We, the Chiefs of the four Wabanaki Nations, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation, respectfully submit the following supplemental testimony in response to the Questions for the Record posed to us by Chairman Raul Grijalva:

1. Are any of you able to speak on your tribe's history with the Maine Indian Claims Settlement Act (MICSA)?

> a. At the time, were negotiations carried out in good faith or did your tribe experience difficulties with State and federal lawmakers?

Houlton Band of Maliseet Indians

Please see our response to question #6 below, which explains our tribe's history with MICSA, the dynamics surrounding its negotiation, and the extremely difficult circumstances that were confronting our tribe at that time.

Mi'kmaq Nation

The Mi'kmaq Nation was not a party to, nor a participant in the negotiations of MICSA. Nevertheless, as a consequence of the passage of that act, it's possible land claim was extinguished without benefits or recompense from the State of Maine (or the United States). See S. Rep. No. 101-291, 101st Cong., 2d Sess. (1990) at 3.

Additionally, and without due process, MICSA also fully subjected the Mi'kmaq Nation, through a provision that stated that all other Indians…bands of Indian now **or hereafter** existing or **recognized** in the State of Maine are and shall be subject to all laws of the State of Maine. 25 U.S.C. §1721(b)(4).

Consequently, the Mi'kmaq Nation holds that the actions of the State and federal lawmakers at that time created a great injustice to be visited upon the citizens of its Nation. An injustice that survives to this day.

Passamaquoddy Tribe

For the Passamaquoddy Tribe, the entire land claims case and settlement negotiations unfolded under a cloud of intense racism, harassment, and discrimination. The Passamaquoddy Tribal attorney that first developed the land claims case was arrested by Maine state police *immediately* after he filed the land claims case. He subsequently fled the state and moved to Israel where he became a rabbi and war hero. As Governor Janet Mills of Maine recognized when she posthumously pardoned Attorney Gellers in 2020, more than 40 years after he fled Maine, there is "merit" to claims that his arrest was intended "to thwart his political and legal advocacy." "Governor Mills Issues Posthumous Pardon for Passamaquoddy Advocate Donald Gellers", State of Maine Office of Governor Janet Mills (Jan. 7, 2020) *available at*

https://www.maine.gov/governor/mills/news/governor-mills-issues-posthumous-pardon-former-passamaquoddy-advocate-donald-gellers-2020-01. According to Governor Mills, the State's top officials handed the arrest, as well as all trial, and appellate arguments related to Attorney Gellers, which was highly unusual. *Id*. Witnesses even confirmed hearing attorneys in the Maine Attorney General Office bragging that "the powers that be in this state" sought to take Gellers down because he was a "troublemaker" that was "stirring up the Indians" and because they "wanted to get him off the Indian suit." Colin Woodard, "Evidence emerges, lending credence to conspiracy", Portland Press Herald (Jul. 9, 2013) *available at* https://www.pressherald.com/2014/07/09/evidence-emerges-lending-credence-to-conspiracy/. Accounts from the time suggest that the Attorney General's office and state police were directly involved in a plot to frame the Passamaquoddy Tribal Attorney in order to obstruct the land claims case. *Id*. Governor Mills' pardon statement for Attorney Gellers effectively acknowledged these hard truths. *See* "Governor Mills Issues Posthumous Pardon for Passamaquoddy Advocate Donald Gellers" (acknowledging there is merit to claims that State officials targeted Don Gellers for political reasons).

In the years that followed, successive Maine Governors and Attorneys General were adamantly opposed to negotiating over tribal land claims until they could avoid the issue no longer. It was not until municipalities in Maine were unable to issue bonds that then-Maine Governor Jim Longley engaged the Passamaquoddy Tribe in negotiations. *See* Colin Woodward, "Bombshells, compromises, greet an unfolding crisis", Portland Press Herald (Jul. 13, 2014) *available at* https://www.pressherald.com/2014/07/13/bombshells-compromises-greet-an-unfolding-crisis/. The Governor lobbied Maine's congressional delegation to introduce a resolution in Congress to block federal courts from hearing the Passamaquoddy and Penobscot land claims cases. *Id*. According to the Passamaquoddy attorney at the time, "[Governor Longley] got on television and thanked the people of Maine for not resorting to violence – but nobody had been talking about violence." *Id*. The Passamaquoddy and Penobscot pledged not to seize land from small landowners within the claimed area but Maine's congressional delegation still introduced legislation to extinguish the land claims and to undercut the Tribe's chances at a fair settlement by limiting potential damages. *Id*. A state legislator even told White House negotiators "someone should get a gun and shoot those bastards" in reference to tribal members. *Id*. A state senator separately stated he was going to "invest heavily in Winchester and Remington", which are gun manufacturers *Id*. The Governor publicly stated that the tribes could never be allowed to have "a nation within a nation". He rejected tribal sovereignty entirely. The Governor's lawyer even said they were worried the tribes would "promote racial and ethnic hostility and resentment". *Id*. The result was that the entire process was very political and led to significant hostility against Native Americans in Maine.

Thus, public officials from numerous parts of the Maine state government expressed overt hostility and racism towards Tribal members in the years leading up to the 1980 land claims settlement. The Tribe negotiated the land claims settlement in this environment.

Penobscot Nation

The Penobscot Nation's experience with the negotiations of the federal settlement act were similar to those of the Passamaquoddy Tribe. Once the Department of the Interior filed the lawsuit on our behalf, our citizens began to experience more intense levels of racism and threats of violence. The level of racism and violence only increased as the federal court issued its decision that our land claims had validity and would be allowed to move forward.

To be clear, the Penobscot Nation was always supportive of settling the land claims. It was never our intent to evict anyone from lands or try to acquire back all the lands that were wrongfully taken from us. We were merely seeking to obtain some sort of justice for the lands we wrongfully lost.

However, the State vigorously advocated that any settlement also include provisions to essentially terminate our existence as a political entity and government of people. Our lawsuit was filed by the Interior Department in the early 1970s. It was just a couple of years after the new federal policy towards Indian tribes was announced by then President of the United States Richard Nixon, who announced a new direction of federal Indian policy that would be aimed at Indian self-determination. In this message, President Nixon condemned the continued forced termination of tribes but also condemned past federal policies of Federal paternalism. He said:

> I believe that both of these policy extremes are wrong. Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.
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> This, then, must be the goal of any new national policy toward the Indian people to strengthen the Indian's sense of autonomy without threatening this sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.

Public Papers of the Presidents of the United States, Richard Nixon, 1970, pp. 564-567.

As we reflect back on the negotiations that occurred, it is clear that the State of Maine rejected the new federal policy and direction announced by President Nixon, which is the federal policy that remains in effect today and is often cited as the reason why so many tribal nations within this country have been able to progress and thrive. Instead, the State of Maine remained committed to the past policy of termination. This is seen throughout the records of the negotiations in the 1970s and up until today. The State of Maine has consistently said that its

intent and interpretation of the federal settlement was to prevent the existence of "a nation within a nation." That is why the State of Maine had provisions, such as section 16(b), added to the federal settlement act at the last minute while the bill was pending in Congress. However, Congress did not terminate the Maine tribes. Instead, Congress reaffirmed our existence as tribal nations.

