Rachel Talbot Ross
Senator, District 28

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

Testimony of Rachel Talbot Ross introducing
LD 395, "An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations"
before the Joint Standing Committee on Judiciary
February 19, 2026

Senator Carney, Representative Kuhn and esteemed members of the Committee on Judiciary, I am Rachel Talbot Ross and proudly represent Senate District 28 which is part of Portland, part of the Casco Bay Islands and includes the University of Southern Maine Campus. It is my pleasure to be with you today to introduce LD 395, "An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations."

Before I begin, it is important for us to all recognize that the land we stand on today is most recently the ancestral unceded land of the Nanrantsouak Band of Abenaki Indians, a name meaning "people of the still water between the rapids," who were the last native stewards of the land between the Kennebec and Androscoggin Rivers, where they lived as farmers and fishermen until European contact. They merged into the Tribes that make up the larger Wabanaki Confederacy – the Houlton Band of the Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribes, and the Penobscot Nation. It is important to recognize this as ancestral territory, now referred to as "Maine." Where there were once 20 distinct Wabanaki tribes in present-day "Maine," now only these four remain.

I also want to take just a moment to give thanks to the many people - including tribal leaders, tribal citizens, attorney general, governor, elected officials, and the people of Maine – who have worked for decades to advance positive tribal-state relations. I specifically want to acknowledge the current effort by Governor Mills and tribal leaders who are working collaboratively to move the issue of self-determination of Wabanaki people forward. I believe they are operating in good faith and, as a result, we will be able to make significant progress toward that goal this legislative session.

The Houlton Band of the Maliseet Indians, Mi'kmaq Nation, Passamaquoddy Tribe, and the Penobscot Nation are recognized under federal law. But unlike the 570 other federally recognized tribes, the tribes in Maine are unfairly excluded from the very laws and programs expressly created by Congress to benefit them.

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The Maine Indian Claims Settlement Act of 1980 (MICSA, P.L. 96-420) and its corresponding Maine legislation, the Maine Implementing Act (MIA), imposed a unique legal, jurisdictional, and regulatory structure on the tribes in Maine. It diminished the tribes' sovereign claims and reduced their standing to that of municipalities. Even more harmful, MICSA contains unusual provisions that block most federal Indian law from applying to the Wabanaki nations if the federal law affects the application of Maine law. Quite simply, this allows state law to be prioritized over federal law.

Any federal law enacted for the benefit of Indian tribes which would "affect or preempt" the civil, criminal or regulatory jurisdiction of the State **does not** apply to the Wabanaki Nations unless the United States Congress ***explicitly*** makes that law applicable in Maine. This means that the Wabanaki nations are the only federally recognized tribes routinely denied benefits of federal legislation that help all the other tribes grow, flourish and prosper.

I have introduced LD 395 to correct that historical anomaly and give the Wabanaki Nations the opportunity to improve the lives of not only all tribal citizens in Maine, but every person who calls the State of Maine home. As I will explain, if the Wabanaki Nations are granted the benefits of federal legislation that applies to all other tribes throughout the United States, they will have the opportunity to build their tribal governments; engage in meaningful economic development; access federal programs that were created in part to remedy our country's historically brutal treatment of our only Native residents; reduce unemployment, poverty, and improve housing and infrastructure. When the Wabanaki realize those opportunities, the lives of Mainers residing in surrounding communities will improve as well.

During my testimony, I will refer to two publications that help explain the history of why we have treated the Wabanaki Nations so unjustly under MICSA and Maine law and the devastating consequences of that mistreatment. The first is the report of the Task Force on Changes to the Maine Indian Claims Settlement Act Implementing Act that was issued in January of 2020 (The Maine Task Force Report).

The second report was issued in December of 2022 by the Harvard Project on American Indian Economic Development and is entitled *Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nations in Maine* (The Harvard Report).

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Both reports focused in part on the sheer volume of federal legislation enacted since MISCA and the Maine Implementing Act came into law in 1980. The Maine Task Force Report listed 151 federal laws enacted after 1980 that benefited federal laws that do not benefit the Wabanaki are laws that are seminal for federal Indian policy including:

- The American Indian Religious Freedom Act
- The Clean Water Act Amendments of 1987
- The Esther Martinez Native American Languages Preservation Act
- The Indian Civil Rights Act
- The Indian Health Care Improvement Act
- The Indian Self-Determination Act Amendments of 1988 and 1994
- The Indian Tribal Economic Development and Contract Encouragement Act
- The Indian Trust Asset Reform Act
- The Native American Graves Protection and Repatriation Act
- The Native American Housing Assistance and Self-Determination Act
- The Safe Drinking Water Act Amendments of 1986 and 1996
- The Stafford Act
- The Tribal Law and Order Act, and
- The Tribal Self-Governance Act of 2000

