

**TESTIMONY OF
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SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
OVERSIGHT HEARING ON
“REVIEWING THE BROKEN PROMISES REPORT: EXAMINING THE CHRONIC
FEDERAL FUNDING SHORTFALLS IN INDIAN COUNTRY”
NOVEMBER 19, 2019**

The Honorable Chairman Raúl M. Grijalva, Ranking Member Rob Bishop, Chairman Ruben Gallego, Ranking Member Paul Cook, and Members of the Committee:

Thank you for the opportunity to offer this testimony as Ambassador to the Muscogee (Creek) Nation (also “MCN” or “Creek Nation”). The failure of the United States to adhere to and uphold its promises in the hundreds of treaties signed with Tribal Nations is the direct cause of the myriad critical challenges our people face today. Today, the citizens of our nations face the highest rates of domestic violence and murder, they experience serious economic and health disparities, and their governments have been precluded from exercising jurisdiction to ensure their protection based on legal principles that directly contradict the treaties the United States has signed. Truly, the solution to some of the largest crises in Indian Country is simple: Congress must pass legislation that effectuates the promises made in the treaties the United States signed with Indian Nations.

I. Introduction

In transmitting the Broken Promises Report on December 18, 2018, Chairman Catherine Lhamon wrote:

Since our nation’s founding, the United States and Native Americans have committed to and sustained a special trust relationship, which obligates the federal government to promote tribal self-government, support the general wellbeing of Native American tribes and villages, and to protect their lands and resources. In exchange for the surrender and reduction of tribal lands and removal and resettlement of approximately one-fifth of Native American tribes from their original lands, the United States signed 375 treaties, passed laws, and instituted policies that shape and define the special government-to-government relationship between federal and tribal governments. Yet the U.S. government forced many Native Americans to give up their culture and, throughout the history of this relationship, has not provided adequate assistance to support Native American interconnected infrastructure, self-governance, housing, education, health, and economic development needs.

As the signatory to more than one of the 375 treaties referenced in the Broken Promises Report, the Muscogee (Creek) Nation maintains a profound understanding of how the United States’ failure to abide its promises enshrined in these treaties has impacted all Tribal Nations and their citizens.

Creek Nation is a foundational nation—in the true sense of the word—before, during, and after the formation of the United States.

Prior to the existence of the United States, the Creek Nation engaged in diplomatic relations with every colonial power that attempted to conquer and maintain jurisdiction over Creek Nation’s territory in what is now known as the Southeastern United States. In our homelands of what is today recognized as Florida, Georgia, and Alabama, the Creek Nation negotiated authority and trade with the governments of Spain, France, Great Britain, and eventually, the United States.

At a time when international nations questioned the sovereignty of the newly born United States, President Washington sought to sign treaties with the Indian Nations whose sovereignty had previously been affirmed through treaties signed with France, Spain, and England. Following the ratification of the new U.S. Constitution, the Muscogee (Creek) Nation was one of the first to sign a treaty with the nascent country.

In 1790, President Washington signed a treaty with the Muscogee (Creek) Nation, and in order to do so, he negotiated with the Head of the Muscogee delegation—a leader from our ceremonial Hickory Ground. Together, meeting often in Washington’s home, they shaped and secured what was then the southwestern boundary of the United States. This became known as the Treaty of New York, since the capitol of the infantile United States was in New York.

The Treaty of the New York was the first our Nation signed with the United States, but there were many more to come. Although an element of coercion and duress factored into the making of every one of our treaties with the United States, the treaty promises must be upheld. In fact, the treaty canon of construction, long upheld and enforced by the United States Supreme Court, commands it. Just this year, the Supreme Court reiterated a 1942 holding that “[i]t is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people.” *Washington State Dep’t of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000, 1012 (2019) (quoting *Tulee v. State of Washington*, 315 U.S. 681, 684 (1942)). Our treaties with the United States have guaranteed the Creek Nation its reservation, jurisdiction, and inherent right to self-govern.