Our experience for the past 40 years with the federal settlement act has been one of dealing with a State that has long intended for us to be terminated. The federal Department of the Interior expressed its concerns about the impacts of the settlement act provisions to Congress during the negotiations, but ultimately was ignored by the politics in Congress and the politics within Maine. Our hope is that the current Congress, which has the knowledge of the positive impacts of the federal policy of self-determination, agrees to make the minor amendments necessary to the settlement act to allow the Wabanaki Nations the opportunity to fully realize self-determination in the future.

2. The restrictive provisions in MICSA have prevented beneficial federal Indian laws, such as the Indian Health Care Improvement Act and the Violence Against Women Act, from applying to each of your tribal jurisdictions.

> a. Can you all share with us how the non-application of critical federal Indian laws has affected your communities and citizens?

<u>Houlton Band of Maliseet Indians</u>

Four examples show how we, the Houlton Band of Maliseet Indians, have been seriously harmed by the non-application of beneficial federal Indian laws due to the sections of MICSA – Section 6(h), 8, and 16(b) of MICSA – that deny to our tribe equal treatment with other federally recognized tribes.

First, our tribe, along with the Mi'kmaq Nation, has been denied access to the full range of benefits under the Indian Child Welfare Act (ICWA), which has resulted in the removal of Maliseet children from our tribal community and made it more difficult for us to develop our governmental institutions. Under Section 8 of MICSA, we are not eligible to reassume jurisdiction over Indian child custody proceedings under section 108 of ICWA, unlike the Passamaquoddy Tribe and the Penobscot Nation. Section 108 provides that an Indian tribe subject to state jurisdiction (under Public Law 280 or another federal statute) may petition the Secretary of the Interior to reassume jurisdiction over child custody proceedings and must submit a suitable plan for exercising that jurisdiction, subject to the Secretary's approval. 25 U.S.C. §1918. As a result, we have been unable to access federal funding to expand our governmental capacity to provide effective and culturally-appropriate child welfare services, including the development of a tribal court system and child welfare code. This has had a devastating impact on Maliseet children and families: During the five-year period from 1996 to 2001, the State removed 29 Maliseet children from Maliseet families – more than 10% of Maliseet children under the age of 18 – and placed only 4 of them in the homes of tribal

families. This has a traumatic multi-generational impact on our tribe. Our tribe is at the mercy of individuals when dealing with state HHS, and in my time as Chief I have had to schedule meetings regarding the application of ICWA with local, regional, and state HHS leadership with little improvement in the relationship. I have had to spend time advocating for funds that come to the state on behalf of the tribe to support Indian Custodians and tribal foster families. Not being able to access benefits for a child while they are in care is just another barrier to placement of our children into Maliseet homes. H.R. 6707 will give us an essential tool to build and maintain the institutions and services we need to keep our children and families safe, healthy, and strong. For these reasons, the National Indian Child Welfare Association has voiced its strong support for H.R. 6707.

Second, under the Stafford Act, the Wabanaki Nations have been denied the authority that other tribes have to directly request a disaster or emergency declaration from the President in response to natural disasters and public health emergencies in our communities. This denies us the ability to directly access critical federal funding to respond to emergencies like the opioid epidemic. Instead, we have had no other option but to advocate through the Governor of the State of Maine for these disaster declarations. While we know that the Governor is always seeking to advance the best interests of all Mainers, this process adds a layer of bureaucracy and delay that the Stafford Act amendments were intended to eliminate in order to protect uniquely vulnerable tribal communities. As a Registered Nurse, I am painfully aware that immediate access to drug treatment can be the difference between life and death.

Third, due to MICSA, the Wabanaki Nations are not eligible for treatment as a state (TAS status) under environmental laws such as the Clean Water Act (CWA). For more than 30 years our tribe has been engaged in comprehensive efforts to restore the Meduxnekeag River watershed and to restore native fish species, including reducing contamination from legacy pollutants such as arsenic and DDT, planting riparian buffers, helping farmers implement best agricultural management practices, completing more than five miles of instream habitat restoration, and partnering with the local Conservation District. If the full range of CWA provisions applied to us, as they do to other Indian tribes, our ability to improve water quality and to restore native salmon populations to the Meduxnekeag River would have been greatly enhanced. These fish and other natural resources affected by pollution are especially significant to Maliseet sustenance, spiritual, and ceremonial cultural practices. The inability to safely consume fish from the river has a very detrimental effect on our citizens.

Finally, because the Indian Gaming Regulatory Act (IGRA) would preempt state jurisdiction over tribal gaming activities, the federal courts have held that IGRA does not apply in Maine. Thus, we cannot game under IGRA. To be absolutely clear, gaming is not an end undo itself – gaming is only a tool that tribes can use to stimulate their economic development, generate governmental revenues to support critical public safety, health, and welfare services and infrastructure for their citizens and tribal communities, and to build their governmental institutions and to provide diverse job opportunities for tribal citizens. While tribal governments around the country have been able to grow their economies, services, and

institutions, we have been trying to achieve the same things for our communities with one hand tied behind our back, stuck in 1980.

Depriving our tribe of access to the full range of programs, services, and authorities that Congress has provided to help build strong tribal governments and thriving native communities has very real consequences. According to a 2010 study, Maliseet citizens lag well behind other Mainers in education and employment (17% of Band members had not completed high school and 18% were unemployed, nearly twice the rate of non-Indians), income (72% of Band members had an annual household income of less than $25,000, compared to only 33% of non-Indians), and other public health indicators, including alcoholism, depression (44% compared to 15%), obesity (50% compared to 28%), alcoholism, and diabetes (17% compared to 10%). In short, compared to other Mainers, we face the same disparate socioeconomic and public health outcomes that we did in 1980.

Mi'kmaq Nation

While the Mi'kmaq Nation never had a say in the drafting of the restrictive provisions in MICSA, it was nonetheless later legislated to be subject to them. Federal ABM Settlement Act, 25 U.S.C.§1721, Sec.6.(b).

As such, the Mi'kmaq Nation has suffered the same harms indicated in the Maine Center for Economic Policy's 4/13/22 Letter of Support for H.R.6707 previously entered into this congressional record, as well as the harms presented by the Houlton Band of Maliseet's testimony located herewith.

