

SEMINOLE TRIBE OF FLORIDA

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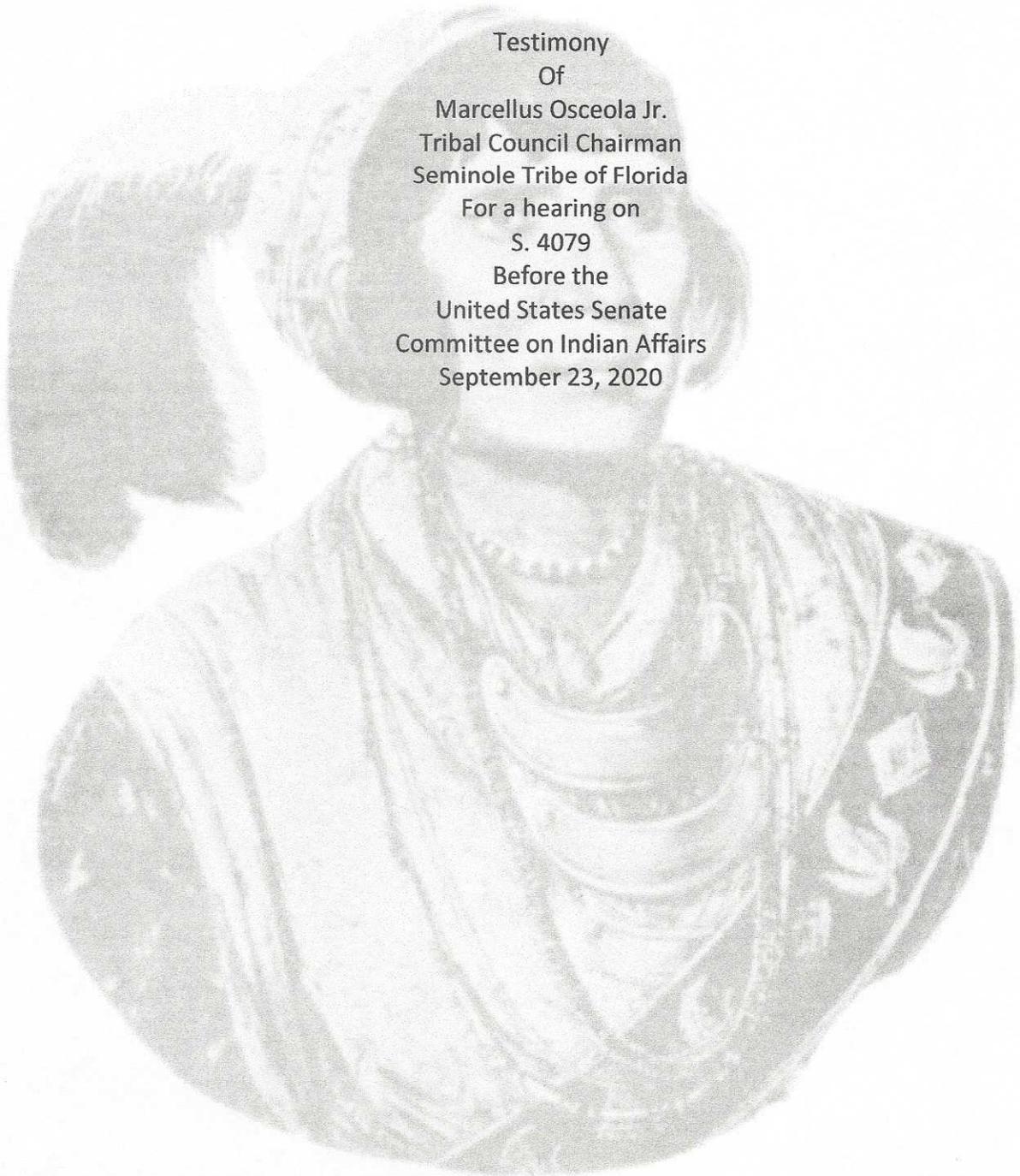
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Tribal Officers:
MITCHELL CYPRESS
Vice-Chairman
LAVONNE ROSE
Secretary
PETER HAHN
Treasurer