The Muscogee (Creek) Nation Reservation that exists today was created in a treaty my Nation signed with the United States in 1866, stating that our lands in what is today Oklahoma would be “forever set apart as a home for said Creek Nation.” The reservation guaranteed by the Treaty of 1866 constitutes a promise to my people, made by the United States, effectively in exchange for the cessation of our original homelands—an exchange that was ruthlessly effectuated by our forcible removal on what we all know as the Trail of Tears.

As the Supreme Court continues to consider Oklahoma’s request to judicially dis-establish a treaty-created reservation that Congress has never dis-established, I am confident that this Congress will be mindful of its solemn trust duty and obligation to preserve that which our treaties with the United States promised would be exist in perpetuity for Creek Nation and its citizens.

And to be clear, questioning the financial capacity of our tribal governments to govern their treaty-guaranteed territories does not constitute a constitutional basis for depriving those governments of their treaty-guaranteed territories. Instead, such questioning only highlights the broken promises of the United States, as well as the need to fund tribal capacity to self-govern. The solution is not the breaking of more treaty promises—instead, the solution is to provide the resources to tribal governments that the treaties promise.

These promises are not stories of distant history.

I am the son of the late Jean (Hill) Chaudhuri, a full-blood Mvskoke born on our family's allotment in Okfuskee County, Oklahoma. My mother was raised in the household of James Scott—a man who, as a young boy, survived the Trail of Tears. Many Creeks, including myself, are only three generations away from our removal on the Trail of Tears. Thus, the impact of broken promises constitutes a very real and present aspect of modern Muscogee life. To be sure, they have presented significant challenges to my own family.

Mom was raised at a time when many families, like ours, had to draw water every day and went to town in a horse and buggy. Today, our families continue to struggle with the consequences of these broken promises. From diabetes, to alcoholism, to the high rates of murder and domestic violence, all of our contemporary crises come as the direct consequence of the United States' broken promises to our Nation and her citizens. The legacy of these broken promises impact every aspect of Muscogee life.

II. Modern Governance of the Muscogee (Creek) Nation

Today, I am honored to serve as the official Ambassador to Creek Nation. Despite the legacy of broken promises, MCN has worked hard to utilize its limited resources and opportunities to advance self-determination and the prosperity of not only Creek Nation tribal citizens, but of all of those who live within MCN's borders. The MCN's efforts to maintain the safety, health, and welfare of all living on Creek lands cannot be overstated.

First, with an annual budget of \$290 million, the MCN maintains significant law enforcement and prosecutorial resources – including the Lighthouse Tribal Police Department (LHP) and a dedicated K-9 Unit and Major Crimes Investigation Division. Annually, LHP receives more than 10,000 calls for service, conducts more than 200 criminal investigations, and conducts more than 1000 traffic stops.

LHP's special operations divisions supports local and county support for drug enforcement, seizing illegal drugs through undercover activities and traffic stops and routine check in public facilities such as public schools and community facilities.

Our Muscogee (Creek) Nation courts consist of highly-qualified judges with resumes that include juris doctorates from Ivy League law schools, service in the state legislature, and service in presidentially-appointed and senate-confirmed federal positions. The competency of our Nation to govern cannot legitimately be called into question.

Today, the MCN Department of Health (MCNDH) operates a health system, which includes two community-based hospitals, six (6) outpatient primary clinics, one (1) physical rehabilitation service and a skilled nursing inpatient facility. In the last twelve months, MCN primary care clinics have had more than 23,000 unduplicated patients. The system has an active user population of over 44,000 patients and had over 120,000 patient encounters in 2018.

MCNDH leverages funding provided through our self-governance compact and funding agreement to expand services. In 2019, MCNDH generated enough third-party revenue to double its IHS funding – making the total operational costs for the system nearly \$100 million. In the last two decades, MCN has made significant investments in the health systems infrastructure. Replacing two outpatient clinics and a hospital providing more than \$100 million construction and operational funds for those facilities.

