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**TESTIMONY OF PHYLISS J. ANDERSON
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**OVERSIGHT HEARING, SENATE COMMITTEE ON INDIAN AFFAIRS
CONTRACT SUPPORT COSTS AND SEQUESTRATION:
FISCAL CRISIS IN INDIAN COUNTRY**

Chairwoman Cantwell, Ranking Member Barrasso and Members of the Senate Committee on Indian Affairs. Halito! My name is Phyliss J. Anderson and I have the privilege and honor of serving as the Tribal Chief of the Mississippi Band of Choctaw Indians. Thank you for holding this important oversight hearing on how Indian Country is affected by sequestration and proposed limits on contract support costs (CSC).

Like many other Tribal leaders, I was disappointed that the Administration's response to the tribal victory in *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012), was to view the decision as a "problem" that needed to be fixed. As we informed the White House in June, the *Ramah* ruling should have been celebrated as a victory for Indian Country and a strengthening of Indian self-determination, in stark contrast to the recent rulings in *Carcieri* and *Patchak*, both of which pose direct threats to the sovereignty and well-being of Tribes throughout the country.

Instead, the Administration's FY14 budget proposal seizes upon language in the *Ramah* decision and requests that Congress eliminate the rights of Tribes to full CSC funding, by listing each tribal contractor's individual "capped" CSC funding amount in the Interior Appropriations bill. While the House Interior Appropriations Subcommittee rejected this approach, the Senate Subcommittee included the proposal in its version of the bill. If enacted, this would leave Indian Self Determination Act (ISDA) contractors with no remedy for shortfalls in their CSC funding.

In other words, as highlighted in an October 30, 2013, letter to President Obama from more than 60 Tribal leaders (I joined by reference under separate cover dated October 30, 2013), the proposal is "intended to eliminate all future contract claims – essentially converting mandatory bilateral contracts into discretionary unilateral grants." While Congress may have the legal power to legislate this kind of change, to do so would fundamentally undermine the long-standing policy of promoting Indian self-determination.

Moreover, this proposal was developed without consulting Tribes. Talking to a few of your friends in Indian Country is not a legitimate substitute for conducting tribal consultation, nor does it honor the government-to-government relationship between the United States and Tribes which should be based on good faith and mutual respect.

Two weeks ago, during the United South and Eastern Tribes (USET) conference hosted by the Eastern Band of Cherokee Indians, I had an opportunity to question Assistant Secretary for Indian Affairs, Kevin Washburn, who appeared before the USET Board of Directors. To his credit, the Assistant Secretary acknowledged that the Administration could have handled its response to the *Ramah* decision much better. While it remains to be seen if he, the President, OMB and the Senate Interior Appropriations Committee will honor our request to withdraw this proposal, I commend the Administration for finally engaging in the kind of meaningful tribal consultation that should have occurred well before this CSC language was ever proposed.

I would also like to thank the many Members of this Committee who have consistently encouraged the Administration to follow this course of action, and respectfully urge you to keep up the pressure to reject any proposal that does not fully fund ISDA contracts.

Similarly, I urge the Administration to engage in a good faith effort to settle all outstanding CSC claims right now. The Supreme Court has ruled and the Administration should act immediately in accordance with the *Ramah* decision, as well as the subsequent ruling in *Arctic Slope Native Ass'n v. Sebelius*, regarding CSC claims for ISDA contracts with the Indian Health Service.

Like the failure to pay full contracts support costs, sequestration is another example of broken promises made to Indian Country. As countless witnesses have stated before this Committee, the federal government has a trust responsibility to federally-recognized tribes, including budget obligations, that was forged through the Constitution, various treaties and agreements with Indian nations who relinquished millions of acres of land to the United States.

As a result of these treaty and trust obligations, funding for federal Indian programs should not be classified as discretionary spending. The obligation should be mandatory. Unfortunately, because Congress and OMB do not concur with this perspective, the vast majority of Indian funding comes from non-defense discretionary accounts and, therefore, is subject to the across-the-board spending cuts known as sequestration.

