Testimony of Chairwoman Tina Gonzales, Shivwits Band of Paiutes
U.S. House of Representatives — Subcommittee on Indian and Insular Affairs
H.R. 3073 — Shivwits Band of Paiutes Jurisdictional Clarity Act

May 21, 2025

Chairman Hurd and distinguished Members of the House Subcommittee on Indian and Insular Affairs, my name is Tina Gonzales, and I have the honor to serve as Chairwoman of the Shivwits Band of Paiutes ("Shivwits Band" or "Shivwits"). Thank you for the opportunity to provide testimony on H.R. 3073, the Shivwits Band of Paiutes Jurisdictional Clarity Act, and thank you to Congresswoman Maloy for her dedication to representing the interests of Native American tribes, and in particular for her notable efforts on H.R. 3073.

1. *History of the Shivwits Band of Paiutes*

The Shivwits Band is one of several groups of Paiute Indians that have lived since time immemorial in an area once encompassing more than 30 million acres across present-day southern Utah, northern Arizona, and southern Nevada. The Shivwits were closely tied to their awe-inspiring homelands, living close to water and farming the lands along waterways to cultivate numerous varieties of crops for sustenance and medicinal purposes by implementing irrigation practices.

During the mid-19th century, settlers arrived in the Utah territory and settled on lands traditionally inhabited by Shivwits. Loss of access to food and water sources and being exposed to unfamiliar diseases resulted in decimation of the Shivwits population. As their lands were taken and their traditional sources of food were depleted, Paiute bands like the Shivwits became progressively more dependent on the federal government for survival.

By the late 1880s, settlers petitioned the federal government to relocate Shivwits to a new home on the Santa Clara River, to free up more lands for ranching. The Shivwits Band was first recognized by the federal government in 1891, when the first reservation was established for the "Shebit tribe of Indians in Washington County, Utah." Unfortunately, however, the reservation did not include water rights, so the Shivwits Band was forced to abandon its historical farming practices and were left destitute with little resources to survive.

In 1916, President Woodrow Wilson ordered expansion of the Shivwits reservation to 26,880 acres. Congress added an additional 1,280 acres to the reservation in 1937. In 1935, the Shivwits Band voted to accept the Indian Reorganization Act of 1934, and in 1940, the Shivwits Band established its federally approved Constitution and Bylaws. However, changes in federal policies toward Indian tribes proved devastating to the Shivwits Band's efforts to reestablish itself.

2. *Federal Termination Era (1953-1968)*

Post-World War II, the federal government's policy toward Indian tribes shifted to one of termination, as Congress adopted various laws aimed at terminating federal obligations to Indian tribes. Well over 100 tribes, bands, and rancherias were terminated through Congressional enactments during the Termination Era.

The Paiute bands of southern Utah, including Shivwits, soon fell within the crosshairs of Termination Era policies. In January 1954, Paiute leaders received copies of S. 2670, the termination bill targeting Shivwits and other Paiute bands. By letters dated February 2, 1954, Paiute leaders were informed that Congressional hearings on S. 2670 would be held on February 15, 1954, in Washington D.C., and that Paiute leaders could travel to attend these hearings, "provided that the particular groups concerned have ample available tribal funds to cover the expenses of such a trip. *There are no federal funds available for such travel expenses* nor for advances to delegates who run out of funds while in Washington." Unsurprisingly, the Shivwits Band lacked funds for travel to Washington, D.C. to advocate against its termination. The legislation sped through Congress, and on September 1, 1954, President Eisenhower signed Public Law 762, thereby terminating the federal government's trust relationship with the Paiute bands, including Shivwits.

Despite termination, the Shivwits Band forged onward with its trademark resilience, continuing to perform self-governing functions by electing Shivwits Band representatives and holding meetings of its general membership. Although termination had devastating effects on the Shivwits economy, the Shivwits Band held steadfast to their lands and culture. Remarkably, unlike other Paiute bands, the Shivwits Band managed to retain ownership of its lands, leasing those lands to local ranchers.

In short, the termination policy did not have the effect that its proponents predicted in regards to integrating Native Americans into "mainstream" America. Huge swaths of Indian lands were lost. Socioeconomic data from that time indicates that terminated Indians continued to have higher unemployment rates, lower incomes, and lower levels of educational attainment than surrounding non-Indian communities, but without federal programs and services to aid in responding to these needs. Congress eventually acknowledged that the policies of the Termination Era were a mistake, and ultimately restored terminated tribes, including Shivwits, to federal status, by passage of individualized "restoration" legislation.

3. ***Restoration of the Shivwits Band's Federally Recognized Status***

In 1979, S. 1273 was introduced in the Senate, with aims to restore federal status and services to Shivwits and the other Paiute bands. On November 8, 1979, before the Senate Select Committee on Indian Affairs, Utah Congressman Dan Marriott explained his support of restoration of Shivwits and the other Paiute bands:

> As I see it, for Congress to terminate the Paiute Bands was the equivalent of giving a lame, jobless man and his family a new house, then looking the other way when the mortgage came due. It simply wasn't fair. It wasn't right. ***This Committee and this Congress has the power and the opportunity to restore to the Paiute people of Utah benefits and a measure of dignity which were wrongfully taken from them 25 years ago.*** I urge that we do so by swiftly enacting the legislation now before you.

