

TESTIMONY OF
CHICKASAW NATION LIEUTENANT GOVERNOR JEFFERSON KEEL
BEFORE THE
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
MARCH 8, 2017

Chairman Hoeven, Ranking Member Udall and members of the committee, thank you for inviting me to testify in today's important hearing to identify Indian Country priorities for the new Trump Administration. My name is Jefferson Keel. I serve as the Lieutenant Governor of the Chickasaw Nation and speak today on behalf of Chickasaw Nation Governor Bill Anoatubby and the people of the Chickasaw Nation.

We look forward to working with and supporting Secretary Zinke in protecting our treaty rights and carrying out the federal trust relationship to tribes. Full federal recognition of tribal sovereignty, as that status is recognized in the United States Constitution, is of paramount importance to Indian country. We look to this Congress and the Trump Administration to continue the long-standing federal policy of engaging with tribal sovereigns on a government-to-government basis. This principal is fundamental to all issues that will come before you arising from Indian country.

Federal policies supporting American Indian tribal self-determination and self-governance grows directly from the government's respect for the importance and value of tribal sovereignty. It is a simple fact that these policies work because they rest on the core principal that tribal peoples are in the best position to address the issues affecting their own communities. This committee has helped lead the way in crafting policies that support tribal self-determination and self-governance, and while we have accomplished great things, much remains to be done.

All too often, federal statutes and regulations treat tribal governments differently than every other form of government. While the Constitution establishes tribal governments as sovereigns with rights and responsibilities similar to those of states, in practice, policies are almost always more restrictive for tribes. Indian country has, accordingly, long called for parity—for the treatment of tribal sovereigns in a manner consistent with what states and other sovereigns within the United States system are afforded by federal law. Indeed, given the federal fiduciary obligation to protect tribal sovereignty, we believe our argument for such treatment is even stronger than the states, in many instances.

We commend the new administration's policy to affirm and commit to existing tribal consultation policies, which establish frameworks for meaningful government-to-government engagement and collaboration. We believe such frameworks are essential to a high functioning federal-tribal dynamic and call on this Congress and Administration to deepen and enhance its commitment to effective consultation, wherever and whenever possible. We believe *all* executive departments and agencies should consult and collaborate with tribes on the

development of federal policies with tribal implications, and we believe this is true whether the government is considering the establishment of a new statutory or regulatory provision or the repeal or abrogation of an existing one. Doing so will strengthen our government-to-government relationship and further empower the unparalleled progress made in Indian country since the advent of these policies in the late-1960s.

One example of this body's pragmatic responsiveness to strengthening the federal law's provision of parity to tribal sovereigns is recent action relating to the National Labor Relations Board. Several years ago, the Board administratively set aside decades of settled policy and law and determined, notwithstanding its own profession of having no expertise in federal Indian law, that tribal actors are not all entitled to the protection of tribal sovereignty. Specifically, the Board concluded that non-tribal labor organizations could assert the protections of the National Labor Relations Act against tribal government employers—treating tribal governments in a manner that no state or territory has ever been subjected to. The Chickasaw Nation litigated the matter for several years before the Board finally acknowledged that our sovereignty and treaties with the United States demand the parity of treatment we claimed. But other tribes do not benefit from our treaties, and nothing necessarily precludes the Board from again changing its mind as to what respect it should afford these sources of federal law. I want to thank this committee and our champion on this issue, Sen. Jerry Moran, for recognizing the untenable position in which this put tribal sovereigns and the quick approval of S.63, the Tribal Labor Sovereignty Act. Mr. Chairman, I respectfully urge you to work closely with your colleagues to bring this important issue to a vote by the full Senate as soon as possible. Basic fairness and adherence to long-standing policies regarding tribal sovereignty would support such action.

We also urge swift action to reauthorize the Native American Housing Assistance and Self Determination Act (NAHASDA) by the committee and the Senate. For several years running, the House has overwhelmingly passed a NAHASDA reauthorization with a large bipartisan majority, but Indian country has been forced to wait on reauthorization in the Senate because one or two senators have put holds on the measure—blocking the will of the body and ignoring the needs of Native peoples. This issue is too important to let another two years go by without approval. Indian country and this successful program deserve better.