We estimate that sequestration has already resulted in the loss of more than \$4 million for the Mississippi Band of Choctaw Indians and affected more than 60 programs on our reservation. The largest impact on FY13 funding has been borne by the Choctaw Health Department. This decrease has had a significant impact on patient care, hospital services, and public health on the reservation.

For example, Patient Priority II referrals for needed medical services to outside providers were either delayed or denied. Much-needed prosthetics for patients of all ages were not purchased. While we did not furlough employees and providers related to direct patient care, we did institute a hiring freeze for all other hospital positions.

Moreover, because of the uncertainty related to the budget, we shelved plans for new opportunities for health services such as telemedicine, as well as improvements for emergency services.

In addition, the uncertainty caused by the combination of sequestration and the government shutdown interrupted many hospital and health department operations. Final payments were slow to reach us with payments distributed erratically, even down to the last few days of September 2013. Such an unpredictable stream of income for a small reservation hospital in rural Mississippi that provides services to more than 10,000 eligible users limits the tribe's ability to plan for such services and execute the contracts that are necessary to operate our facility.

Much of the uncertainty related to how sequestration would impact the Mississippi Choctaw Health Department was a result of the confusion created by the Administration as to whether the higher level of across-the-board spending cuts would even apply to the Indian Health Service. For months, many Tribes were told that cuts to IHS programs would be capped at 2 percent, just as cuts to other related programs such as Medicare and Medicaid could not exceed 2 percent. However, OMB ruled that the 2 percent cap only applied to those funds designated as "mandatory," including direct funds such as diabetes program funding, and the reimbursements that the IHS receives from other mandatory funding sources such as Medicare, Medicaid and the Children's Health Insurance Program (CHIP).

Congress and OMB must change this interpretation of the Budget Control Act of 2011 and its predecessor, the Balanced Budget and Emergency Deficit Control Act of 1985, to ensure that all Indian Health Service funding is exempted from sequestration. I agree with other Tribal leaders and many Members of Congress who prefer to replace sequestration with set funding levels as part of completed FY14 appropriations bills negotiated by the Senate, the House and the White House. However, we don't know if and when sequestration will be used as a budget tool in the future. Consequently, the IHS should be added to the list of exempted programs.

That list currently includes such diverse funding as programs administered by the Department of Veterans Affairs, Pell Grants, the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance for Needy Families (TANF) program and Child Nutrition/School lunch programs. While diverse, many of these programs benefit some of our country's neediest citizens. As the New York Times noted in a March 2013 editorial, the imposition of sequestration on the Indian Health Service represents a "little-noticed example of moral abdication." Congress and OMB can and should correct this injustice immediately.

We also support efforts to authorize advance appropriations for IHS, as called for by legislation recently introduced in the Senate by Senators Lisa Murkowski, Mark Begich, Tom Udall and Brian Schatz, and in the House by Representatives Don Young and Ben Ray Lujan.

Forward funding, by itself, will not prevent the adverse effects of sequestration. Nor is it a sufficient substitute for fully funding programs that have been significantly underfunded for far too long. However, in light of the challenges I described earlier, authorizing advance appropriations would create a greater level of budget certainty to allow us to plan, recruit and retain better health care professionals and otherwise provide better services to our citizens.

Sequestration and the recent government shutdown have proven that forward funding can have a positive impact. The second largest reduction caused by sequestration impacted our Choctaw Tribal Schools. However, because most of our tribe's education programs are forward funded, we were better able to plan for the cuts. The Choctaw Tribal School System, funded by the Bureau of Indian Education (BIE), experienced nearly \$1.5 million in cuts to FY13 funds. However, as a result of forward funding, we were better prepared to deal with education cuts than we were for cuts to healthcare, through the use of a structured hiring freeze, staff furloughs during non-instructional periods, and the identification of alternate sources of revenue for critical afterschool and summer programs. For the 2013-2014 School Year, the tribe was also able to reduce personnel cost and identify unspent carry-over funds needed for funding summer school.