MCN Department of Education supports student development from cradle to graduate studies, providing more than \$2 million to Oklahoma’s public schools and \$1.5 million in scholarships to students annually. The Department of Education also provides direct cultural support to public schools.

The College of Muscogee Nation provides educational opportunities for nearly 100 traditional and non-traditional students annually.

MCN operates a number of institutions to promote economic development within the Nation’s Reservation, including Native 8(a)s, a CDFI, and a holding company with a \$25 million portfolio. The Mvskoke Loan Fund (CDFI) has a portfolio that has grown in five short years from zero to \$2 million, focusing on microenterprise and consumer loans.

Muscogee Nation Businesses (8as) have portfolios that have grown to just over \$20 million in just ten years. Together the companies generated more than 100 jobs across two continents. Their portfolio includes government security, staffing, international sourcing, and quick preparation food.

MCN also supports tourism and recreation in rural Oklahoma and Tulsa through cultural tourism, regional and statewide athletics and gaming.

Our commitment to all those who live within our borders was recently called into action since our Nation—along with many communities in Oklahoma—was devastated by unprecedented flooding. Since May 22, when the flooding first hit, the Muscogee (Creek) Nation has worked diligently with local, state, and federal officials to ensure that all life and property located within the MCN’s borders are fully protected. Principal Chief Floyd has met with U.S. Congressmembers, Tulsa City Councilors, Tulsa’s mayor, and the Governor of Oklahoma. Together, we are working towards solutions that protect the interests of all citizens living within our borders.

Although Creek Nation has recently enjoyed greater economic prosperity, our needs remain significant. Federal policies that purposefully broke up Muscogee families, outlawed Muscogee culture and religion, and restricted access to traditional Muscogee foods have left our Creek

Nation citizens with high levels of post-traumatic stress disorder and serious health disparities and disease—all of which have a cumulative effect of creating higher levels of poverty for our people. Securing congressional funding to mend these broken promises is critical.

I greatly appreciate the opportunity to testify on the Broken Promises Report, as there are specific issues identified in the Report that I would like to call to the Committee's attention. While the Report is replete with important recommendations, the following are those that MCN deems most critical.

III. Recommendations

a. Fully Fund Tribal Nations

The first step in rectifying many of the problems identified by the Report is for the United States government to fully fund each and every one of its obligations to Tribes. Tribes should not have to make due with less than adequate funding and make up the difference from their own revenues. Nor should they be held hostage by government shutdowns and sequesters. A good first step here would be to enact HR 1128, the Indian Programs Advanced Appropriations Act. This would end the uncertainty and fiscal pain that so many Tribes have suffered in recent years during shutdown periods, and place Tribes on par with other essential governmental obligations like Medicare, Medicaid, and VA Health.

b. Fix the Broken Promises to Native Veterans

Muscogee citizens have served, on behalf of the United States, in every major overseas conflict the United States has fought in. Today, Native Americans serve in the military at rates higher than any other population in the United States. Muscogee (Creek) Nation is home to 529 living Creek veterans today. We are proud of their service to Creek Nation, as well as the United States.

One area the Report largely omitted but should be addressed are the special challenges that Native Veterans face. When the government lets down Native Veterans and fails to deliver on what has been promised, it is in effect a double broken promise, as they have failed in their duties to both the trust responsibility and those Natives who have served.

As touched on above, when Native American veterans have to pay copayments when accessing health care that should be completely paid for by the Veterans Affairs Administration, the federal government is not only breaking its promise to veterans, but also to the free health care guaranteed in hundreds of broken treaties. Chairman Gallego's bill HR 4908 The Native Veterans Parity in Access to Care Today (PACT) Act would prohibit the collection of a health care copayment by the Secretary of Veterans Affairs from a veteran who is a member of an Indian Tribe.