Passamaquoddy Tribe

Although it is impossible to quantify the overall negative impact that a lack of access to federal beneficial laws has had on the Passamaquoddy, a variety of public health statistics illustrate that systemic challenges that confront the Tribe from a health and wellness and overall socioeconomic perspective. According to a 2010 study, the average age of death for a Passamaquoddy was 58 years compared to a national average of 72. According to the same study, only 31% of all Wabanaki adults over 25 have a high school diploma or equivalent, which is in stark contrast to a national average of 89%. A staggering 33% of Passamaquoddy citizens live in poverty, which is more than double the national average, and the mean Passamaquoddy household income is a mere $16,250, as compared to more than $43,000 in the county where the Tribe is located.

A myriad of factors likely contribute to these public health statistics. However, the simple fact is that the State of Maine has proactively sought to block Passamaquoddy access to federal laws designed to promote better public health outcomes in Indian country. The Indian Health Care Improvement Act (IHCIA) was permanently authorized in 2010 as part of the Affordable Care Act. One provision of the IHCIA, now codified at 25 U.S.C. 1621t, provides that "[l]icensed health professionals employed by a tribal health program shall be exempt, if licensed in any

State, from the licensing requirements of the State in which the tribal health program performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act." This provision was included in the permanent reauthorization of the IHCIA to specifically combat the challenges that tribal health facilities face when trying to recruit licensed medical providers to tribal facilities, which are often located on rural and isolated areas with small labor pools.

The Pleasant Point Health Center (PPHC), which the Passamaquoddy Tribe operates under an Indian Self-Determination and Education Assistance Act (ISDEAA) contract, took immediate advantage of the new IHCIA provision and hired six different medical providers who were licensed medical professionals in states other than Maine. These providers were recruited to work at PPHC because the Tribe had struggled to find licensed providers in Maine who were willing to move to the region where the Passamaquoddy Pleasant Point Reservation is located. In 2014, the State of Maine Department of Professional and Financial Regulation, which issues licenses to health care facilities in Maine, began sending letters to PPHC to demand that the facility only have Maine licensed medical professionals. The State demanded corrective action within weeks of its correspondence, suggesting that it was prepared to action against the Tribe and its facility. The Tribe responded that 25 USC 1612t allowed it to employ medical professionals licensed in states other than Maine. However, the State pushed back to say "[b]ecause the exemption relied upon by PPHC is pursuant to a federal law enacted after October 10, 1980, and was not made specifically applicable within the State of Maine in accordance with 25 U.S.C. 1735(b), Maine law applies." Ultimately, Indian Health Service intervened and took the position that the law at issue was not passed "for the benefit of Indians" but was passed for the benefit of the United States, which would be delivering services at the PPHC if it were not for the existence of an ISDEAA contract with the Passamaquoddy Tribe. Since then, the Tribe has avoided hiring medical professionals licensed outside of Maine in order to avoid conflict with the State of Maine. As a result, the PPHC consistently struggles to maintain a full staff of licensed health care professionals. The lack of consistently available licensed health care professionals has placed tribal citizens at greater risk for medical and public health problems that can be more readily addressed in more populated parts of the state where more reliable public health infrastructure exists.

The Maine Center for Economic Analysis recently undertook a study to examine the amount of funding or revenue that has been denied to the Wabanaki tribes since 1980. The analysis concludes that an annual average of $1.69 million of funding is lost and not delivered to the Tribes as a direct result of the provisions of the Settlement Act that H.R. 6707 seeks to amend. Letter from Garrett Martin, Maine Center for Economic Policy, to Chairman Grijvala and Ranking Member Westerman (Apr. 13, 2022). In addition, the study notes that the Settlement Act was used by Maine to block Wabanaki access to gaming under the Indian Gaming Regulatory Act. According to the Maine Center for Economic Analysis, non-tribal gaming in Maine grossed $147 million in 2021 while nationwide tribal gaming generates tens of billions in revenue each year. The Passamaquoddy and the other Wabanaki Nations have been entirely left out of the economic opportunities inherent in gaming.

Penobscot Nation

The written testimony of Chief Kirk Francis of the Penobscot Nation for the hearing on H.R. 6707 provides several examples of how our community has been impacted by the inapplicability of critical federal laws. The most negative impacts to date have resulted from the State's objections to the applicability of the tribal amendments to the Stafford Act, which would allow us to directly access FEMA, the Violence Against Women Act, and the Indian Gaming Regulatory Act. But, we are constantly worried about the State objecting to any federal law being applicable to us. There are instances in which we have not affirmatively sought to obtain benefits from certain federal laws because it was unclear to us whether the State would deem such law to "affect or preempt" Maine law. Additionally, the views of the State change from Governor to Governor.

The ambiguous and broad nature of the language in section 16(b) provides the State with the complete discretion to say when a federal beneficial act "affects or preempts" Maine law and, thus, make it inapplicable to us. Once the State indicates that a federal law "affects or preempts" Maine law, that federal law is in practice not applicable to us. Yes, we can litigate every time that occurs, but our tribal nation does not have the resources to litigate against the State every time the State infringes on what we believe to be our inherent sovereign rights. The State has the luxury of taxpayer dollars to fight the Wabanaki Nations. The Wabanaki Nations have limited resources in which to fight the State. Providing all the discretion to the State in section 16(b) essentially provides the State with the power to veto the application of any federal law, and we have no recourse, except to ask Congress to provide some clarity.

3. What efforts [have the Wabanaki Nations] taken in the past to work with the State to access federal Indian laws enacted by Congress?

Our current efforts to work with the State to access federal beneficial Indian laws has been ongoing for more than three years. Legislative leaders invited us in early 2019 to participate in a government-to-government process to review the effects of the Maine Implementing Act and related MICSA provisions on our Wabanaki Nations over the past 40 years and the disagreements over essential issues of Tribal self-determination and sovereignty created by the acts, and to consider whether changes to the Tribal-State relationship may be appropriate. This effort culminated in the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, issued in January 2020. The thirteen-person bipartisan Task Force had ten voting members, including state legislators and representatives of our Nations, and three nonvoting members, including the Governor's designee and the Attorney General's designee. Consensus Recommendation #20, approved by unanimous vote of the Task Force, recommends to "Amend the Maine Implementing Act to specify that, for the purposes of §6(h) and § 16(b) of the federal Settlement Act, federal Jaws enacted for the benefit of lndian country do not affect or preempt the laws of the State of Maine." Task Force Report at 64. The Task Force explained:

> Given the broad nature of these provisions, any law for the benefit of Indian country that in any way "affects" Maine law may be rendered inapplicable in Maine. For example, it is theoretically possible that provisions within each of the laws enumerated in the report submitted by the Suffolk University Law School Clinic to the Task Force, which is included in Appendix N, may be rendered inapplicable in Maine if those provisions conflict with state law to some degree.
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> Outright elimination of these sections of the federal Settlement Act requires Congressional action. Nevertheless, the voting members of the Task Force believe that it may be possible to render Sections 6(h) and 16(b) of the federal Settlement Act inoperable by enacting legislation that affinnatively provides, as a matter of state policy, that federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine. In theory, such legislation would eliminate the argument that application of any federal law enacted for the benefit of Indian country either affects or preempts state law, because state law would specifically condone application of that federal law within the State. The Task Force recognizes that adoption of Consensus Recommendation #20 may require further consideration and careful drafting, but nevertheless suggests that implementation of this suggestion will go a long way toward allowing Maine's tribes to "enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States."