While we may have been able to plan better, if the sequestered funds are not restored through FY14 appropriations, or worse, should sequestration continue, these stopgap measures will not be sustainable and essential services will need to be reduced. Afterschool and summer instructional programs are critical to the health, safety and well-being of Choctaw youth. It is not an exaggeration to state that many of these kids will be at risk for neglect or abuse if these programs continue to suffer from sequestration.

Sequestration has also made an historic problem in our education system much worse. The perennial lack of funding for school facility replacement or expansions prevents the Tribe from addressing overcrowding conditions at our largest elementary school on the reservation. Pearl River Elementary School was built in 1991, by the BIA for a student capacity of 350 students. At the time, we unsuccessfully argued for a design capacity of 550 students, but BIA standards limited growth to a five-year enrollment projection. Since then, we have used tribal funds to expand the school, but Pearl River Elementary currently has 657 students, 200 of whom are housed in portable classrooms, some of which are 40 years old. This isn't just an education issue; this is a serious health and safety issue that demands an increase in school facilities funds, for both Operations & Maintenance (O&M) and new school construction. Unfortunately, the safety of our children has taken a back seat to the politics and realities of sequestration.

The Choctaw Head Start program was also significantly affected. With a January 1, 2013, start date, the program was forced to take steps immediately following sequestration. Although we were able to place some of the Head Start children in other programs, as a result of the cuts in FY13 funds, we were forced to close one Head Start and one Early Head Start classroom.

I would like to mention one more Choctaw department that has been adversely affected by sequestration: the Department of Public Safety. After many years of minimal or no increases, sequestration forced cuts to law enforcement, public safety and fire protection services by more than \$500,000. These cuts, which include child protection services and emergency assistance, put the Tribe's most vulnerable members in danger as staff reductions have resulted in corresponding reductions in police response times and first responder readiness on the reservation. Furthermore, the reductions directly limit our ability to combat domestic violence on the reservation, especially by repeat offenders.

Earlier this year, I stood side by side with many of the Tribal leaders who are in Washington this week to ensure that this Congress reauthorized the Violence Against Women Act with the tribal

provisions intact. As you know, the VAWA legislation that Congress passed and the President signed into law included language recognizing the inherent right and power of Tribe's to exercise special domestic violence criminal jurisdiction over certain non-Indian defendants. We fought for months, against very vocal and powerful opposition, to secure this language, and I would like to thank every Member of Congress who helped make passage of that important legislation a reality.

However, as I mentioned to the Department of Justice as part of our VAWA implementation consultation, no matter how many programs we authorize, no matter how much we streamline operations or improve communication between tribal governments and the federal government, these programs will not be as effective as they need to be without adequate funding. Sequestration is denying adequate funding for VAWA implementation at the very same time that it is needed most.

Madame Chairwoman, according to Webster's Dictionary, "sequester" means "to set apart," or "to keep (a person or group) apart from other people." Our ancestors who relinquished millions of acres of their homelands and were forced to live on vastly reduced plots of land, now called reservations, were all too familiar with this concept of setting some Americans apart from others.

Today, in the legislative arena, sequester means to set money apart, by arbitrarily cutting federal expenditures in order to meet certain budget and austerity targets because our political leaders were unable to specify exactly how those cuts should be applied.

In my opinion, however, whether at Choctaw or any other Indian reservation, the word sequester has come to mean something else: failure; specifically, the failure of the United States Congress and the President of the United States to work together and do their jobs on behalf of the American people.

In conclusion, my final recommendation to this distinguished Committee, the President, and every other Member of Congress: please, do your jobs. The health and well-being of Choctaw families and Native Americans throughout the country depend upon you not failing again.

Thank you.