

United States Senate Committee on Indian Affairs

Spirit Lake Tribe

Written Testimony

November 14, 2018

My name is Douglas Yankton, elected Vice-Chairman of the Spirit Lake Tribe, previously known as the Devils Lake Sioux Tribe. The Spirit Lake Tribe is located in northeastern North Dakota and our reservation consists of approximately 245,000 acres of trust and fee land. As a representative of the Spirit Lake Tribe one the most important responsibilities we have is to ensure the laws impacting our community foster community safety while protecting and preserving our inherent sovereign and jurisdictional authority. The Spirit Lake Tribe has gone on record to formally request the repeal of 60 Stat. 229, an Act that previously conferred criminal jurisdiction over on reservation misdemeanor crimes to the State of North Dakota. I am here today to request your support in passing “S. 2788, a bill to repeal an Act previously conferring jurisdiction on the State of North Dakota over offenses committed by or against Indian on the Devils Lake Indian Reservation.”

As a background on this matter, in April of 1944, following a referendum vote, the Devils Lake Sioux Tribal Council passed Resolution No. III. The referendum occurred prior to the formal ratification of the Constitution and Bylaws of the Devils Lake Sioux Tribe. Resolution No. III sought to continue state jurisdiction over misdemeanor crimes occurring on the Reservation. At the time there were community safety concerns and a significant lack of tribal justice system resources, including lack of law enforcement and no formally established tribal court. After the Tribe passed Resolution No. III, it was relied upon by the U.S. Congress to pass

60 Stat. 229 (1946). 60 Stat. 229 is a federal law that applies only to the Spirit Lake Reservation and it delegates authority to the State of North Dakota to prosecute crimes on the Spirit Lake Reservation regardless of who commits the crime.

Since the 1944 referendum vote and 1946 federal law, the Spirit Lake Tribe has established BIA agency law enforcement, tribal law enforcement, a Fish and Wildlife Division and most importantly a Tribal Court. The Spirit Lake Tribal Court has been operational for decades and exercises both criminal and civil jurisdiction. The Tribal Court is staffed with a Chief Judge, Associate Judge, and a Clerk of Court within each of its three divisions. The Spirit Lake Tribe also funded a Tribal Prosecutor, a Juvenile Presenting Officer, and a Public Defender. The Tribe has further enhanced the tribal justice system through the establishment of a Traditional Diversionary Court and the establishment of a Law and Order Committee. The tribal justice system is served by Bureau of Indian Affairs law enforcement and also includes direct services for victims through the Spirit Lake Tribe Victim Assistance Program.

With the great strides that the Spirit Lake Tribe has made in the past seventy plus years, there is no need for the State of North Dakota to prosecute crimes occurring on the reservation beyond what is permitted by federal laws generally applicable to Indian Country as a whole. In recent decades the state of North Dakota has not provided a consistent law enforcement or judicial presence relevant to on reservation crimes. The state of North Dakota has instead, relied upon this archaic law to selectively prosecute a very minimal number of crimes and to further justify their involvement in reservation crimes beyond what is typically exercised by other states or by the state of North Dakota on other reservations. Due to the significant changes to our tribal justice system infrastructure and the lack of involvement by the state of North Dakota relevant to

on reservation crimes, the Tribal Council passed Resolution A05-10-033 on December 1, 2009 requesting the U.S. Congress to repeal 60 Stat. 229.

If the Congress repeals 60 Stat. 229 the state of North Dakota would no longer have concurrent misdemeanor jurisdiction on the Spirit Lake Reservation but would retain criminal jurisdictional authority otherwise permitted by federal law that is consistent with jurisdictional authorities reflected across much of Indian Country. The repeal of 60 Stat. 229 would not have a negative impact on the state of North Dakota. In fact, the state of North Dakota would continue to have jurisdiction over crimes occurring on the reservation in accordance with existing federal law. Furthermore, the repeal of 60 Stat. 229 would not create an jurisdictional gaps or otherwise interfere with the exercise of tribal, federal or state jurisdictional authority as it stands under existing law.

To be clear, S. 2788 only repeals 60 Stat. 229, which is specific to the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe. A repeal of the Act would in no way impact or otherwise limit the applicability of the Major Crimes Act 18 U.S.C. § 1153, Assimilative Crimes Act 18 U.S.C. § 13 nor the General Crimes Act 18 U.S.C. § 1152, all of which serve to establish federal criminal jurisdiction within Indian Country, including the Spirit Lake Reservation. A repeal of the Act in question would not alter any current common law impacting criminal jurisdiction in Indian Country. Existing precedent pertaining to jurisdictional authority, established by cases such as *Oliphant v. Suquamish*, 435 U.S. 191 (1978)(*finding that tribal courts generally lack criminal jurisdiction to criminally prosecute non Indians in tribal courts*) or *United States v. Lara*, 541 U.S. 193 (1994)(*finding that tribes have the inherent authority to prosecute member and non-member Indians pursuant to the Indian Civil Rights Act as amended; also finding that the exercise of said authority is concurrent to the exercise of federal criminal*

jurisdiction), would not be altered in any manner. The Spirit Lake Tribe and justice system officials within the Spirit Lake Tribe would continue to exercise inherent criminal jurisdiction in a manner that is consistent with existing tribal law and the Indian Civil Rights Act, as we have been doing for decades. *See 25 U.S.C. §§ 1301-1304.*

In conclusion, the Spirit Lake Tribe requests that you pass S. 2788 to formally repeal 60 Stat. 229 thereby supporting tribal efforts to move forward with criminal justice system enhancements while preventing unnecessary interference with tribal sovereignty by the state of North Dakota. S. 2788 is an important step to reinforcing existing current federal policy aimed at fostering tribal self-determination. On behalf of the Spirit Lake Tribe, I would like to thank you for the opportunity to provide this testimony and for your consideration the request for a formal repeal of 60 Stat. 229.