On April 3, 1980, the Shivwits Band was restored to federally recognized status when Congress passed the Paiute Restoration Act, Public Law No. 96-227, reestablishing the trust relationship between the federal government and the Paiute bands, including Shivwits. As of that date, and

since that time, Shivwits has been a federally recognized Tribe. Shivwits was restored to its status as a federally recognized Tribe that existed before termination. Today, Shivwits cooperates with four other restored Bands of Paiutes on some common governance issues through an inter-Tribal constitution. Notably, the joint governance cooperation that Shivwit chose after being restored by Congress does not diminish the Band's status as a federally recognized, restored Tribe. The use of the term Band or Pueblo or Rancheria, etc. does not denote a lesser status. The Shivwits Band of Paiutes is a federally recognized Tribe based on Congress' Restoration Act in 1980.

4. ***Roadblocks to Shivwits Economic Development***

Since its restoration in 1980, the Shivwits Band has continued its dedicated efforts to strengthen its sovereignty. While restoration has yielded notable improvements in the quality of life for members of the Shivwits Band, restoration did not bring substantive economic development to Shivwits Band lands, without which true self-determination and self-sufficiency remain unattainable. As a result, the Shivwits Band has remained dedicated to confronting economic challenges, continuously searching for economic development opportunities that will allow the Shivwits Band to supply governmental services and employment options to Shivwits members, and to become independent from reliance on federal funding, which is very limited and is generally tied to implementation of federally conceived programming.

The story of the Shivwits Band is one of determined resilience in the face of relentless challenges and broken promises. After years of searching for suitable business investments, recent development opportunities on the Shivwits Reservation has opened the door for sustainable economic expansion for the Shivwits Band. Unfortunately, however, as discussed below, a 2022 decision by the Tenth Circuit Court of Appeals has presented a roadblock to these opportunities, and has stunted the Shivwits Band's ability to engage in economic development and self-determination.

The decision in question, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892 (10th Cir. 2022) (hereinafter, "*Lawrence*"), holds that, even where an Indian tribe has provided a clear and valid waiver of its sovereign immunity in an agreement, Utah state courts lack subject matter jurisdiction to hear cases arising under that agreement and within Indian country, unless the requirements of 25 U.S.C. §§ 1322 and 1326 are met. As discussed below, 25 U.S.C. §§ 1322 and 1326 derive from Public Law 280, an enactment that was part of the suite of harmful Termination Era legislation aimed at ending federal obligations to Indian tribes. The *Lawrence* case's holding, based upon a flawed interpretation and application of 25 U.S.C. §§ 1322 and 1326, along with language in the Paiute Restoration Act, has resulted in outside developers being unwilling to engage the Shivwits Band for long-term economic development activities, because non-Indian businesses and entities are not guaranteed a state court forum for resolving disputes arising under contracts with the Shivwits Band.

A. Public Law 280

Public Law 280, or "PL 280," is the common reference to the Act of Aug. 15, 1953, 67 Stat. 588, which is codified in part at 25 U.S.C. §§ 1321–1326. As mentioned above, Congress passed PL 280 during the Termination Era. PL 280 controversially transferred legal jurisdiction from the federal government to state governments in certain states, which altered previous longstanding

dynamics of legal authority between federal, state, and tribal governments. Before PL 280, the federal government and tribes shared jurisdiction over almost all civil and criminal matters involving Indians in Indian country, and states had no jurisdiction in Indian country. By PL 280, Congress mandated that six (6) states (CA, MN, NE, OR, WI, and AK)—referred to as the "mandatory" PL 280 states—had extensive criminal and civil jurisdiction over Indian country within those states.

Separately, PL 280 also permitted some other states to acquire jurisdiction over Indian country at their option—called the "optional" PL 280 states. Utah is one of those "optional" PL 280 states. When passed in 1953, PL 280 was written to provide that "optional" states could legislate to accept some degree of jurisdiction over Indian country, without the consent of the Indian tribes within that state. However, that consent requirement (or lack thereof) changed in 1968 when Congress amended PL 280 to require tribal consent to state jurisdiction (manifested by a special election) before a state could opt-in to assume jurisdiction over a tribe's Indian country under PL 280. The PL 280 provisions that permit states to acquire criminal and civil jurisdiction over Indian country at the state's option are codified at 25 U.S.C. §§ 1321, 1322. The provision requiring a tribe's consent to state jurisdiction by special election is codified at 25 U.S.C. § 1326.