Id. at 65 (footnotes omitted).

Since the issuance of Consensus Recommendation #20, we have been working with both state legislators and congressional representatives on vehicles to implement it. For example, in 2021 the Maine Legislature passed legislation (LD 554) withdrawing state law and jurisdiction as applied to gaming operations conducted by our Wabanaki Nations in compliance with the Indian Gaming Regulatory Act (IGRA), but the bill was vetoed by the Governor of Maine, in part because the Governor believed that Congress must act to extend such federal Indian laws to our Nations. Veto Message of Governor Mills at 2 (June 30, 2021) (citing "a serious question as to whether a court would interpret these changes in State law, with no corresponding change in Federal statute, as being effective in making IGRA applicable in Maine."). We have also worked with legislators on bills (LD 1626 in the 130th Legislature and LD 2094 in the 129th Legislature) that would comprehensively withdraw state law and jurisdiction with respect to the subject matter of laws enacted by Congress for the benefits of Indians and Indian tribes, such that state law would not be "affected or preempted" by the application of those federal laws to our Nations. Again, however, the Maine Attorney General has taken the position that congressional action is necessary to accomplish this policy change. Testimony of Attorney General Frey at 20-21 (February 14, 2020).

Although our current efforts to access federal beneficial acts began in 2019, the Wabanaki Nations have sought to access federal beneficial acts since 1983. *See At Loggerheads, The State of Maine and the Wabanaki, Final Report of the Task Force on Tribal-State Relations,* prepared by the Maine Indian Tribal-State Commission (Jan. 1997), at 16. While the main purpose of the settlement act was to resolve the significant land claims of the Wabanaki Nations, the State used the settlement act process to gain substantial jurisdiction over the tribal nations. The leadership of the Penobscot Nation and Passamaquoddy Tribes at the time did not fully understand the implications or consequences of the two provisions in the federal settlement act that relate to the application of federal beneficial acts to the Wabanaki Nations. And, the Houlton Band of Maliseet Indians and Mi'kmaq Nation were never consulted about the provisions. Additionally, none of the Wabanaki Nations consented to the addition of section 16(b) to the federal settlement act, which is the provision that H.R. 6707 seeks to amend.

Almost immediately after the federal and state settlement acts took effect, the State began to assert its jurisdiction over the Wabanaki Nations and say that none of the Wabanaki Nations had access to federal beneficial acts. The Maine Indian Tribal-State Commission ("MITSC"), which was established by the state settlement act to continually review the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the State and Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation, had its first meeting in 1984 and immediately began to consider the concerns of the Wabanaki Nations being denied access to federal beneficial acts.

MITSC is an independent inter-governmental entity with thirteen members, six of whom are appointed by the State, six by the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation. The thirteenth member is the Chairperson and is selected by the other twelve members. Over the years, MITSC has developed numerous reports, most of which address the concern of the Wabanaki Nations not being able to access federal beneficial acts. These reports can be found on MITSC's website at www.mitsc.org.

In addition, the Wabanaki Nations have participated in several task forces and work groups created by the State legislature to try to address many of the shortcomings of the settlement acts, including the lack of access to federal beneficial acts. The reports from these efforts can be found on MITSC's website.

But, ultimately, the reason why there has been no meaningful improvements to the settlement acts is because the various recommendations from MITSC, the task forces and workgroups are ignored by the Chief Executive of the State.

4. During the hearing, one of the witnesses suggested that it would better for the Maine Tribal Nations to work with the State on a solution to accessing federal beneficial acts.

> a. Why [do the Wabanaki Nations] believe that Congress needs to address this issue rather than the State?

There are several reasons why we believe that Congress needs to address the issue of our Wabanaki Nations' access to federal beneficial acts, rather than the State. First, Section 16(b) of MICSA already expressly authorizes Congress to determine as a matter of federal policy (with or without the agreement of our Nations and the State) whether future laws enacted for the benefit of Indians and Indian tribes should apply to our Nations, and if so, which laws. H.R. 6707 simply answers that question, while preserving the ability of future Congresses to exclude the Wabanaki Nations from particular federal laws. Second, the Maine Attorney General and the Governor of Maine have publicly stated their view that, even if the Maine Legislature acts to withdraw state law and jurisdiction over a particular subject matter relating to our Nations so that state law and jurisdiction are not "affected or preempted" by federal laws on that particular subject matter, Congress must act to amend MICSA to ensure the application of those federal laws in Maine. Therefore, state officials have taken the position that the State and our Nations cannot solve the question of the Nations' access to federal benefits, but that Congress must do so. Third, the United States is the only sovereign that has a trust responsibility to our Nations, which includes, among other things, the responsibility to ensure that our Wabanaki citizens receive the public safety, social, health, and welfare services necessary to protect tribal communities and our rights of self-determination and self-government. The vast majority of federal Indian laws enacted by Congress since MICSA's passage have been to protect the health and welfare of Indians and Indian tribes. Unfortunately, Section 16(b) has proven to be a substantial barrier to our Nations' ability to access federal funding and other benefits, with harmful unintended consequences that we have discussed. Congress has a long history in the field of Indian affairs of evaluating the success or failure of legislation over time and of reversing course when a policy change is necessary to fulfill the trust responsibility and to protect Native people. After 40 years, the time has come for Congress to recognize that a change is necessary and that our Nations should not be uniquely deprived of the benefits of federal laws, unlike other federally recognized Indian tribes.

We would emphasize that the simplest reason is because the State leadership (AG and Governor's Office) believe that Congress must act to amend MICSA to ensure the application of beneficial federal Indian law in Maine.

Congress through its plenary power doctrine participates in setting **federal public policy** towards the various Indian Nations. The MICSA was arguably negotiated during a transitional period of federal Indian policy. The federal Indian policy in place prior to the mid to late 1970s was deemed a **termination era** where the policy was marked with the goal of assimilating Indian nations into the commonwealth of the nation. The goal of the federal termination policy was to eliminate the "nation within a nation," model of tribal government existence. This policy gave way around the time of the enactment of MICSA to a new national federal Indian policy that supported **self-determination** for tribes. Where the policies of the termination era were found to simply not work, study after study has shown that where tribes' self-governance is supported, they are more likely to be successful. See Fact Sheet: Building A New Era of Nation-to-Nation Engagement, The White House, dated January 2021. The leadership of Maine's negotiation team stated its goal was to eliminate the nation within a nation model for

the tribes of Maine and to assimilate the Maine tribes into the State municipal model. https://www.pressherald.com/2014/07/13/bombshells-compromises-greet-an-unfolding-crisis/. In this period of transition, MICSA clearly held on to the goals of the waning federal Indian termination policy era. Over 40 years have passed since the enactment of MICSA. Over 150 federal laws supporting a federal public policy of tribal self-determination have been enacted for the benefit of Indian tribes, except for Maine tribes, during this period. The Wabanaki Nations believe that it is time for Congress to change its Indian policy regarding the Maine tribes. H.R.6707 marks a measured prospective change of federal Indian policy in Maine. We humbly and respectfully request your support.