Testimony
Of
Marcellus Osceola Jr.
Tribal Council Chairman
Seminole Tribe of Florida
For a hearing on
S. 4079
Before the
United States Senate
Committee on Indian Affairs
September 23, 2020



“BUT I HAVE PROMISES TO KEEP & MILES TO GO BEFORE I SLEEP”

Chairman Hoeven, Ranking Member Udall and Members of the Committee, my name is Marcellus Osceola, Jr. and I am chairman of the Tribal Council of the Seminole Tribe of Florida. I am here today to urge Congress to move quickly to enact S. 4079, legislation that will make clear that the Seminole Tribe of Florida has the authority to lease or transfer certain fee lands without requiring prior congressional approval. I especially want to thank Florida Senators Marco Rubio and Rick Scott for introducing the bill and working with us throughout this process.

Seminoles have lived in Florida for thousands of years. Our ancestors were the first people to come to Florida. In 1830, when the United States enacted a law requiring that all Native People east of the Mississippi River be "removed" west, we resisted and remained free and unconquered in the swamps of Florida. We kept our ways and our traditions as well as our home, and we continue to do so to this day.

We have grown and prospered over time and number more than four thousand Tribal members today. We are a sovereign government with our own schools, police, and courts. We run one of the largest cattle operations in the United States. We own Hard Rock Hotel & Casinos, an international business with locations in 74 countries. We still continue our traditions of sewing, patchwork, chickee building, and alligator wrestling. The world has changed, as it always has, and we have adapted, as we always have; while keeping our ways, our culture, and our lives, to remain the Unconquered Seminole Tribe of Florida.

A key strategy we have chosen to pursue in adapting to a changing world is diversification of our investments and revenue sources. I am here today to ask for your help in addressing an outdated and paternalistic law that is hampering our efforts to diversify.

The Seminole Tribe has established an investment fund to invest in commercial real estate properties in order to create generational wealth for the Seminole Tribe. The Tribe will seek properties with a targeted rate of return of 4 percent per year on unlevered investments and 7 percent on levered investments, based upon invested equity. The proposed structure for the acquisition is for the Seminole Tribe to establish a state chartered subsidiary entity to act as a holding company. The holding company then creates a subsidiary entity to hold title to the property, enter into financing transactions and grant any lender a mortgage interest in the property.

However, we have been unable to move forward with our first project due to concerns raised by the lender and proposed title insurance company about the Indian Non-Intercourse Act (NIA). The NIA states in part:

"No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

Lenders require that they be granted a mortgage on the property financed and that the mortgage be insured with a mortgagee title insurance policy. At least two title insurance companies approached for first transaction we considered have interpreted the NIA to apply to real estate owned by a state chartered subsidiary entity of the Tribe. While we believe this is a wrong reading of the NIA, the title companies approached have not changed their view and will not insure the mortgage without an exception for the NIA. This effectively kills any ability to finance an acquisition.

The Act dates back to the 1800's and in part was designed to prevent Indian tribes from being defrauded. Today, it is hampering efforts to diversify for tribes that are imminently capable of making our own business decisions.

In order to address this issue and provide certainty to lenders and title insurers, Senators Rubio and Scott introduced S. 4079 to make clear that the NIA does not apply to fee land owned by the Seminole Tribe. Florida Representative Darren Soto has introduced the House counterpart, H.R. 7565, with six bipartisan Members of the Florida delegation as cosponsors. This legislation is necessary for the investment fund to acquire properties.

Congress has routinely approved similar legislation for other tribes. For example, "The Oregon Tribal Economic Development Act", Public Law 115-79, and Public Law 114-127 allowed certain tribes in Oregon and the Miami Tribe of Oklahoma to alienate non-trust property without further federal approval.

On behalf of Seminole Tribe of Florida, I ask that this Committee and the full Senate act quickly to approve S. 4079 in order to allow the Seminole Tribe to reach our goal of economic diversity and help secure the future of our tribal members. In fact, I urge Congress to consider taking up broader legislation going forward in order to assure that this outdated and paternalistic NIA language will no longer hinder economic opportunities for any federally recognized Indian tribe.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have. Sho-Na-Bish.