To: Sen. Carney, Rep. Moonen, and Members of the Joint Standing Committee on Judiciary.

From: Tony Brinkley, 188 Fountain Street, Bangor, Maine. Retired Professor, University of Maine.

Re: In support of LD 2007, *An Act to Advance Self-determination for Wabanaki Nations*

Dear Senator Carney, Representation Moonen, and Members of the Judiciary Committee,

My name is Tony Brinkley, I live in Bangor, and I am a retired Professor of English who worked of almost 40 years at the University of Maine. As the Faculty Associate in Academic Affairs during the 1990s, I coordinated the process that led to the creation of Wabanaki Center and Wabanaki Studies at the University. In that capacity I worked closely with leaders in Maine's Native American Communities. Later, first as Chair of the English Department, then as the Senior Faculty Associate at the University's Franco-American Centre I continued these relationships, in particular with Wayne Newell who over the years became my mentor.

Why do I support LD 2007? One of tragedies of the Land Settlement Acts has been the way in which the State of Maine has repeatedly distorted the constitutional right of Maine's Wabanaki communities to sovereignty. Because the acts acknowledge that the rights and responsibilities of Maine's municipalities, the State has insisted that the Tribes no longer have surrendered any sovereign rights exceed those of municipalities. This is quite distinction from the understanding negotiated between the Tribes and the State. Given that understanding, sovereign rights and responsibilities that were *like* those of municipalities would be respected by the State in the same way that they were respected for municipalities. Given the history of State-Tribal relations in which Native Americans were treated as colonial subjects and the State as the colonial administrators, the parallel between municipalities and the Tribes reflected an overdue respect on the part of the State (a way of making a badly needed recognition to which the Tribes responded by giving up justified claims to much of the land in Maine to which they were entitled). At the same time, the Tribes did not cede their sovereignty and to all aspects of sovereignty not specified in the settlement. Once the Settlement was enacted however, the State has used the parallel with municipalities to perpetuate colonial arrangements which originated as most such arrangements with colonial authority to impose its will. The opposition by powerful Maine leaders to recognition of Wabanaki sovereignty reeks of a nostalgia for the kind of unquestioned power that the Settlement Acts ceded. I support LD 2007 because I support the inalienable constitutional right of the Wabanaki Peoples to Sovereignty.

The view I am expressing here reflect an analysis of the Settlement Acts that I co-authored with Professor Margaret Lukens and that was published by the *Portland Press Herald* last summer. I am attaching a copy of the article. Thank you very much for considering my testimony.

Maine relegates tribes to the status of municipalities

The Maine Indian Claims Settlement Implementing Act reflects a partnership between tribes and the state that distinguishes Wabanaki communities from Maine cities and towns.

BY MARGO LUKENS AND TONY BRINKLEY SPECIAL TO THE PRESS HERALD

At a time when the rights of Wabanaki communities are at the center of a controversy

between Maine's Legislature and Maine's governor, it is illuminating to reread the 1980 Maine Indian Claims Settlement Implementing Act, which is at the heart of the debate. The state of Maine argues that the MICSA relegates the Wabanaki tribes to the status of Maine municipalities, and the news media have often accepted the state's assertion. In doing so, however, they misread the Maine law and the partnership between tribes and the state that the MICSA reflects. They take the term "municipalities" out of context in order to deny Wabanaki sovereignty in ways that the MICSA does not deny. In the context of the 1980 law, "municipalities" is a simile: First Peoples in Maine are like municipalities in specific areas of governance. This does not mean that they are, became or have ever been municipalities.

The word "sovereignty" does not appear in either the federal Land Claims Act or the state Implementation Act, but in what way does either act affect the sovereignty of Wabanaki communities in Maine? The Implementation Act does refer to the Passamaquoddy Tribe and the Penobscot Nation as having a status like municipalities in Maine, but while it does so with respect to laws of the state regarding a municipality's "duties, obligations, liabilities and limitations," it does so without additional limitations. In specifying "internal tribal matters" that "shall not be subject to regulation by the State," the MICSA recognizes a partnership with the state that

distinguishes Wabanaki communities from

Maine municipalities.

One way to approach this difference is to consider the status of the Passamaquoddy Tribe and Penobscot Nation before 1980. It was never undefined. Both had sovereign rights, though that sovereignty was restricted by law because, like all First Peoples, Wabanakis

were subject to the power of the federal and state government to impose its laws. Wabanaki sovereignty was nevertheless reflected in treaties that are part of the Maine Constitution but have been omitted in recent, abridged editions. (The insistence on this abridgment by Maine's governor and others amounts to unacknowledged censorship, but the recognition of Wabanaki sovereignty in Maine's constitution is clear. The state of Maine does not sign treaties with its municipalities.)

The 1980 Implementation and Settlement Acts explicitly limit sovereignty in specific areas and explicitly recognize sovereignty in other areas in ways that do not apply to Maine municipalities. Not all areas of sovereignty are addressed. The state of Maine has asserted that these unaddressed areas are governed by the state. This assumes that prior to 1980, the state was

sovereign in all areas and, through the MICSA, ceded some areas, but this is a misreading of the law and of history.

Negotiations between the state and Wabanakis reflected recognition by the state that the Penobscot Nation and the Passamaquoddy Tribe were sovereign entities with the right and independence to negotiate what amounted to another treaty. Unspecified sovereign rights were not abrogated in the MICSA and, therefore, continued to be Wabanaki rights. The state can deny these rights, given its power to do so, but to assert this is lawful is unjustified – part of a history of relations between the state and Wabanaki peoples that over many years have been manifestly unjust. In 1980 Wabanaki negotiators agreed in limited areas to be governed like Maine municipalities, but – as a matter of law – they did not surrender sovereignty or ever agree that their communities were ever municipalities.

ABOUT THE AUTHORS

Margo Lukens is a resident of Orono and has taught English and Native American studies for 31 years at the University of Maine. **Tony Brinkley**, a resident of Bangor, also taught English, was the senior faculty associate at the University's Franco-American Centre and coordinated the creation of the university's Wabanaki Center.

Tony Brinkley
Bangor
LD 2007

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Why do I support LD 2007? One of tragedies of the Land Settlement Acts has been the way in which the State of Maine has repeatedly distorted the constitutional right of Maine's Wabanaki communities to sovereignty. Because the acts acknowledge that the rights and responsibilities of Maine's municipalities, the State has insisted that the Tribes no longer have surrendered any sovereign rights exceed those of municipalities. This is quite distinction from the understanding negotiated between the Tribes and the State. Given that understanding, sovereign rights and responsibilities that were like those of municipalities would be respected by the State in the same way that they were respected for municipalities. Given the history of State-Tribal relations in which Native Americans were treated as colonial subjects and the State as the colonial administrators, the parallel between municipalities and the Tribes reflected an overdue respect on the part of the State (a way of making a badly needed recognition to which the Tribes responded by giving up justified claims to much of the land in Maine to which they were entitled). At the same time, the Tribes did not cede their sovereignty and to all aspects of sovereignty not specified in the settlement. Once the Settlement was enacted however, the State has used the parallel with municipalities to perpetuate colonial arrangements which originated as most such arrangements with colonial authority to impose its will. The opposition by powerful Maine leaders to recognition of Wabanaki sovereignty reeks of a nostalgia for the kind of unquestioned power that the Settlement Acts ceded. I support LD 2007 because I support the inalienable constitutional right of the Wabanaki Peoples to Sovereignty.

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