HR 4153 and S.2365, the Health Care Access for Urban Native Veterans Act is also geared towards improving access to healthcare for Native veterans in urban areas. This bill by amending the Indian Health Improvement Act would authorize urban Indian organizations to enter into arrangements for the sharing of medical services and facilities. Because not all Native Veterans live on Indian Reservations, this would allow those in urban areas to receive their health care

from urban healthcare centers where they may feel culturally more comfortable receiving care over a VA facility, or if a VA facility is not within the mandated 30 miles of a veterans home. This would give Native Veterans empowerment in where they choose to be seen and could potentially lead to more Native Veterans seeking the care they may critically need.

One additional bill, HR 2791 and S.524 the VA Tribal Advisory Committee Act will establish a VA Advisory Committee on Tribal and Indian Affairs. The Committee will facilitate communication and understanding between the VA and tribal governments to better address the unique barriers Native American veterans face when accessing VA services. These advisory committees when done for other issues in the VA like women's healthcare have been very effective in the past and the VA tends to take suggestions seriously and has a good track record for implementing improvements.

c. Addressing the MMIW Crisis

We are just beginning to understand the crisis of murdered and missing indigenous women in the United States. We know it is a crisis, but no one can say for sure how many of our women and children are murdered or missing because local city, county, and state law enforcement simply do not know. In most cases, they do not keep records that identify when one of our women or children goes missing.

Our women are not any safer in their own homes. On our tribal lands and reservations, the Supreme Court's 1978 elimination of tribal criminal jurisdiction plays a large role in the high rates of murder our Native women face (*Oliphant v. Suquamish Indian Tribe*). When a Native woman goes missing on tribal lands, our tribal governments often times cannot investigate, arrest, or prosecute the perpetrator because, if he is non-Indian, our governments do not have jurisdiction. At the same time, our missing and murdered Native women do not rank high on the priority list for federal authorities, who, in most cases and under the current legal framework *do* have jurisdiction. More often than not, they simply do nothing.

That was the case with Peggy McGuire, a Muscogee Creek citizen who has been missing since she was last seen taking her child to school on November 16, 2015. Her truck was found at an ice house about 10 miles away from her home shortly after she disappeared. The state investigation has gone cold, and federal authorities have not intervened. Because of the Supreme Court's decision in *Oliphant*, Muscogee (Creek) Nation is unable to exercise its inherent jurisdiction to investigate the disappearance of one of its own tribal citizens.

i. Savanna's Act

In the Senate, Senator Murkowski has introduced "Savanna's Act," S. 227, which would address the number of missing and murdered Native women and girls in the United States. Former Senator Heitkamp initially introduced the bill after Savanna LaFontaine-Greywind was murdered. Her killers removed her unborn child, cutting her from Savanna's womb, while Savanna was still alive. Savanna's child was found in the possession of her killers; Savanna herself was found in the Red River.

The bill would improve tribal access to federal crime information databases, such as the National Crime Information Center (“NCIC”), and would create data fields relevant to the Native population. The bill would also require all U.S. Attorneys consult with tribal, state, and federal law enforcement and stakeholders to create standardized protocols across jurisdictions to address the issue of missing and murdered and requires an annual report to Congress.

Savanna’s Act (H.R. 2733) was introduced in the House on May 14, 2019 by Norma Torres (D-CA). It has 36 cosponsors, the majority of which are in the Native American Caucus. Right now, the bill is in the Subcommittee on Crime, Terrorism, and Homeland Security and the Subcommittee for Indigenous Peoples of the United States.”

Although Savanna’s Act fails to restore the critical criminal jurisdiction that *Oliphant* removed, and although the Act does not provide any additional sources of funding to law enforcement, passage of the Act would constitute a step forward in combatting the MMIW crisis because it would require the U.S. Attorneys to engage in the MMIW crisis instead of ignoring it, as many of them currently do.

ii. **Studying the Missing and Murdered Indian Crisis Act of 2019 and the Native American Child Protection Act**

Congress should also move to enact Chairman Gallego’s legislation, HR 2029 Studying the Missing and Murdered Indian Crisis Act of 2019 and HR 4957 the Native American Child Protection Act. The federal government must help Tribes fulfill the most basic obligation of protecting their own citizens, and accurate data about the scope of what has been called an ‘invisible crisis’ of missing and murdered Indian women and children is a necessary tool to assist law enforcement in tackling this.