5. Is it correct that sections 6(h) and 16(b) of the Maine Indian Claims Settlement Act were part of detailed negotiations between the Maine Tribal Nations and the State in 1980?

No, it is incorrect that sections 6(h) and 16(b) of the Maine Indian Claims Settlement Act were a part of detailed negotiations between the tribal nations and State in 1980. As described in other answers, the Mi'kmaq Nation was not consulted on the provisions of the Maine Indian Claims Settlement Act, including sections 6(h) or 16(b). And, although the Penobscot Nation, Passamaquoddy Tribe and Houlton Band of Maliseet Indians were aware of section 6(h) being included in the federal settlement act, they expressed significant concerns about the broadness of the provision, and they were not aware of 16(b), which was added in the final days of Congress' consideration of the legislation.

A 2017 report analyzed more than 200 Congressional archival records surrounding the drafting and enactment of the Maine Indian Claims Settlement Act. *See The Drafting and Enactment of the Maine Indian Claims Settlement Act, Report on Research Findings and Initial Observations* ("Report"), prepared by Suffolk University Law School for the Maine Indian Tribal-State Commission (Feb. 2017). This report specifically examined the level of negotiations surrounding sections 6(h) and 16(b) of the Settlement Act and how they came to be included in the final federal law.

The Report found that the Department of the Interior, White House and tribal nations expressed concern about section 6(h)'s broadness. According to the Report, the primary purpose of section 6(h) "was to prevent the application of certain federal environmental laws to the Tribes." *See* Report at 4. But, as the Report notes, the Department of the Interior opposed the broad language of section 6(h) and preferred to enumerate the environmental laws that the State was concerned with. Then Interior Secretary stated that the language "would have made inapplicable every provision of federal law codified in title 25, except financial benefits" and that the Department "found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians." Report at 22. The Houlton Band of Maliseet Indians was on record in 1980 as supporting the Interior Department's concerns. Report at 22. During Senate hearings on the bill, the Interior Department witness reaffirmed that the Department remained "troubled by the language." Report at 23. Ultimately, the Department and Tribes agreed to include section 6(h) in order to get the settlement passed, but it was not without concerns about the broad nature of the

language and potential impacts. Now, more than 40 years later, the Wabanaki Nations have experienced the negative consequences of this language and realized the concerns expressed by the Interior Department back in 1980.

With regards to section 16(b), the Report found no documents explaining why it was included in the final bill and what it was intended to cover. The Report noted that the provision "was added to the bill just days before the full House and Senate voted" and there were no Congressional documents indicating who requested the provision to be added to the bill or why. Report at 4. The Report also noted that this broad limitation of federal law to the Wabanaki Nations contained in section 16(b) is "uncommon," and stated:

"This limitation of federal law to federal tribes is uncommon. Federal authority, specifically congressional authority, is plenary in governing the relationships between the three sovereigns: the United States, the states and the tribes. Other Indian settlement acts have been interpreted to preclude a federal law, but most, if any, tribes are not subject to the framework established in MICSA." Report at 26.

The only document found to discuss section 16 was a September 5, 1980 memorandum from Tim Woodcock to Senator Cohen from Maine. The legislative language from that memorandum is what became section 16(a). Report at 24. The Report drafters could not find any documents indicating the author or purpose of section 16(b). But, what the Report was able to find is that at one point the term "materially" was inserted into the language of section 16(b) before the words "affect or preempt". The addition of the word "materially" would have at least limited the scope of section 16(b), but ultimately, the final version of the bill enacted into law failed to include the term "materially." Report at 25.

A Penobscot Nation elder, who was a part of the tribal negotiation team, had this to say about the last minute inclusion of section 16(b) and in response to the Report's findings:

> It stated that the author of that last minute language added to the bill was a not known. This was based on language taken from the Feb. 2017 "The Drafting and Enactment of the Maine Indian Claims Settlement Act Report on Research Finding and Initial Observations." Quote: ("Though the exact origin of 1735(b) remains unclear".
>
> I was under the impression that it was public knowledge that Senator Cohen of Maine added that language during the mark up session or the final vote in the Senate, I can't remember which one. We, the Tribal Governors and the Negotiation Committee were gathered outside the Senate Chamber when Tom Tureen came to us and told us that Senator Cohen had added the clause. We responded (I paraphase) "he can't do that – we didn't agree to that". But, at that late hour, we were powerless to oppose it.

Statement of Penobscot Elder.

The Wabanaki Nations have opposed section 16(b) since they first became aware of it in 1980. This is the provision that H.R. 6707 seeks to amend.

6. During the hearing, it was suggested that if the Tribal Nations did not like inclusion of sections 6(h) and 16(b) in the Maine Indian Claims Settlement Act, they could have walked away from negotiations in 1980.

a. Can you describe the dynamics in Maine at the time when the Maine Indian Claims Settlement Act was being negotiated?

Houlton Band of Maliseet Indians

At the time the Maine Indian Claims Settlement Act was being negotiated, we, the Houlton Band of Maliseet Indians, had no land and virtually no financial resources. Our citizens, relative to other Mainers, were impoverished and uneducated, our tribal community was in desperate need of basic social and health services, and we were subject to overt discrimination. These were the dynamics in Maine for our tribe when MICSA was negotiated, and we had no practical ability to walk away from the negotiations without risking the permanent loss of our lands claims and our rights as Maliseet people.

On the eve of MICSA, our Maliseet citizens had a per capita income of roughly $600-$900 a year. We were being denied access to public assistance, apartments, credit at local stores, and bank loans because we were Indians, and the federal government was denying us the services that it provided to "reservation" Indians in Maine. We were living in poor housing – including lean-tos, tar-paper shacks, and repurposed, dilapidated trailers – with dirt floors, no running water or sewer system, leaky roofs, and inadequate heating. *See* Proposed Settlement of Maine Indian Land Claims, S.2829, Hearings Before the Senate Select Committee on Indian Affairs, at 428, 431, 441 (July 1980). Many of our citizens lived at a traditional Maliseet camping site on a floodplain along the Meduxnekeag River in an area called "the Flats," just below the Houlton Town dump, near where earlier Maliseet homes on "Hungry Hill" had been bulldozed by the Town for non-payment of taxes. *See id.* at 430, 441, 473, 582-583. More than 60% of our families were affected by alcoholism, 90% lacked health insurance, and life expectancy was just 45 years. *See id.* at 428. Job opportunities were extremely limited, consisting largely of seasonal work in the potato industry, and we suffered from a lack of education. *See id.* at 428, 431, 473. And without the benefits of the Indian Child Welfare Act, our Maliseet children were being placed in foster homes (mostly non-Indian) "at a rate of 62.4 times (6,240 percent) greater than the State-wide rate for non-Indians." *See id.* at 442.

