



**Testimony for the Oversight Hearing on
"The President's FY2019 Budget Request for Indian Programs"
May 9, 2018
Chairperson Aaron A. Payment, MPA, MEd, EdD**

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'Aaron Payment'

Ahneen, BiiWaagajig, Ndzinakoz. My name is Aaron A. Payment. I am the elected leader of the *Sault Ste. Marie Tribe of Chippewa Indians*, the largest tribe east of the Mississippi. I proudly serve as the President of the United Tribes of Michigan, Vice-President of the Mid-West Alliance of Sovereign Tribes and 1st Vice-President for the National Congress of American Indians. I also serve as the Mid-West Alternate to the Tribal Interior Budget Committee. For a quarter of a century, I have trained future legislators through the non-partisan Michigan Political Leadership Program on tribal and treaty rights and the origins of federal trust responsibility pursuant to the Northwest Ordinance, United States Constitution and subsequent law.

The duty of the Presidential Administration, the Courts, and Congress in giving fidelity to the treaties and US Constitution is not a partisan one but one of a measure of the integrity of our great country in honoring our treaty obligations. Your fiduciary duty as Congressional appropriators is balancing the budget while honoring the contractual promise to provide, "health, education, and social welfare" into perpetuity. Let me be clear, however, that...

Our funding is NOT BASED ON RACE or reparations but instead was PRE-PAID through the exchange of millions of acres of lands.

Chi MeGwitch (thank you) for inviting tribal leaders to be heard in a government-to-government fashion by holding these hearings on the President's FY 2019 Budget Request for Indian Programs. The distinguished Congressman Don Young (AK) recently said it best, when he exclaimed, "he is my President but that is not my budget". We are comforted by the expression, "the President proposes, Congress disposes". Thank you for being the stop gap to the proposed draconian cuts to Indian Country which threaten the abrogation of the treaty and trust responsibility.

I respectfully ask for restoration of wholesale proposed eliminations and cuts to these tribal programs. Given tribes have long opposed pitting tribes against each other through competitive grant funding, we restate our request to formula fund grants to tribes as part of the treaty obligation. Further, I restate my request for moving tribal funding from discretionary to mandatory and to forward-fund programs to ensure continuity. Just as there have been no interruptions in the use of the land we exchanged, we ask that the monetary value for this exchange not be interrupted.

Drawing from my testimony to the *United States Senate Committee on Indian Affairs* last month, I restate that tribes seek only those things promised to us and every citizen by the Constitution, and the solemn treaties and agreements reached between our tribal nations and the United States. At the founding, the United States dealt with our tribal governments as sovereign equals. In exchange for Federal protection and the promise of

certain benefits our ancestors ensured into perpetuity in exchange for the benefits to the people of the United States including title to the very soil of our beloved country. To settle the process for admission of new states, the thirteen original states agreed to transfer western land claims to the United States under the principles in the Northwest Ordinance, including:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

These provisions signify the intent of the Framers to provide for the governance of Indian country, a compact between the original States and all that followed. We have never asked anything except that these protections be continued. Many of the proposed deep reductions in the President's Budget threaten to limit this protection and these benefits. The proposed budget cuts to tribal governmental services, if enacted, would represent a clear retreat from the federal commitments and treaty promises made to tribes.

In contrast to treaty obligations, the President's budget would cut the Bureau of Indian Affairs (BIA) by about half a billion dollars, or 15 percent! BIA Social Services would be reduced by more than a third, Indian Child Welfare by more than a 25 percent, and critical human services programs, law enforcement and courts programs, environmental protection, housing, and education programs would face unconscionable reductions. Infrastructure programs, such as the Indian Community Development Block Grant would be eliminated, and the Indian Housing Block Grant and road maintenance would be reduced.

Summary of Major Changes

As Congress has the final say on discretionary spending, I call your attention to the following proposals in the President's budget as stark and alarming. Some of the proposed eliminations that I respectfully request that you reinstate include: Indian Community Development Block Grant (in Housing and Urban Development); Low Income Home Energy Assistance Program (LIHEAP); Indian and Native American Program (INAP in Department of Labor); Community Development Financial Institutions, Native American program (Treasury); Tribal Energy Loan Guarantee Program; Eliminations within BIA include: Small and Needy Tribes, Housing Improvement Program (\$10 million), Tribal Climate Resilience, Alaska Native Programs, Johnson O'Malley Program (\$15 million), and Scholarships and Adult education (\$35 million). When programs are zeroed out in the President's budget, this erodes the trust responsibility and causes a disruption in the delivery of service to our people.

Major reductions that I ask you to reject include: Native American Housing Block Grant cut from \$654 million to \$600 million, -8.2 percent; Bureau of Indian Affairs cut by \$433 million, or -15.6 percent; and major reductions in BIA include- Social Services cut by \$19 million, or -37 percent; Indian Child Welfare Act cut by \$5 million, or -27 percent; Welfare Assistance cut by \$8.4 million, or -11 percent; Rights Protection Implementation cut by \$14.7 million, or -37 percent; and Job Placement and Training cut by \$4.4 million, or -35 percent.

Here, again, I need to sound the alarm of what appears to be an abrogation of the treaty and

trust responsibility in the President's proposed budget which is either tone deaf to the identified needs though the BIA budget formulation process or intentionally draconian. In fact, some priorities as identified by tribes are proposed to be eliminated or face up to 40% reductions!

