative Westerman are as follows:

1. **Your written testimony described your tribal history in the state of Alabama and the tribe's current relationships with many local governments. Can you expand on how your tribe was able to build and maintain these relationships?**
 - a. **How can Congress help to promote congenial relationships between tribes and localities?**

When we first went through the Interior Department's land into trust process, our Tribe did not have much in the way of resources. Over the years, as our economy developed and the Tribe's enterprises grew and diversified, we were able to strengthen our relationships with nearby counties and local governments, entering into dozens of MOUs and intergovernmental agreements as noted in my written statement. However, far too many tribal governments lack resources to meet the most basic needs of their citizens. As a result, they are not able to help their neighboring state or local governments.

One proposal that would help foster relationships between tribes and local units of government would be to include tribal trust lands in the Payment In Lieu of Taxes ("PILT") program. Congress established the PILT program in 1976 to help local governments offset losses in property taxes due to the existence of nontaxable Federal lands within their

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boundaries. PILT payments are made annually for tax-exempt Federal lands administered by Department of the Interior agencies, including the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Reclamation. In addition, PILT payments cover Federal lands administered by the U.S. Forest Service, the U.S. Army Corps of Engineers, and the Utah Reclamation Mitigation and Conservation Commission.

Many local government concerns with tribal government land-into-trust applications relate to potential losses of tax revenue. Including tribal trust lands in the PILT program would resolve these concerns. While Indian trust lands are not public lands owned by the United States, the government does hold legal treaty and trust obligations to make existing Indian lands livable homes to tribal citizens and to help restore the tribal government land base.

2. You mentioned in your testimony that several litigation challenges continually use the *Carcieri* decision reasoning, even after cases have been resolved.

a. Is there any litigation still ongoing?

b. If so, what is the status of the litigation?

Fortunately, our Tribe, often with the support of the federal government, has been successful in defeating most *Carcieri*-based arguments in court during the early stages of litigation. We have also settled a handful of lawsuits where *Carcieri* arguments were raised in connection with alleged injuries involving our various businesses and facilities. The U.S. Court of Appeals for the Eleventh Circuit has already rejected challenges to the status of our trust lands on two separate occasions. See *Poarch Band of Creek Indians v. Hildreth*, 565 F. App'x 934, 942-44 (11th Cir. 2016); *Alabama v. PCI Gaming Authority*, 801 F.3d 1278, 1291-93 (11th Cir. 2015). The United States filed brief in support of our Tribe in both of these cases, expending valuable federal resources.

The only ongoing litigation where a *Carcieri* challenge has been raised is a lawsuit brought by the Muscogee (Creek) Nation challenging our right to develop our trust land in Wetumpka, Alabama. The United States District Court for the Middle District of Alabama dismissed all of Muscogee's claims against our Tribe and the United States in March of 2021, but Muscogee has appealed that ruling to the Eleventh Circuit Court of Appeals. Muscogee's *Carcieri* claims ignore the two prior decisions on this now well-settled legal question, and further prove our point that our Tribe will be forced to litigate these baseless legal claims time and again without enactment of H.R. 6160. And Muscogee's lawsuit, which names various federal officials and entities as defendants, has forced the federal government to once again expend taxpayer funds to relitigate this twice-decided issue. After Muscogee filed its appeal, our two tribal nations engaged in a lengthy mediation process in an effort to amicably resolve the dispute, but it proved unsuccessful, and the appeal is moving forward. The only question on appeal is whether the Poarch Band of Creek Indians can be sued in federal court without our consent; the district court dismissed Muscogee's claims without even needing to reach the *Carcieri* argument. All appellate briefs have been filed, and oral argument before a panel of the Eleventh Circuit is set for September of this year.

3. In your written testimony, you mentioned that your tribe is looking to develop a nursing home but needs additional land.

- a. **Are there lands your tribe is seeking to have taken into trust currently?**
- b. **Have you seen any opposition to these applications?**

Currently, we do not have any pending trust land applications due to the concerns the Tribe has regarding the definition of “under federal jurisdiction” in 1934. As previously stated the Poarch Band of Creek Indians has already spent millions of dollars defending our existing trust lands. While we are confident that our Tribe qualifies to have land taken into trust under current law, as the federal government has repeatedly concluded, we are equally confident that any trust land application by our Tribe will lead to costly, extended litigation that will frustrate the purpose and value of any potential trust acquisition. Until the Department of Interior’s authority to take land into trust for our Tribe is unequivocally affirmed, we cannot risk facing additional costly challenges that may arise due to the lack of clarity on the definition of 'under federal jurisdiction' as required by the Indian Reorganization Act.

4. Is there anything else you would like to add to your testimony on how the Department of the Interior’s fee-to-trust process could be reformed to benefit tribes and state and local governments?

As noted in my written testimony, the Poarch Band of Creek Indians generally supports the amendments to the Part 151 regulations. We support the clarification to the process for a Tribe to prove that it was “under federal jurisdiction.” However, as noted below, upon further review of new Part 151.11, the Tribe does not support the elimination of the “bungee cord” approach, which had been employed since at least 1995.

5. The new 25 CFR Part 151 regulations governing lands into trust provide no geographic boundaries within which tribes can acquire trust lands, eliminates the previous requirement that the Secretary use heightened scrutiny the further a tribe goes from its existing reservation to seek new trust lands, and failed to include a consultation requirement with nearby tribes for any new trust land acquisitions. In fact, the regulations do not even require the Department to notify a tribe if another tribe applies for trust lands. The Interior Secretary would be able to review such an application with complete discretion and no requirement to notify or consult affected tribes.

- a. **Does Poarch Band support this part of the new regulations that eliminate the heightened scrutiny for applications that seek to acquire lands far from a tribe’s existing reservation?**
- b. **Would you want the Interior Secretary to be mandated to consult with you if any other tribe applies for trust lands within your ancestral territory in Alabama?**

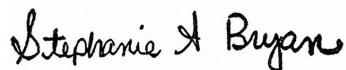
The updated regulations to Part 151.11, now listed under the question “How will the Secretary evaluate a request involving land outside of and noncontiguous to the boundaries of an Indian reservation?”, eliminate the requirement that as the distance between the applicant-tribe’s reservation and the land sought to be placed in trust increases, “the Secretary shall give greater scrutiny” to application.

As noted in my written testimony, our Tribe appreciates the Interior Department's efforts to improve the administrative land into trust process. We generally support the changes at Part 151.4 to clarify the process for a Tribe to prove that it was "under federal jurisdiction." However, upon further review of new Part 151.11, the Tribe does not support the elimination of the requirement that the Secretary give greater scrutiny to off-reservation land into trust applications as the distance between the applicant tribe's current lands increases, also known as the "bungee cord" approach, which had been employed since at least 1995.

Yes, we would want the Interior Secretary to consult if any other tribe applied for trust lands within our ancestral territory in Alabama. Failure to require consultation with nearby federally recognized Indian tribes has been a longstanding gap in the fee to trust process. While the regulations in place from at least 1995 to 2024 required Interior to provide notice and comment to state and local governments, it did not provide similar outreach to federally recognized Indian tribes that have existing trust lands nearby the proposed land into trust application and have never required meaningful consultation with nearby federally recognized Indian tribes.

Again, thank you for the opportunity to provide information that supports our bill. Please let me know if I can be of any further assistance.

Mvto (thank you),



Stephanie A. Bryan
Tribal Chair & CEO, Poarch Band of Creek Indians