Another timely issue of critical concern is the status of the Indian Health Care Improvement Act. That measure was permanently reauthorized after a decade-long bipartisan effort to enact the measure; however, it was unfortunately tucked into the Affordable Care Act in 2010. The Indian Health Care Improvement Act, which stands apart from the rest of the Obamacare measures, is critical to the provision of health care throughout Indian country and must be safeguarded in any effort to change federal health care laws.

There are a number of other issues inside the Affordable Care Act that I would like to bring to the committee's attention. We believe, for example, that the employer mandate represents an unwarranted intrusion on tribal self-government. In addition to health services to our tribal citizens, the Chickasaw Nation provides generous health care insurance coverages to all its employees—benefits that far exceed the standards in the prevailing market—and the Act's mandate created complications and burdens where no problem could be shown. We would also

point out that the Act uses a definition of Native Americans that differs from that found in other parts of the U.S. Code and the regulations, which has been widely acknowledged as a drafting error over the years. We urge the committee to correct this error in any legislation on the subject. Finally, tribal health departments have well developed third party payer arrangements with Medicare, Medicaid, the Department of Veterans Affairs, and other federal programs. Congress should pay careful attention to nuance and detail in overhauling the Act so that these relationships are not inadvertently disrupted or unsettled.

We applaud the President's commitment to the veterans who have served and proudly serve today to protect our great nation. On a daily basis active duty members become veterans, and too many veterans return home to find that their greatest challenges still lie ahead. The Chickasaw Nation is committed to finding the path for our veterans to become leaders, both in the community and tribal government, teachers, business owners, active citizens and successful parents. We work closely with the US department of Veterans Affairs and have established a good relationship with the Office of Tribal Government Relations in the VA.

President Trump has spoken for many months about a wide-ranging infrastructure package. We support the concept of vigorously investing in our nation's roads, airports, waterways, water and sanitation systems, and other critical infrastructure. Indian country has, for generations, faced chronic shortages of public and private investment in this area, which adversely affects public safety as well as opportunities for sustainable economic development and self-sufficiency. We believe tribes should be full participants in any and every program authorized by Congress for the rehabilitation of aging or the development of new infrastructure. We further believe funds for such projects should flow directly to tribes rather than be run through state governments, which have not always adequately addressed Indian country needs. In Oklahoma, we work closely with our colleagues in local government and the Oklahoma Department of Transportation to identify and execute projects that help the entire community but are of particular importance to tribal citizens. Without an ability to bring funds under our control to the bargaining table, tribal needs and interests would likely not receive the prioritization they deserve.

We believe tax reform would present great opportunities to incentivize tribal investment and bring badly needed opportunities to Indian country. We commend the Native American Financial Officers Association and the outstanding work they have done identifying workable tax and pension reforms that would have an immediate beneficial impact on tribal economies. In particular, we commend efforts to repeal the "essential governmental function" rule that applies to tribal bonds and which forces tribes to maintain two separate pension or employee retirement programs. Members of this committee and the Senate Finance Committee have been working hard to address this particular matter, and we thank you. Your success in these efforts would have tremendous positive impact on Indian country.

We also believe that the New Markets Tax Credit program has already demonstrated its utility for Indian country development and suggest the program should be expanded and stabilized. The Chickasaw Nation was recently awarded a \$20 million allocation and is facilitating economic development projects throughout Indian country with these monies—

projects that are creating jobs, enhancing infrastructure, and deepening service provision and tribal entrepreneurship. We previously used a New Markets Tax Credit allocation to completely redevelop an outdated and dilapidated Indian Health Service facility in Ada, Oklahoma, to serve now as the Carl Albert Service Center, a multi-purpose tribal government facility. Both the construction and the operation of this new facility has been an economic and programmatic boon to the community. We believe Congress should support the allocation of a stable revenue stream to support the implementation of this program in Indian country.

The Chickasaw Nation works closely with the federal government in the provision of a wide variety of services to our citizens. Often times, we administer federal programs under 638 self-governance compacts. We have been a leader in the Indian Health Service's joint venture program—which we used in conjunction with \$220 million of our own funds, to construct and equip three health facilities, including the 80-bed Chickasaw Nation Medical Center in Ada, Oklahoma, which serves American Indians throughout southeast Oklahoma. Our facilities in Ada, Ardmore, and Tishomingo provide critically needed health services in this region, which we operate in conjunction with other services and programs addressing suicide prevention, mental health and substance abuse, child welfare, domestic violence, and sexual assault. Without continued federal support for self-governance compacts, Indian country, American Indians, our citizens would be deprived of these programs and services, and we commend you for your continued commitment to ensuring that the compacting system remains strong and vital to the federal-tribal relationship.