iii. **Not Invisible Act**

Another third piece of key legislation which we could use to fight violent crime is HR 2438, the Not Invisible Act. This bill would increase intergovernmental and interagency coordination to identify and combat violent crimes on Indian lands and against Indians. Once again, accurate data and coordination are key in effective law enforcement.

d. **Restore Tribal Criminal Jurisdiction to Ensure Safety for Native Women**

In the now six years since VAWA was reauthorized in 2013, over two dozen tribal governments have begun exercising criminal jurisdiction over non-Indians and several dozen more are in varying stages of planning to implement the law.

Muscogee (Creek) Nation has implemented VAWA 2013’s special domestic violence criminal jurisdiction (“SDVCJ”). Since that time, the Nation has made four arrests and has completed three convictions.

From 2013 to 2018, collectively, the implementing Tribes reported making 143 arrests of 128 non-Indian abusers. These arrests ultimately led to 74 convictions, 5 acquittals, and as of 2018,

there were 24 cases then pending. There has not been a single petition for habeas corpus review brought in federal court in an SDVCJ case. Although some argued, prior to VAWA 2013's passage, that Tribal Courts would be incapable of fairly implementing SDVCJ, the absence of even a single habeas petition in the first five years reveals that those arguments were unfounded and likely based on prejudice alone.

The National Congress of American Indians has issued a report summarizing their experiences that shows the true difference that the 2013 Reauthorization has been making on the ground for Native victims. I encourage you to review this report in its entirety as the information, data, and analysis contained in the report demonstrates that the restored tribal criminal jurisdiction in VAWA 2013 (SDVCJ) increased public safety for all of those—both Indian and non-Indian—living on tribal lands and in tribal communities. By all accounts, it has been an incredible success.

VAWA 2013, however, left many gaps. I applaud the bi-partisan effort of this Congress to address the gaps left in the wake of VAWA's 2013 re-authorization. This past April, the House of Representatives passed H.R. 1585, a bill re-authorizing VAWA. H.R. 1585 would restore tribal criminal jurisdiction over non-Indian perpetrated crimes including sexual assault, human trafficking, child abuse, and assaults on law enforcement. The bill would also allow Tribes in Alaska and Maine to implement the jurisdiction that Tribes in the other States may now exercise following VAWA's 2013 re-authorization, which excluded Tribes in Maine and Alaska. Most importantly, H.R. 1585 left intact the majority of VAWA 2013's language, including the provisions in VAWA 2013 that protect the due process rights of non-Indian defendants and provide for a habeas corpus petition to federal court.

I urge you to reach out to your colleagues in the Senate and encourage them to follow the House of Representatives' support for this bi-partisan legislation. Restoring tribal sovereignty and protecting Native women is not a partisan issue. Instead, it is a promise—one that should not be broken.

e. Support and Empower Tribal Justice Systems

Unfortunate rhetoric in the Supreme Court and Congress has called into question whether these two branches of the United States government hold the requisite constitutional respect for Tribal Courts. To be sure, the Muscogee (Creek) Nation opened the doors to its Supreme Court more than a century ago. Every subsequent treaty signed between the United States and Creek Nation preserved the inherent right of MCN to exercise jurisdiction over its own lands.

And yet now, as members of Congress debate issues such as the re-authorization of the Violence Against Women Act—and as the State of Oklahoma asks the Supreme Court to judicially dis-establish the Creek Nation Reservation—we hear questions regarding the competency and capacity of our tribal judicial systems to govern fairly and effectively.

As a former Muscogee Creek Nation Supreme Court Justice myself, I can say affirmatively that nothing about us, or our court systems, is inferior to the court systems maintained by the United States or several States. One key difference, however, is that states and federal courts are funded

by revenues generated through forms of taxation that Tribal Nations are not permitted to undertake. Many of the broken promises discussed in the Broken Promises Report focuses on the failure of the United States to fund tribal governments.

