Oral Remarks of Maulian Dana

Ambassador of the Penobscot Nation

on LD 2004, An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations

before the Joint Standing Committee on the Judiciary

May 31, 2023

Thank you for the opportunity to testify in support of LD 2004.

Current law blocks any Federal law providing benefits to Indians from applying to the Wabanaki Nations if it affects or preempts State jurisdiction. This exclusion is unique to the Wabanaki Nations – no other federally-recognized tribes are subject to such a sweeping exclusion from Federal Indian laws. It is an exclusion full of ambiguity because we never know if a Federal law affects or preempts State jurisdiction until the State says something. The past 42 years have shown that the State fails to act in a timely fashion, and the burdens of the existing law have caused significant economic and public safety harms to the Wabanaki Nations and surrounding communities.

LD 2004 shifts the burden to the State to proactively identify and advocate for the Wabanaki Nations to be excluded from a Federal Indian law. We believe this shift in policy is better for us and all of Maine because it will force the State government to act in a timely fashion and provide some justification for why the Wabanaki Nations should be excluded.

I want to provide some examples of the harms to the Penobscot Nation under the current settlement act scheme:

- The Penobscot Nation was working with a company to develop a wind farm on our land. We were hoping to access federal funding for the project. The company walked away from the project when the State said it had to comply with State and Federal environmental and permitting laws.
- In 2010, Congress passed the Indian Health Care Improvement Act. Within that law is a provision that says medical professionals can practice anywhere in Indian Country so long as they are licensed to practice in at least one State. The State didn't object to this provision of Federal law applying to the Wabanaki Nations until just recently.
- In 2013, Congress passed tribal provisions in the Violence Against Women Act that allows tribes to prosecute non-Indians for domestic violence against Native people on our land. Maine didn't object to the provision until after the law was enacted and Penobscot was being chosen for a pilot program. Penobscot hired a federal lobbyist to advocate for the Wabanaki Nations to be expressly included in the law, and it took us 7 years. During that time, the State never assisted us with advocacy to Congress.

There are numerous other examples, but the overall problem is twofold: (1) there are no time restrictions on when the State can object or indicate that it believes its jurisdiction is being impacted, and (2) there is no requirement or process for evaluating whether the State's objections are reasonable. This is what LD 2004 seeks to fix.

The Governor's office has consistently objected to our efforts to fix these provisions of the settlement laws, but the only solution they offer up is to keep the status quo. That is not a solution.

In 2019, Suffolk University released a report identifying 151 Federal laws that may not apply in Maine if they "affect" Maine jurisdiction. The Governor has had 4 years to analyze which of these laws may affect or preempt State jurisdiction, but no analysis has been done.

The Penobscot Nation is always open for productive dialogue, but the dialogue needs to be focused on meaningful change. Opponents to LD 2004 should be required to identify the specific Federal Indian laws they don't want to apply in Maine, and why. If the Legislature fails to act on LD 2004, you will be supporting the continued stagnation of economic and public safety progress for the Wabanaki Nations and other rural communities in Maine. Please take action on this bill.