The Maine Task Force concluded that:

> *Given the broad nature of [the exclusionary language in MICSA] any law for the benefit of Indian country that in any way 'affects' Maine law may be rendered inapplicable in Maine. It is theoretically possible that provisions within each of the laws enumerated in the report included in Appendix N, may be rendered inapplicable in Maine if those provisions conflict with Maine law to some degree.*

Therefore, the Task Force unanimously adopted Consensus Recommendation #20 which read:

> *Amend the Maine Implementing Act to specify that for the purposes of §6(h) and §16(b) of the federal Settle Act, federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine.*

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LD 395 accomplishes that and would allow the Wabanaki Nations to enjoy the same rights, privileges, powers and immunities as every other federally recognized tribe in the United States.

The Harvard Report begins with the following observations.

For at least several decades federal Indian policy in the US has supported tribal self-determination through tribal self-government. The results have been (1) remarkable economic growth across most of Indian Country, and (2) concomitant expansions of the responsibilities and capacities of tribal governments. Hundreds of tribes across the other Lower 48 states now routinely serve their citizens with the full array of governmental functions and services that we expect from non-Indian state and local governments in the US and increasing numbers of tribes are the economic engines of their regions.

Unique to Maine, the federal Maine Indian Claims Settlement Act of 1980 (MICSA) empowers the state government to block the applicability of federal Indian policy in Maine. As a result, the development of the Wabanaki Nations' economies and governmental capacities have been stunted. Today, all four of the tribes in Maine–Maliseet, Mi'kmaq, Passamaquoddy and Penobscot–are stark economic underperformers relative to the other tribes in the Lower 48 states. The subjugation of the Wabanaki Nation's self-governing capacities is blocking economic development to the detriment of both tribal and nontribal citizens, alike. For the tribal citizens of Maine held down by MICSA's restrictions, loosening or removing those restrictions offers them little in the way of downside risks and but much in the way of upside payoffs.

Again, LD 395 removes those existing restrictions and places the Wabanaki Nations on par with other tribes It does so by stating in proposed 12 MRSA §6215 "that any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians 1s applicable within this State, without regard to any effect on the jurisdiction of or the application of the laws of this State " This will allow the Wabanaki Nations to become the economic engines that all of Maine desperately needs, foremost among them, our tribal citizens who might finally be able to have the opportunity to attain the benefits of economic development that many other Maine people take for granted, and that tribes throughout the United States enjoy

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The lack of the ability for the Wabanaki to take advantage of beneficial federal legislation and the programs established by that legislation has had devastating impacts on their tribal citizens The Harvard Report discussed many of those impacts.

- Wabanaki unemployment rates are consistently higher than Maine as a whole. When Maine's unemployment rate for all people was 41%, Unemployment for Penobscot tribal citizens was 57%, Maliseet tribal citizens was 58%, Passamaquoddy Indian Township tribal citizens was 6 5%, Mi'kmaq tribal citizens was 75%, and Passamaquoddy Pleasant Point tribal citizens was 87%, more than double Maine's overall rate.
- In terms of income growth, the numbers are equally troubling Since 1989, inflation adjusted income of the average resident of the United States has increased by 17% For Mainers overall, income has increased by 25% during that time However, tribal citizens in Maine have realized an increase of only 9% while income for tribal citizens in the Lower 48 states, who have had the benefits contained in federal legislation that are denied to the Wabanaki, saw their income increase more than 61%.
- Regarding housing, tribal citizens in Maine reside in overcrowded housing, which is defined as housing units with more than one person per room, at rates higher than Maine's overall rate of 15% For Maliseet tribal citizens that rate is 89%.
- Child poverty rates tell a similar story, and the story is bleak. While in 2019 Maine's overall child poverty rate was 15 1%, for Indian children it ranged from a low of 40 2% at Passamaquoddy's Indian Township to a high of 76.9% for the Mi'kmaq.

All these numbers, all of these figures are unacceptable. Every number, every figure, represents a human being, an Indian adult or an Indian child who is not able to reach their full potential and live a life filled with hope and dignity LD 395 will help change those numbers, those figures, and most importantly, in so doing change so many lives for the better.

I thank you very much for your time and attention. I also want to extend my appreciation to you for your thoughtful work over the years on this matter before us today and for the opportunity to once again introduce this bill.

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