When asked about these conditions in 1980, the state's CETA representative's response reflected the dynamics facing our Nation at the time of MICSA: "I don't know if conditions could improve in Houlton…. I think the Indian is mentally and even physically inferior. What can you do?" *Id.* at 431. The Houlton Police Chief commented, "Do we have an Indian Problem? Well, if there's an Indian problem, it's largely of their own making. There may be some

discrimination by landlords and for valid reasons. You put them in the nicest home, and they'll wreck it. I've been in Indian homes around here where I wouldn't put animals." *Id.* at 428. And even though our tribe and citizens did not receive any monetary payments in the settlement (beyond $900,000 to purchase lands), we were subject to racial hostility and accusations that we were receiving large sums of money and living off of the government. *See id.* at 429-431, 777. Despite these conditions, our people continued to support themselves by engaging in traditional economic activities, including making ash baskets and snowshoes, guiding sportsmen, and gathering fiddleheads. *See id.* at 587-588.

The circumstances facing our tribe were so dire that one important project undertaken by the Association of Aroostook Indians (the non-profit organization we created to provide services for our citizens) was to cut 140 cords of firewood and to provide them to Maliseet people to heat their homes. *See id.* at 429. But even then, the Association had to shut down the project because it did not have funding to pay for insurance, gasoline, and other costs. *See id*.

Throughout the legislative record our tribe is repeatedly described as being vulnerable and subject to sharp dealing and discriminatory treatment. *See*, *e.g.*, *id.* at 427 ("This testimony examines the vulnerability of the Band in terms of social and economic status, lack of sophistication, and subjection to sharp dealing and to racism."); *id.* at 429 ("The Association is highly vulnerable to exploitation by the white business community."); *id*. at 432 ("It is evident that the Houlton Band of Maliseets is vulnerable in a number of ways. Not only are members subjected to the harsh conditions of abject poverty, but also exploitation, unsophisticated fiscal management, and racism."); *id.* at 760; *id.* at 787 ("local opinion is not so uniformly enlightened as to guarantee that the Maliseets' own best interests will always be respected in financial and other dealings"). The Senate Committee on Indian Affairs explained in its report on MICSA that "[t]he Houlton Band is impoverished, it is small in numbers, it has no trust fund to look to, and it is questionable whether the land to be acquired for it will be utilized in an income-producing fashion in the foreseeable future.... [S]hould the land which is intended to constitute satisfaction of the Band's legal claims come into the possession of a third party, the intent of this Act in this regard will have been defeated." Authorizing Funds for the Settlement of Indian Claims in the State of Maine, S.2829, Sen. Rep. 96-957, at 24 (Sept. 17, 1980).

We were unable to secure legal representation for many years because we did not have funds to pay for private legal counsel and because we could not share the legal counsel of the other Wabanaki Nations because of potential conflicts. Nevertheless, our lands claims were strong. We had never voluntarily left our aboriginal lands in Maine or surrendered our hunting, fishing, and gathering rights on those lands; Congress had never extinguished our title to those lands; and there were no treaties with Maine, Massachusetts, or the United States that purported to surrender our title to Maliseet lands in Maine. Instead, our people were forcibly excluded from our aboriginal lands beginning in the nineteenth century and non-Indian settlers destroyed our hunting and fishing subsistence economy. *See*, *e.g.*, Proposed Settlement of Maine Indian Land Claims, S.2829, Hearings Before the Senate Select Committee on Indian Affairs, at 441, 448-450, 465-466, 470 (July 1980).

Mi'kmaq Nation

The Mi'kmaq Nation would like to build on the testimony presented by the Houlton Band of Maliseet Indians. Simply put, the Mi'kmaq's actual exclusion from MICSA resulted in the very fears the Maliseet alluded to if they had in fact walked away from negotiations in 1980. "If we walked away from the MICSA negotiations, we would receive absolutely nothing and our tribe would remain landless, mired in poverty, and confronted by hostile neighbors that disputed over very status as an Indian tribe." See Houlton Band of Maliseet Indians Question 6 Response.

The Mi'kmaq Nation, suffering the same limitations as the Maliseet, was not able to participate in the 1980 MICSA negotiations and did in fact receive absolutely nothing. The Maliseet's fears were not just subjective in nature; indeed, they were objectively and tragically justified.

Passamaquoddy Tribe

As stated above for question 1, the dynamics in Maine around the time the MICSA negotiations occurred were extremely hostile towards Native Americans. Violence and threats of violence towards Native American were common in Maine during this period. According to accounts of this period, "Indian children were harassed at schools, There were runs on guns at sporting goods shorts." *See* Colin Woodward, "Bombshells, compromises, greet an unfolding crisis", Portland Press Herald (Jul. 13, 2014) *available at* https://www.pressherald.com/2014/07/13/bombshells-compromises-greet-an-unfolding-crisis/. The State's entire negotiating position, which was adopted among successive Governors, was "the Indians could never be allowed to have a 'state within a state'" or a "nation within a nation". *Id*. The State's position was that tribal sovereignty and the ability of the tribes to exercise jurisdiction over their own lands would "promote racial and ethnic hostility and resentment to the ultimate detriment of our people." The notion of rejecting tribal sovereignty was "an uncompromising point of principle for the state", whose elected officials blatantly encouraged hostility and, at times, violence against Native Americans. *Id*.

In 1968, the Governor of the State of Maine commissioned a report into human rights issues existing in Maine at the time. This is how the report's introduction began:

> TO BE AN INDIAN in the State of Maine means:
>
> If you are on a reservation, you live in substandard housing, with inadequate sanitary facilities,
>
> Your children are likely to receive such a poor elementary education that they will be almost certain to drop out of high school; but, no matter how bright they are, they are likely to be "counselled" away from a college education;

> White men can commit crimes of violence against you and your family with almost complete impunity, while you are likely to be arrested for the slightest infraction of the law, and prosecuted to the hilt;
>
> Most of all, that you can be certain your problems will be studied, the study filed and forgotten until the next study; but that nothing will change very much.

Governor's Task Force on Human Rights Report at 1 (Dec. 1968) *available at* http://lldc.mainelegislature.org/Open/Rpts/jc599_u52m3_1968.pdf. The report went on to note "evidence of systematic police harassment and abuse of Indian citizens", "discriminatory prosecution practices, and "deplorable" education conditions in schools located on tribal lands. *Id.* at 4-7. The report noted multiple instances of where state prosecutors vociferously pursued charges against tribal members while "prosecution was lackadaisical at best" in cases involving the killing of Native Americans. *Id*. at 6-7 (quoting a local newspaper's account of the 1965 homicide of Passamaquoddy elder and World War II veteran Peter Francis, which the Passamaquoddy's claimed was "merely another in the list of violence deaths on or near the reservation. [The Tribe] claims that little effort is made by law enforcement officials to investigation crimes against Indians.")