Often times, questions about the capacity of tribal courts to adjudicate disputes and rights are nothing more than a mask for prejudice and assumptions that the officers of these courts are inferior to those that populate state and federal courts. We are not. And to the extent that Congress becomes concerned with capacity, Congress should channel that concern into concrete funding—specifically, Congress should abide the promises made in hundreds of treaties to fund Tribal Nations and their governments, and ultimately, fund the infrastructure and staff of any and all tribal courts and tribal justice systems.

f. Ensure Housing for All Tribal Citizens

Inadequate housing on tribal lands was identified as a major broken promise in the Report. Congress needs to reauthorize and then fully fund one of the most critical tools we have to combat substandard housing, NAHASDA. Right now, several hundred Muscogee Creek citizens who desperately need housing assistance are on a waiting list due to the lack of full funding of NAHASDA. We are doing the best we can, and supplementing NAHASDA funds with our own, but there is a limit to what we can do unless the federal government holds up its end by fulfilling its obligations to fund NAHASDA.

Recent data illustrates that 4,477 AI/AN households have housing cost burdens greater than fifty percent (50%) formula annual income in the MCN formula area and 1,689 AI/AN households are overcrowded or without kitchen and indoor plumbing. Furthermore 5,164 AIAN households have annual income less than or equal to thirty percent (30%) of formula median income in the MCN formula area.

Housing maintains five rental properties with more than 300 living units, purchases or facilitates homeownership for nearly one hundred AI/AN annually, and provide emergency repair services in disasters.

The Housing budget has not had a substantive increase in the last decade, while housing and construction costs have consistently grown year of year during the Nation's economic recovery. The department is in the process of developing additional elderly housing in Okmulgee. This new development took nearly five years of saving to and a grant award to initiate construction for 75 new units and community center.

HR 2999, the Tribal HUD/VASH Act of 2019 would also be another good step towards addressing failures in housing. More money is needed for rental and housing assistance for homeless Native Veterans. Right now, even though our Nation is the 4th largest in the country with 89,000 citizens, we only have 21 current vouchers to help our veterans.

All too often, the problem of homelessness is disguised as a simple housing problem. To be sure, lack of affordable housing is a significant contributor. Another factor, however, is often overlooked—and that is the cumulative effect of all of the United States' broken promises. From

broken families, to military violence throughout several generations, to lack of access to traditional foods, to outlawed religion and culture—when it is all added up, the cumulative trauma is such that a certain percentage of the population is statistically destined for challenges that preclude the ability to maintain a stable home life. We can build all the houses we want, but truly, until we address the United States’ systemic broken promises to our Indian people, all the houses in the world will not solve the root cause of much of Indian Country’s homelessness crisis.¹

g. Protect and Preserve the Inherent Right of Tribal Nations to Own, Operate, and Regulate Indian Gaming on Tribal Lands

Tribal gaming, as we think of it today, dates back to the 1970s when a number of Indian Tribes established bingo operations as a means of raising revenue to fund tribal government operations and realize the goals of tribal self-determination.

The *California vs. Cabazon Band of Mission Indians* decision affirmed a Tribe’s right to regulate gaming on tribal lands. In that case, the United States Supreme Court recognized that a Tribe may engage in gaming if it is located within a State that permits such gaming for any purpose by any person, organization, or entity. The Court also found the tribal and federal interests supporting gambling – tribal self-determination and economic self-sufficiency – preempted the State interest in regulating gaming. The Court emphasized the compelling need in Indian Country for economic development and that the gaming operations were a major source of employment.

Soon after the *Cabazon* decision, Congress took up the issue of tribal gaming and conducted a series of hearings, ultimately culminating in the passage of the Indian Gaming Regulatory Act (“IGRA”) of 1988. In addition to providing a statutory basis for gaming on Indian lands, the Act incorporates the very same reasons the Court identified in *Cabazon* as compelling: to promote economic development, self-sufficiency, and strong tribal governments. The Tribes’ role as primary regulators and primary beneficiaries, as well as their sovereign right to pursue gaming on their lands, was left intact, with general regulatory oversight at the federal level to be provided by the newly created National Indian Gaming Commission.