As a result of the 1968 amendments, any "optional" PL 280 state's passage of legislation after 1968, in which the state purports to acquire jurisdiction over Indian country within that state under 25 U.S.C. §§ 1321, 1322, is only effective where a tribe holds a special election consenting to the state's jurisdiction over that tribe's Indian country under 25 U.S.C. § 1326. The State of Utah passed its legislation in 1971, **making Utah the only "optional" PL 280 state that passed legislation under 25 U.S.C. §§ 1321 and 1322, acquiring jurisdiction over Indian country *after the 1968 amendments to PL 280***. As a result, the State of Utah can only exercise global civil and criminal jurisdiction over Indian country under PL 280 where Utah tribes hold a special election under 25 U.S.C. § 1326 and vote to consent to Utah state jurisdiction over the tribe's Indian country.

B. Paiute Restoration Act and PL 280

Several post-1968 federal statutes affording restoration or federal recognition to individual tribes specified that the state must only exercise civil and criminal jurisdiction as if that state had assumed such jurisdiction with the consent of the tribe under PL 280 as amended in 1968. As discussed below, the Paiute Restoration Act is one such federal statute.

Relevant here, Section 7(b) of the Paiute Restoration Act provides that the "State of Utah shall exercise civil and criminal jurisdiction with respect to the reservation and persons on the reservation **as if it had assumed jurisdiction pursuant to [P.L. 280 and its 1968 amendments], and pursuant to sections 63-36-9 through 63-36-21 of the Utah State Code**." (emphasis added.) Section 7(b) is written to provide that the State of Utah shall only exercise civil and criminal jurisdiction over the Paiute bands pursuant to PL 280's tribal consent requirements and Utah law passed in 1971, which accepts jurisdiction over Indian country in Utah only where the tribe in question has held a special election to confer such jurisdiction as required by PL 280. The Paiute Restoration Act's provision on jurisdiction places the Shivwits Band at risk of a fate similar to that in *Lawrence*. Under *Lawrence*, Section 7(b)'s language acts as a jurisdictional limitation, given the provision requiring compliance with PL 280 **and its 1968 amendments**.

C. ***Lawrence* Case**

In *Lawrence*, a Utah tribe waived its sovereign immunity for suits arising from a contract with a non-Indian consultant ("consultant"), which contract was the subject of the underlying lawsuit. The tribe also expressly waived any arguments regarding exhaustion of tribal court remedies and agreed to submit to the jurisdiction of any court of competent jurisdiction. Despite these waivers, once disputes arose under the contract in question, the tribe fought the consultant's efforts to have the disputes heard in Utah state court. Notwithstanding the tribe's immunity waiver and contractual consent to state court jurisdiction, the Tenth Circuit Court of Appeals held that Utah state courts could not exercise civil jurisdiction over this *specific* contractual dispute absent tribal consent to *general*, global civil jurisdiction under 25 U.S.C. § 1322(a), which general consent must be provided through a special election conducted under 25 U.S.C. § 1326.

Lawrence rejected valid and reasoned arguments that special elections under 25 U.S.C. § 1326 are only required where a tribe wishes to *permanently* authorize the state to assume *global* jurisdiction over the tribe's Indian country.

Contrary to the ruling in *Lawrence*, the procedures at 25 U.S.C. §§ 1322, 1326 for assuming permanent general civil jurisdiction should not foreclose a tribe's ability to selectively consent to state court jurisdiction for disputes arising under individual contracts and agreements. Tribes like the Shivwits Band should be able to selectively consent to state court jurisdiction in contracts, by agreeing to waive their sovereign immunity for suits arising under that contract and consenting to state court as a court of competent jurisdiction as to specific legal actions. The *Lawrence* decision has robbed tribes, including the Shivwits Band, of their ability to so selectively consent to state court jurisdiction, resulting in uncertainty for outside investors looking to engage the Shivwits Band in economic development and other business opportunities.

5. ***Need for H.R. 3073***

As a result of *Lawrence*, because non-Indian businesses and entities are not guaranteed a state court forum for resolving disputes arising under contracts with the Shivwits Band, those outside businesses and entities are hesitant to engage the Shivwits Band in business relationships. Recently, the Shivwits Band was presented with a promising business opportunity to develop its lands; however, without assurances that there will be a forum available in which to resolve disputes, the Shivwits Band is concerned that this opportunity, and any future opportunities, will not be realized. The Shivwits Band's self-determination and independence depends on a federal legislative fix that allows the Shivwits Band to selectively consent to state court jurisdiction in individual agreements, rather than holding a special election to adopt a global and permanent consent to state court jurisdiction over the Shivwits Band's affairs.

H.R. 3073 is the federal legislation that the Shivwits Band needs to address the problem created by *Lawrence*. Affirming the Shivwits Band's ability to consent to state court jurisdiction in individual contracts and agreements is essential to ensuring that the Shivwits Band can engage outside businesses for long-term economic development benefitting not only the Shivwits Band's community, but local Utah communities as well. By passage of H.R. 3073, you would be championing legislation to assist the Shivwits Band in resolving the issue created by *Lawrence*, so

that the Shivwits Band and surrounding community can enjoy the benefits of economic development, stability, and financial security.

Thank you again to this Subcommittee for holding this hearing and for your consideration of H.R. 3073, and to Congresswoman Maloy for her tireless work on behalf of the Shivwits Band. I am happy to answer any questions that you may have.