In sum, the dynamics in Maine between the 1960s and 70s were extremely oppressive and violent for the Passamaquoddy Tribe.

Penobscot Nation

The Penobscot Nation experienced similar dynamics as the other Wabanaki Nations. While we had an attorney, we relied on the Department of the Interior, as our federal trustee, to help protect our inherent sovereign rights, privileges and immunities enjoyed by other federally recognized tribal nations. The political dynamics and threats of violence that existed in Maine during the time of negotiations were unbearable for many Native Americans and those who represented us.

> b. Was it realistic for the Tribal Nations to consider walking away from the negotiations in 1980?

Houlton Band of Maliseet Indians

No. It was not at all realistic for us, the Houlton Band of Maliseet Indians, to consider walking away from MICSA in 1980. The State opposed the recognition of our tribe, and the State, the Passamaquoddy Tribe, and the Penobscot Nation had already spent several years negotiating legislation. Congress was also prepared to extinguish all Indian land claims in Maine – including the Maliseet land claims – regardless of whether we participated in the settlement, which is what happened to the Mi'kmaq Nation.

During negotiations, the Maine Attorney General refused to acknowledge our status as an Indian tribe and our right to redress for the unlawful taking of our aboriginal lands. *See* Proposed Settlement of Maine Indian Land Claims, S.2829, Hearings Before the Senate Select Committee on Indian Affairs, at 163, 168 (July 1980) (referring to "the so-called Maliseet Band of Indians" and stating that "we would find totally unacceptable any amendments which would grant special status to this group in any respect"). Although the State's position was wrong, we did not have the resources to litigate our claims, and Congress had already signaled that it was prepared to support the extinguishment of all Indian land claims in Maine, regardless of our participation in MICSA.

In fact, certain federal officials had taken the view that we should not be included in the legislation at all, and that our only recourse for our extinguished land claims would be to sue the Passamaquoddy Tribe and the Penobscot Nation, who had already negotiated an agreement with the State. *See id.* at 474; Authorizing Funds for the Settlement of Indian Claims in the State of Maine, S.2829, Sen. Rep. 96-957, at 41 (Sept. 17, 1980) (explaining that "[t]he Maine Implementing Act is a codification of an agreement reached by the Passamaquoddy Tribe and Penobscot Nation with the State of Maine."). Our own Maliseet representatives were not included in the White House Work Group that negotiated the provisions for the federal bill. *See* Sen. Rep. 96-957 at 57. However, we didn't want to interfere with or jeopardize the fragile negotiations between our fellow Wabanaki Nations and the State, and we would never imagine suing the Nations when it was state and federal officials who had allowed over one million acres of Maliseet aboriginal territory in the Wolastoq-St. John River watershed to be unlawfully taken. *See* Proposed Settlement of Maine Indian Land Claims, S.2829, Hearings Before the Senate Select Committee on Indian Affairs, at 474, 626 (July 1980).

Even after the negotiators agreed to provide our tribe the meager sum of $900,000 (which was taken out of the funds for the Passamaquoddy Tribe and the Penobscot Nation) to purchase lands (with no other financial benefits flowing to the Houlton Band of Maliseet Indians), we had to fight with all of our limited resources simply to amend the bill to have those lands taken into trust status (like the other Nations' lands would be held), and simply to confirm our status as a federally recognized Indian tribe. This was because the State had insisted that our Nation only be permitted to acquire lands in fee simple, which would put our new land base at great risk of foreclosure, despite the Maine Commissioner of Indian Affairs and many others recognizing that our tribe was not prepared at that time to manage settlement lands that would not be held in trust. *See*, *e.g.*, *id.* at 432; *see also id.* at 426 ("It is difficult to understand what reasons the State of Maine can have for digging in its heels on the Maliseet situation. Anyone even remotely familiar with the Houlton Band would conclude that they are the group *most* in need of restrictions against alienation of their land[.]… The dangers of forfeiting the land are simply too great.").

Our representative in 1980, Terry Polchies, explained that our support for MICSA was:

> conditioned upon the bill providing that the $900,000 be held in trust for the Band to purchase land that will be held in trust and restricted against alienation and will not be

> subject to State property taxes…. These minimal protections—already afforded the Passamaquoddy and Penobscot "Indian territory" lands under S. 2829—are needed to insure that the lands to be purchased for the Houlton Band by the United States will be more than a fleeting possession, will provide a permanent land base of enduring value for the Band. History teaches that Indian tribes retain their lands only where those lands are exempt from levy for failure to pay property taxes and generally restricted against alienation (as by mortgage liens, judgment liens and the like)…. Restrictions against alienation of Indian lands have been imposed by Congress since 1790. Without such restrictions, the expenditure of $900,000.00 of federal funds for lands for the Houlton Band will undoubtedly prove to be a wasted gesture, as the lands will soon go out of tribal ownership and the benefit sought by the Band and the United States—a tribal land base—will be irrevocably lost.

Id. at 440.

In other words, we had no choice. If we walked away from the MICSA negotiations, we would receive absolutely nothing and our tribe would remain landless, mired in poverty, and confronted by hostile neighbors that disputed our very status as an Indian tribe. Our other option was to accept the limited benefits provided by MICSA, work to improve the lives of our citizens, and pursue future opportunities to secure the full range of federal benefits that our tribe and Maliseet citizens are entitled to as a federally recognized Indian tribe.

Mi'kmaq Nation

The Mi'kmaq Nation, suffering the same limitations as the Maliseet, was not able to participate in the 1980 MICSA negotiations and did in fact receive absolutely nothing.

Passamaquoddy Tribe

Leaving the negotiating table was simply not an option in the years just prior to 1980. The alternative to a negotiated settlement enshrined in a statute was litigation but the chance of success in court were questionable. Furthermore, Maine's congressional delegation introduced numerous legislative attempts to extinguish legal claims and to reduce available damages. *See* Woodward, "Bombshells, compromises, greet an unfolding crisis". Such legislative efforts would have only gained steam if the Tribes walked away from negotiations. Negotiators from the time recognized that litigation over the claims would endanger private citizen land holdings, public finances, and mortgages. On the other hand, they knew that asking a court to eject to the 350,000 people that lived in the land claims area was a nearly impossible . *Id*. Activists in Maine felt like negotiations were pointless because court orders could never been enforced and even went so far as to suggest that court judgments would be met with violence. *Id*. (quoting Pierre Redmond: "Will there be any army of United States marshals which will descend upon the homeowners, farmers and woodsmen of eastern Maine? Will they be armed?" "Will people be injured and possibly killed if there is resistance to this court order?") (citation omitted). Finally, in late 1980, Ronald Reagan, an opponent of the land claims settlement process, defeated

Jimmy Carter in the presidential election. Reagan was known to be opposed to the settlement and was considered a near lock to veto settlement act legislation if it reached his desk. Maria Girouard, "The Original meaning of the Maine Indian Land Claims: Penobscot Perspectives at 8 (2012) *available at* https://www.sunlightmediacollective.org/wp-content/uploads/2021/06/Original-Meaning-and-Intent-of-the-Maine-Indian-Land-Claims.pdf (citation omitted). Thus, the Tribe felt that it had to agree to the settlement or face the possibility that all efforts would have been in vain.