But for the allowances provided for in the Indian Gaming Regulatory Act, States would have no role in the operation and regulation of Indian gaming. Although IGRA creates an avenue for States to enter into compacts with Tribes if and when they engage in what the Act defines as Class III gaming, any authorities or benefits the State receives has to be consistent with and within the parameters of IGRA. In other words, when Compacts exceed the scope of IGRA, the federal government has a critical responsibility to serve as a backstop against State overreach.

h. Protect Sacred Sites and Burial Grounds

¹ For further background on the complexities and potential solutions regarding Native American homelessness, a good reference could be the Memorandum of Understanding signed by numerous federal agencies in 2015, titled *Regarding Interagency Coordination and Collaboration for Setting a Path to End Homelessness among American Indians and Alaska Natives*.

While the Report discusses many aspects of the United States government's failure to uphold its promises made in the treaties signed with Tribal Nations, perhaps no example is more exemplary of this failure than the United States' approval of the Dakota Access Pipeline's permit to cross the Missouri River. The Report, of course, places this failure in the context of environmental law and the failure of federal agencies to engage in good faith consultation. The Report also makes clear that this failure was all the more significant because the United States permitted the private company to construct the pipeline over a section of treaty lands where the Standing Rock Sioux Tribe "often conducted spiritual ceremonies along the banks of the river." Report at 185.

The Report noted that the permit was granted for the pipeline to cross land that contained "multiple sacred ancestral burial grounds and artifacts," Report at 185, with no regard for the harmful impact destroying burials would have on the Tribe and the descendants of those buried on the destroyed grounds. Ultimately, the Report concluded that the disregard for human burials and sacred sites inherent in "the federal government's approval of the pipeline has caused some to question the government's willingness to honor the tribes' religious and cultural autonomy." Report at 187.

Furthermore, in 1999, the federal government delegated historic preservation responsibilities to the Poarch Band. At that time, the Poarch Band had acquired a site called Hickory Ground, a sacred historic site of the Muscogee (Creek) Nation that is located in Wetumpka, Alabama. The site has been listed on the National Register of Historic Places since 1980. Hickory Ground is part of the Muscogee (Creek) Nation's aboriginal lands, the location of the Muscogee (Creek) Nation's last capital before the tribe was forcibly removed from Alabama, and is a historic ceremonial ground and burial site.

Poarch acquired the site using federal preservation grant funds under the pretense that Poarch would protect the site from development. After the United States illegally delegated its preservation responsibilities to Poarch, Poarch excavated Hickory Ground to make way for a \$246 million casino resort called Wind Creek Wetumpka. Poarch desecrated the site, removing over 57 bodies of Plaintiffs' ancestors and thousands of sacred artifacts to build a casino. By permitting the Poarch Creek to destroy burials and obliterate the remains of our ancestors at the traditional Hickory Ground in present-day Alabama, the federal government broke its promise to the Muscogee (Creek) Nation.

The federal government's abdication of its duty to honor Tribes' religious and cultural autonomy is a harm the Muscogee (Creek) Nation understands all too well. In response to the purposeful destruction of our sacred sites, burials, and ceremonial grounds, the Creek Nation is actively engaged in a variety of efforts, including collaboration with relevant state and local governments—including State Historic Preservation Officers—to protect ancestral remains, critically sacred sites, and patrimony throughout Creek Nation's ancestral homelands. Legislation and administrative support of MCN's efforts in this regard will go far in rectifying the negative impact of the United States' broken promises and the various federal policies that have allowed for the desecration of Creek Nation burials and sacred sites.

IV. Encourage Tribal Economic Development

Lack of economic development opportunity on tribal lands is a major problem identified in the Report. One way to combat this is to develop more Native owned businesses. HR 1900, the Native American Business Incubators Program Act, would be a good step in helping many Natives take important first steps towards owning and operating their own businesses and achieving more economic security.