Bureau of Indian Affairs

The 2019 President's proposed budget for Indian Affairs is \$2.4 billion in current appropriations, a 15.6% decrease from the FY 2018 CR level. Nearly every line item in the BIA budget would see reductions in the FY 2019 budget request. The BIA's budget provides funding for tribal base operations, including social services, education, road maintenance, water resources, forestry, law enforcement, tribal courts, and many other core governmental services. The proposed overall level for BIA/BIE would take funding in nominal dollars back to the FY 2013 sequestration levels. However, adjusted for inflation, the proposed funding is lower than any enacted amount going back to FY 2003, and 21 percent lower than the level in FY 2010.

I urge you to reject the steep reductions in the BIA's proposed budget and instead invest in the programs ranked as most in need of increases as a part of the FY 2019 tribal budget formulation process. As part of the FY 2019 budget formulation process, tribes from each BIA region completed a survey to outline which 10 budget lines they would prefer to provide increased funding to any why. The results of this process show that BIA Social Services, Indian Child Welfare Act implementation funding, Scholarships and Adult Education, Tribal Courts, and Aid to Tribal Government made up the top five.

Unfortunately, most of the programs identified by the tribes as needing increases in FY2019 would receive reductions in the FY2019 President's budget request. Four programs in the top 5 identified by tribes were proposed to be eliminated in the President's budget: Scholarship and Adult Education, Housing Improvement Program; the Johnson O'Malley Program, and Small and Needy Tribes. Social Services and ICWA would be cut by 37 percent and 27 percent respectively, both cuts disproportionately larger than the over reduction for the Department of Interior, which would see a reduction of 16.8 percent.

Faulty Treatment of Tribes as Race Rather than Governments

Tribal governance existed before intervention and tribes continue to govern their citizens as recognized by the *U.S. Constitution* in several sections including *Article I, Section 8, Paragraph 3* which institutionalizes tribes as sovereigns equal to or exceeding that of state sovereignty. Additionally, hundreds of treaties, federal statues and Supreme Court precedence, reaffirm tribes as sovereign nations rather than as merely a racial ethnic population. True, as a subset of the American population, we do have the unfortunate distinction of having the worst of the worst statistics on most social indicators including suicides, alcoholism, low education attainment, unemployment, incarcerations, and violence against our people. We believe these outcomes to be attributable to the legacy of historical trauma, tribal critical race theory characterized though a lack of opportunity, and various federal policies at the expense of our people. Nonetheless, the funding that exists for "health, education and social welfare" is based on the treaty and trust responsibility and not based on race. As a simple explanation, if programs and services were based on race, there would exist the same funding for other racial ethnic populations.

One of the first statements from the current Presidential administration dealt with the

Secretary of Housing and Urban Development equating tribal housing with a race-based program. With virtually no platform or draft American Indian policies, this single statement gave pause to tribes as a foreshadowing of a new termination policy to discount the federal treaty and trust responsibility and therefore abrogation of the funding obligation.

More recently, in January, the Centers for Medicare and Medicaid Services (CMS) issued a Dear State Medicaid Director letter indicating a new policy supporting states mandating work requirements though Section 1115 waivers conditioning eligibility for Medicaid. The conflating of these indicators suggest the threat of a new termination era abrogating treaty and trust responsibilities though equating tribes as race based rather than sovereign nations. While the issue of Medicaid expansion is not under the purview of this committee, I ask that members of this committee and all members of Congress be vigilant in monitoring any efforts to regress the treaty and trust responsibility.

Treaty Rights Protection Implementation, Great Lakes Restoration and Environmental Protections as Trust Responsibility

As my friend Bay Mills Indian Community President Bryan Newland so expertly testified today, I wish to reinforce his testimony as it relates to our appropriations request for treaty right protections. As a prerequisite to Statehood for Michigan in 1837, the 1836 Treaty of Washington (Chippewa Ottawa Treaty) ceded nearly 14 million acres of land that connected the upper and lower peninsulas and qualified Michigan for Statehood. Like many treaties of the time, the federal government contractually obligated the United States to guarantee the rights of signatories and their descendants to the right to hunt, fish, and gather on such lands and in such waters until such time this territory is needed for settlement. This obligation is enshrined though judicial precedence. As both a signatory to the 1836 Treaty and in fulfilling the federal trust responsibility, the federal government retains responsibility to act as trustee to fully act advocate and defend the integrity of the original treaty obligations but also subsequent judicial precedence. Funds appropriated for treaty rights protection are used to implement this treaty obligation and trust responsibility.

As a signatory tribe and member of the Chippewa Ottawa Resource Authority, I do not support the President's FY2019 Budget which could cut funding by 37%. Managing the resource necessitates complex biological services, and conservation and enforcement activities. The current consent decree expires in 2020 such that we are entering a period of renegotiations with other parties to the 2000 Consent Decree. The State of Michigan, has already earmarked a large appropriations which suggests a long and protracted legal battle. I support CORA's request for Congress to maintain \$39.4 million for Rights Protections Implementation for the FY2019 budget and to maintain the CORA Tribes' share at \$5.999 million. I ask that Congress appropriate the full \$1.9 million to the Bureau of Indian Affairs for "Litigation Support" for tribal and treaty rights litigation and to dispatch these funds to tribes post haste. CORA estimates a need for an additional \$450,000 in FY2019 to negotiate the new Decree beyond 2020. Finally, I respectfully request you support our CORA request for FY2019 RPI funding at \$39.4 million with \$5,999,614 allocated for the CORA tribes.

Thank you for your attention and consideration of my testimony and upholding the treaty and trust responsibility. **After all, a government is only as good as its word.**