Penobscot Nation

The Penobscot Nation's experience was similar to that of the Passamaquoddy Tribe, in that we were fearful that we would receive nothing if we walked away, and that the incoming President of the United States may seek to terminate our very existence. As described earlier, the federal policy of Indian Self Determination was still new, and it had not been very long since the end of the policy of termination. So, we were worried that the Maine tribes would be terminated.

Additionally, walking away from the settlement negotiations would only prolong the litigation and the significant levels of racism and violence towards our communities and people.

7. In the hearing, one witness expressed concern about the impact of H.R. 6707 on forest management in Maine.

a. Can you describe what role the State plays in land or forest management on Tribal lands?

Two of the four federally recognized Wabanaki Nations (Passamaquoddy Tribe and Penobscot Nation) manage their forested trust lands pursuant to tribally enacted forest management plans, which are also subject to approval by the Bureau of Indian Affairs. Tribal citizens have been engaged in the logging industry for many, many generations. Logging is one of the oldest, most continually occupied professions in our communities without question.

Today, the development and administration of tribal forest management plans is regulated pursuant to the National Indian Forest Resources Management Act (NIFRA), codified at 25 U.S.C. § 3101 *et seq.* NIFRA and its implementing regulations provide a comprehensive federal framework for the management of tribally-owned forest lands. This framework supersedes and exists completely independent from any state regulation of private forestlands within the State of Maine.

Although the State of Maine has no jurisdiction over forestry operations on tribal lands managed in accordance with NIFRA and tribal forest management plans, it is common for the Tribes to voluntarily coordinate and communicate with appropriate state agencies on overall forestry practices. Such discussions typically focuses on conservation issues, including but limited to mitigation against insect infestation and tracking tree growth across regions of the state.

8. How do Tribal forestry operations affect private entities or landowners located off of Tribal lands in Maine?

a. Would H.R. 6707 alter this framework in any way?

No. Tribal forestry operations are entirely conducted on tribally owned lands that are either held in trust or fee status. Pursuant to federally approved tribal forest management plans, the Passamaquoddy Tribe and Penobscot Nation separately issue contracts to permit the legal logging of timber located on tribal lands. Tribal logging contractors often subcontract with well-known logging companies that have operations throughout the State of Maine. Lumber harvested on tribal lands is then sold to local mills located near tribal lands. Thus, the Tribes' logging operations directly benefit not just private logging companies with whom they contract but also the local mills that purchase and process timber logged from tribal lands. By law, the Tribes may not harvest lumber on another landowners land unless they have a legal entitlement to do so.

No aspect of H.R. 6707 would alter any aspect of the long-standing logging practices in which the Tribes and tribal citizens have engaged for many generations. If enacted, H.R. 6707 would permit the Wabanaki Nations to benefit from future laws passed for the benefit of Indian tribes. In doing so, the impact of the bill is somewhat hypothetical because it would not alter any federal statute that deals with forest management on or off tribal lands. H.R. 6707 would not amend any federal law that deals with forestry operations on tribal lands or otherwise. Thus, H.R. 6707 would have absolutely no impact on Maine's forest products industry, in which the Passamaquoddy Tribe and Penobscot Nation are participants.

9. Would H.R. 6707 allow the [Wabanaki Nations] to obtain Treatment as a State status or regulate private dischargers under the Clean Water Act or other federal environmental laws?

No. H.R. 6707 would not allow our Wabanaki Nations to obtain Treatment as a State (TAS) status or regulate private dischargers under the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, or any other federal environmental law that is in effect as of H.R. 6707's enactment date. If Congress in the future enacted a new environmental law that made Indian tribes eligible to treated like states, then our Nations, like other tribes, would be eligible for that authority unless Congress specifically excluded them.

10. Would H.R. 6707 allow the [Wabanaki Nations] to benefit from federal laws passed before H.R.6707's enactment date?

No. MICSA, as enacted in 1980 and previously amended in 1982, allows our Wabanaki Nations to benefit from federal laws enacted for the benefit of Indians and Indian tribes if those laws do not "affect or preempt" state jurisdiction. H.R. 6707 would not allow our Nations to benefit

from any federal law that is in existence as of H.R. 6707's enactment date and that would "affect or preempt" state jurisdiction, unless Congress or the laws of the State of Maine provides for the application of the law.

H.R. 6707 would equalize the treatment of the Houlton Band of Maliseet Indians and the Mi'kmaq Nation with the existing treatment of the Passamaquoddy Tribe and Penobscot Nation under the Indian Child Welfare Act.

11. Would H.R. 6707 alter any aspect of how State and federal environmental agencies regulate Tribal lands in Maine?

No. As stated above with respect to H.R. 6707's impact on forest management activities on or off tribal lands in Maine, no aspect of H.R. 6707 would alter any aspect of state or federal environmental jurisdiction over Tribal lands in Maine. The plain language of H.R. 6707 makes clear that the legislation would only have a prospective impact by allowing the Wabanaki Nations to benefit from statutes enacted in the future. It follows then that the immediate effect of H.R. 6707 with respect to future federal Indian law statutes is hypothetical only. Simply put, no current laws that touch on the regulatory powers of state or federal agencies would be impacted by H.R. 6707 in any ways.

12. Would H.R. 6707 extend the body of federal Indian common law to the Tribal Nations in Maine?

No. H.R. 6707 does not extend the body of federal Indian common law to our Wabanaki Nations. H.R. 6707 only extends to our Nations future laws enacted by Congress and future federal regulations and the case law interpreting those new statutes and regulations.

13. Under H.R. 6707, if Congress amends an existing law like the Clean Water Act in the future, would that mean that all provisions of the Clean Water Act, including Treatment As a State status, apply to the Tribal Nations in Maine?

No. Under H.R. 6707, if Congress amends an existing law like the Clean Water Act in the future, only the new statutory provisions would apply to our Wabanaki Nations. The amendment would not operate to apply existing provisions of the Clean Water Act, including existing Treatment as a State provisions. Likewise, if Congress merely renumbers existing statutory sections or reauthorizes funding for an unexpired program under the Clean Water Act, that renumbering or funding reauthorization would not operate to apply the existing sections or underlying program to our Nations.