

Written Testimony to the Senate Committee on Indian Affairs
By: John Blackhawk, Winnebago Tribal Chairman
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Over the years, numerous accounts of testimony have been provided by Tribal leaders and organizations representing Native people. Many have provided statistics on well documented health disparities for American Indians. Government officials have also recognized these inequalities in services. We all know, without a doubt, many of these disparities are a direct result of inadequate funding: inadequate funding that continues to be jeopardized as a result of discretionary funds status. The inequitable allocation of funds is not based on population or need. Formulas for appropriations should be based on the trends of population growth and medical inflation. The negative effects of the insufficient funds appropriated continue to disrupt the well-being of Native American Nations.

Although American Indians are reported to have a shorter lifespan, the populations on reservations continue to rise not only due to the increase in number of births, but also on the number of tribal members returning to reservations to receive appropriate healthcare that is unfortunately operating with limited resources and high demand. The domino effect from this quagmire perpetuates a cycle of inadequacy. The process begins with poor funding which leads to poor delivery, frustrated employees and therefore, horrendous outcomes that can and have resulted in death. Patients experience the turmoil of prolonged hiring processes, executive vacancies and territorial behaviors of programs. This unfortunate cyclical pattern of inadequacy is perpetuated by the failure to increase funding or modify the formula in which appropriations are determined.

This severe lack of funding also strengthens the resistance to collaboration with Tribal Programs and the deleterious effects of such institutionalized oppression are witnessed and experienced through poor patient care. Contract Health Services is an excellent example of how this takes place as a territorial nature ensues when the inability to provide expected services is questioned.

In addition to the limited funding for CHS, systemic issues erode the possibility of efficacious referrals. And although the federal government recognizes the importance of prevention services we have not experienced adequately funded efforts. Major efforts for prevention programs are neglected and providers are spending enormous amounts of time on acute issues. Contract Health Services does not fund prevention services such as colonoscopies, mammograms or routine screenings. By covering prevention services, we can decrease the cost of long term chronic care by addressing these concerns before they become chronic.

The stagnant nature of funding has resulted in losing quality employees and providers. Retention and recruitment of quality care professionals also continues to be an unmet need for our facilities. We are often limited to physician assistants who must refer out for appropriate medical attention. Having adequate staff would reduce the number of referrals and increase the appropriateness of service. Staffing should therefore be based on population and need.

There are two more important points I want to make while I have the opportunity. Our goal is to figure out short term ways to fund Indian Health Care, but I must remind you that the best way to address the long term problem is for tribes to break out of their grinding poverty and develop their emerging economies. Instead of asking for a bigger budget, our goal would be for our people to have employer provider health care insurance. If given the choice, I would rather complain about the cost of health insurance than declining federal support of IHS.

The federal government has created a system that makes it incredibly difficult to develop our reservations economically. The legal system is universally feared by tribes and going to the U.S. Supreme Court is the last thing any tribal leader wants to do. The states are growing increasingly aggressive in fighting tribal growth of all kinds, especially land acquisition and taxation issues.

Within this context, tribes are trying to develop their economies. The four largest industries in Indian Country are Natural Resources, Gaming, Government Contracting and Native American Tobacco. There are several systemic problems to be dealt with, but federal government is doing everything it can to help us develop our natural resources. Gaming has provided a much needed capital injection into tribes, but it has reached a plateau and the Indian Gaming Industry declined last year for the first time in its 25 year history.

The third largest industry is Government Contracting, primarily driven by the SBA 8a business development program. The federal government placed a restriction on tribes last year, called Section 811, which requires burdensome and highly unlikely approval requirements on tribal contracts over \$20 million. Twenty million dollars sounds like a lot, but it isn't when you consider most large contracts are for multiple years. Section 811 was developed behind closed doors and passed without any input from tribes. This law hasn't even been fully implemented yet and is already having a stifling effect on tribes.

Senator McCaskill has also introduced a bill to eliminate the tribal specific provisions for Alaska Native Corporations and has publically stated she will do the same to tribes as soon as she can find evidence she knows must exist proving tribal malfeasance. When questioned by an Alaska newspaper about this hurting individual tribal people, she callously referred the tribal people to the federal and state welfare system—something we are already familiar with.

The SBA 8a program has been one of the most successful economic development programs in tribal history. The 8a program is a prime contracting program, not a sub-contracting program. It has allowed tribes to transform themselves over the last 30 years from being the low cost, low value added sub-contractor with low paid employees toiling with mundane tasks, to become prime contractors that can compete with larger companies on a head to head basis.

The program's very success is why it is under criticism. New regulations just published should go a long way towards addressing the criticisms raised, ironically, by our competitors. I ask that you support the SBA 8a program's tribal provisions because it has been one of the primary ways for tribes to break out of the negative economic cycle and begin providing for ourselves.

The Native Tobacco industry is the fourth largest industry in Indian Country and the recent passage of the much despised Pact Act has put that entire industry in jeopardy. The PACT Act was supposed to stop the internet tobacco mail order business and it did just that. I realize it is hard to defend the mail order tobacco business, but I do strongly believe that tribes should have the right to manufacture, distribute and sell their own tobacco products on their own land without state interference.

The 12 year old Master Settlement Agreement (“MSA”) between the States and Big Tobacco has dramatically complicated the regulatory and tax issues between the states and tribes. Big Tobacco has threatened the states with the withholding of settlement payments if the states do not aggressively enforce the terms of the settlement on the tribes. The tribes were not part of the lawsuit, nor do we receive any settlement funds. There is no legal or logical reason we should be subject to its terms.

The Pact Act ended the mail order business, but the on-going threats from Big Tobacco has now resulted in the reservation business is coming under assault too. The states also want tribes to collect state taxes and MSA fees for non-Indians sales on our reservations. We refuse to use race to determine price in our own stores in our territory to create a price advantage for a non-Indian company. Such a system is completely out of date and offensive to us as sovereign governmental entities.

The states working with Big Tobacco have already introduced “model legislation” in multiple states to use the information required to be reported to states by the Pact Act to figure out ways to isolate and control tribes. The Pact Act should now rightly be called the MSA Enforcement Act. The Pact Act purported to have protections for tribes, such as protecting our sovereign immunity. But one state introduced legislation which stated that if a tribe exercised its legal right by claiming sovereign immunity to an MSA enforcement action, then that tribe would be put on a “list” and it would be illegal for anyone to sell them any tobacco products or tobacco manufacturing products. These “economic sanction” bills and the arrogance of their introduction is astounding.

These are direct attempts to circumvent the protections provided to tribes under the Pact Act and the Department of Justice and Bureau of Alcohol, Tobacco and Firearms are complicit in this problem by interpreting the Pact Act, under heaving lobbying from states, to help them achieve their goals. We have asked the Department of Justice and the ATF for another consultation to explain what is happening to tribes, but we have yet to get a response and would appreciate your help in being heard.

Thank you for your time.