

James McCarthy
Brunswick
LD 785

To: Sen. Carney, Rep. Kuhn, and members of the Joint Standing Committee on
Judiciary

Re: Support for LD 785, An Act to Enact the Remaining Recommendations of the
Task Force on Changes to the Maine Indian Claims Settlement Implementing Act,
sponsored by Sen. Rachel Talbot Ross, D-Portland, Rep. Billy Bob Faulkingham,
R-Winter Harbor; Sen. Richard A. Bennett, I-Oxford;
President Matthea Daughtry, D-Cumberland; Speaker Ryan D. Fecteau, D-Biddeford;
Sen. Marianne Moore, R-Washington; Sen. Anne M. Carney, D-Cumberland; Rep.
Adam R. Lee, D-Auburn; Rep. Amy D. Kuhn, D-Falmouth; Rep. Mark Michael
Babin, R-Fort Fairfield

Dear Sen. Carney, Rep. Kuhn and members of the Judiciary Committee, my name is
James McCarthy and I'm a retired journalist who lives in Brunswick. I appreciate this
opportunity to submit written testimony in support of LD 785.

It's been seven years since the Maine Legislature formally recognized a need to alter
the 1980 Settlement Acts in 2019 by tasking a bipartisan group of state legislators and
tribal chiefs to recommend changes; six years since that task force, which included
members of the Wabanaki Nations and designees of the governor and attorney
general, issued its 22 consensus recommendations for modernizing the 1980
Settlement Acts.

Those 22 recommended changes have been taken up in several proposals with varying
success and are again a focus of the legislation now being considered at your public
hearing today. For anyone needing a reminder about what those changes are, and why
they need to be implemented, I recommend the Wabanaki Alliance's explainer [<https://www.wabanakialliance.com/taskforce-explainer/>] on its website, which
includes a link to the January 2020 report "Task Force on Changes to the Maine
Indian Claims Settlement Implementing Act" [<https://legislature.maine.gov/doc/3815>
].

I bring up this history simply to make the point that there's been ample and robust
discussion of the task force recommendations for several years now; I would humbly
suggest that no lawmaker should claim this bill is too complex, its purposes confusing
or unknown, with not enough time to understand the changes it seeks to make to
MICSA. And for members of this committee and other lawmakers who might be
inclined to repeat the timeworn dismissal "a deal is a deal" as grounds for rejecting
this bill, I recommend the 2021 Bangor Daily News op-ed written by former state
Sen. Michael Carpenter, co-chair of the task force and a former Maine attorney
general. [Link:
<https://www.bangordailynews.com/2021/09/24/opinion/opinion-contributor/its-time-to-correct-legal-inequities-harming-maines-tribes/>]

Carpenter offers a unique perspective, relevant to your discussion today: He served in
the Maine Senate from 1976-1986, voting for the Settlement Acts because he
regarded them as a reasonable compromise to settle land claims involving two-thirds
of the state — claims the Maine tribes had made following a string of favorable court
rulings in the 1970s. He continued to hold those views during his four years as
Maine's attorney general from 1991-1995.

But Carpenter changed his mind, and became an early advocate of the 22 changes to
MICSA that are the basis for LD 785. "Nothing in life is set in stone," he wrote in that
BDN commentary. "I no longer embrace views I held strongly more than 40 years ago

on any number of issues, including how the government-to-government relationship between the tribes and state should be understood and practiced.”

In my written testimony supporting LD 385, I referenced a new analysis that was only made public a week ago at the Wabanaki Alliance’s coalition meeting. This 17-page analysis was undertaken independently (i.e., it was not commissioned by the Wabanaki Alliance) and it represents a thoughtful reevaluation of the 1980 Settlement Acts, including their origins and their well-known and longstanding adverse impact on the Wabanaki Nations. It’s written by Evan Richert and Roger Milliken, names I trust you’ll recognize for their decades of service and accomplishment here in Maine: Richert brings to the analysis first-hand knowledge of how misunderstanding and disagreements about the Settlement Acts can result in litigation, having served from 1995 to 2002 as director of the State Planning Office under Gov. Angus King. Milliken is the former president and CEO of the Baskahegan Company, which manages 150,000 acres of timberland in eastern Maine.

I encourage each of you and your colleagues in the House and Senate to take the time to read this important document. It addresses many of the misconceptions and fears that have sadly kept our state in an almost 50-year stalemate over diametrically opposed understandings of the 1980 Settlement Acts right from the start. Richert and Milliken, in my opinion, do an excellent job in pinpointing how and why those misconceptions came into play ... and still adversely affect the Wabanaki Nations today.

Richert and Milliken give credit where credit is due to both Gov. Mills and the Maine Legislature, noting several incremental changes resolving various issues brought forward by the Wabanaki Nations in recent years. But they close their analysis with these two caveats to any who might be inclined to rest on those laurels:

“But the incremental approach is often slow, consumes resources, and unpredictable in outcome. It is not the same as recognizing the breadth of inherent sovereign rights the Tribes believe were not given up under MICSAs, and that they believe are necessary to control their destinies. Further, the need to keep returning to the State for each additional matter that needs an exception under the Implementing Act and Sec. 16(b) of MICSAs undermines the notion of sovereignty, even limited sovereignty.

“Based on our research, as summarized above, we believe it is time to address the Tribes’ long-standing concerns that interpretations of MICSAs and the MIA over the last 44 years have significantly limited their rights to self-determination beyond what we believe they agreed to in 1980. The effective preemptive veto by the state of new federal laws and policies creates time-consuming, expensive and demeaning hurdles for the Tribes as they seek to enjoy the share of sovereignty they do not think they relinquished, with control over the internal affairs needed for the well-being of their respective communities.”

I am grateful for their insights and hope they will boost the bipartisan efforts to get LD 785 over the finish line with a veto-proof majority.

Thank you for the important work you are doing. I appreciate your time and consideration of my testimony urging you to vote “Ought to Pass” on LD 785.

Sincerely,

James McCarthy