We appreciate Congress's passage of the Violence Against Women Act, which statute is key to the protection and well-being of American Indian women—among the most basic responsibilities of any government. This legislation provides American Indian tribes the tools to enable to do even more to help keep Native American women safe through effective law enforcement and prosecution. We thank you for your continued support for this measure, now and when it is due for reauthorization.

Our own work under the Violence Against Women Act supplements our other law enforcement programs throughout the Chickasaw Nation. We have made it a priority to work closely with federal, state and local law enforcement agencies within a complicated jurisdictional landscape to protect and serve all citizens of Oklahoma, and federal support for these efforts through the Self-Governance Compact and Community Policing Act is important to continued success of the Chickasaw Lighthorse Police.

Additional governmental services include the Johnson-O'Malley education program, high school equivalence tutoring and testing. Education has long been a high priority for the Chickasaw Nation. Therefore, we request the Chickasaw Nation High School Equivalency (HSE) testing centers and certification and transcript issuing processes be certified and recognized by the U.S. Department of Education. While the U.S. Department of Post-Secondary Education currently only recognizes state-issued HSE transcripts, the Chickasaw Nation HSE testing center policies are set up to adhere to equivalent security and testing practices as those of state recognized testing centers. We have a signed and approved Educational Testing Service contract in place to provide the HiSET exam which is one of three HSE tests federally

recognized by the U.S. Department of Education and has been approved in 21 states. The exam aligns itself to the College and Career Readiness Standards for Adult Education.

Broadband internet availability is an important aspect of the infrastructure challenges facing Indian Country. Tribal citizens access only internet connectivity speeds that are far below the FCC broadband standard. This limitation stifles economic development, technical advances like tele-medicine, and negatively impacts education by accelerating the already increasing homework gap. Current federal funding models are aimed primarily at for-profit businesses and often focus on specific institutions that provide too little service to those in need. Tribes are dedicated to improving the lives of the traditionally underserved including tribal citizens, rural schools and health care institutions, and those living in economically depressed areas. Directing funds to groups such as tribes could improve the likelihood of these funds benefiting those who need it most, and we ask that you remember Indian country when considering any measure to upgrade the country's internet availability.

Chickasaw identity is founded upon a unique and special heritage embodied in our language, our sacred sites and our traditional knowledge. Repatriation of our ancestors' remains is extremely important to us. The repatriation process, however, can take many years to complete. The Chickasaw Nation aboriginal homeland in the southeastern United States is rich with generations of our ancestors, including archaeological sites and sacred burial places. In 2016 the Chickasaw Nation actively pursued 21 repatriations, which will allow us to take care of 4,034 of our ancestors and thousands of their funerary objects. We ask the government to continue to provide supportive funding for tribal repatriation efforts, both culturally affiliated and culturally unidentifiable. We further ask that you consider developing legislation to aid indigenous peoples seeking the international return of ancestors and items of cultural patrimony.

Finally, I want to touch on a recent announcement by the Department of the Interior about reforming the Indian Trader Act and attendant regulations. We believe this effort to be representative of the well-intended work by career staff across Administrations of both parties. We support this effort and believe there is good work to be done on this front. We would, and will, encourage the Department both to modernize the regulatory framework and to streamline mechanisms for tribes to conduct direct oversight of the federal regulatory system via appropriate self-governance compacts. We would, and will, also urge the Department to proceed carefully in its effort—with the principal of “do no harm” clear and foremost in mind. Given the complexities of the federal common law of Indian affairs, any statutory and regulatory change must be approached carefully and with due consideration of potential unintended consequences. Indeed, a number of important Supreme Court decisions rest on the preemptive scope of the Indian Trader Statutes and implementing regulations. In attempting any update of those laws, the Department must not displace or alter the careful balance of sovereign interests that those decisions uphold. While we support update and reform—indeed, we would applaud it—we also ask that caution be observed in all future actions.

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Thank you for your time and for holding this important hearing. I look forward to answering your questions.