Furthermore, as the fourth largest Tribe in the Nation, MCN is engaged in a broad variety of economic development activities to improve the economic conditions throughout southeastern Oklahoma. In addition to helping secure a better future for its citizens, these efforts improve the daily lives of non-citizens throughout southeastern Oklahoma and beyond. According to the 2017 Economic Impact Study by the Economic Impact Group, LLC, these efforts account for an estimated 8,700 jobs in the region and a state-wide impact of more than \$866 million dollars. Despite these remarkable efforts, income levels in southeastern Oklahoma remain low. Congressional and administration support of MCN economic activities through fully funding grants and programs through HUD, USDA, HHS, DOI, SBA, community block grants, and other relevant agencies so that Nation is not left perpetually facing the Hobson's choice of choosing between funding community services and economic development.

I. Engage in Meaningful Consultation with Tribal Nations

Another key problem that often causes federal programs for Tribes to not achieve as much as they should is the lack of meaningful consultation with Tribes both prior to enactment and throughout the execution of policy changes. This could be remedied by Congress taking up and enacting Chairman Grijalva's RESPECT Act, which would set uniform standards on all government agencies to consult with Tribes and provide Tribes real remedies when consultation is inadequate or does not occur.

X. Suicide Prevention

Suicide rates for American Indians and Alaska Natives (AI/ANs) are four times higher than the national average. Suicide is the second leading cause of death for AI/AN youth between the ages of 15 to 24. Based on available MCN social services information, MCN's challenges in addressing the suicide crisis are consistent with those noted throughout all of Indian Country. The Report's recommendation for supporting tribal data collection efforts will benefit the ability of MCN, and other Tribal Nations, to further address the underlying causes of suicide. This issue deserves further consideration and additional stand-alone research and policy action.

II. Conclusion

Two hundred years ago, the sovereignty of the newborn United States was inextricably interwoven with that of the Muscogee (Creek) Nation. Today is no different.

In conclusion, I agree with the Commission's conclusion that:

Accurate data on Native Americans are necessary for federal, state, local, and tribal governments to monitor conditions and make informed policy and spending

decisions. Congress should provide funding to establish an interagency working group to share expertise and develop and improve systems and methodologies that federal government agencies could replicate for the collection of accurate and disaggregated data on small and hard to count populations such as the Native American and Native Hawaiian or Other Pacific Islander racial groups.

Report at 217.

We wholeheartedly support the Commission's call for Congress to fully fund existing Indian country programs that aim to rectify the United States' broken promises. Funding, however, is just one part of the problem. As the Report's recommendation on data collection wisely acknowledges, accurate data on Native Americans are necessary for federal, state, local, and tribal governments to monitor conditions and make informed policy and spending decisions.

If we are truly going to have an honest dialogue about rectifying the systemic, continuing, and purposeful violation of the promises in the treaties signed between Tribal Nations and the United States, we need to invest in a significant effort to collect and analyze all relevant information on the impacts these broken promises have directly had on issues such as homelessness, psychological trauma, domestic violence, MMIW, suicide, and other critical socio-economic issues in Indian Country today. We also need to be prepared to confront the policy implications that could result from this national soul-searching. The promises that were broken involve the taking of lands, the destruction of sacred sites, the loss of our languages, and the desecration of our trust. Not everything can be restored through funding, and Congress, as well as all citizens of the United States – Native and non-Native alike – must have the courage to tread where this path may lead us. To be sure, after a full analysis of the costs due to tribal nations, full repayment for all that has been lost due to America's broken promises may prove elusive. At a minimum, however, Congress needs to start the conversation.

As former United States Supreme Court Justice Hugo Black wrote, "Some things are worth more than money and the costs of a new enterprise.... Great nations, like great men, should keep their word."

I urge this Congress to enact all legislation necessary to restore the United States' broken promises.

Mvto.