



AMERICAN CIVIL LIBERTIES UNION

Maine

TESTIMONY OF MICHAEL KEBEDE

LD 785 – Ought to Pass

**An Act to Enact the Remaining Recommendations of the Task Force
on Changes to the Maine Indian Claims Settlement Implementing Act**

Joint Standing Committee on Judiciary

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Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am policy director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to support LD 785.

Since the Maine Indian Claims Settlement Act (“MICSA”) and Maine Implementing Act (“MIA”) were passed in 1980, Maine has treated Wabanaki Nations not as the sovereigns they are, but as municipalities with a legal status akin to that of a town or city. This status has meant that as other Indigenous nations have had sovereign-to-sovereign relationships with states along shared borders, Wabanaki Nations have been treated as less than sovereigns. The Wabanaki Nations are denied certain meaningful controls over their territory, resources, and futures enjoyed by over 500 other federally recognized tribes.

This bill would help correct the lopsided relationship between the State of Maine and Wabanaki Nations by making substantial changes to the Maine Implementing Act (MIA).¹ These changes come from a painstaking, thorough, and bi-partisan 2020 task force that produced twenty-two consensus recommendations to help settle the litigious and unfair relationship between the state and Wabanaki Nations.² In the time since, we have gained the insights of a study showing the economic benefits of legislation like LD 785: a 2022 Harvard report shows that enhancing

¹ 30 MRS § 601 et seq.

² See generally, Report of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, January 2020, available at <https://legislature.maine.gov/maine-indian-claims-tf>.



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Wabanaki sovereignty would make rural areas more prosperous for all people living there.³

Indigenous Sovereignty

“Sovereignty is a legal word for an ordinary concept – the authority to self-govern.”⁴ Indigenous nations operated as self-regulating sovereign governments long before the United States was a country or Maine was a state. The U.S. Constitution recognizes Indian tribes as distinct governments, U.S. Const. art. I, § 8, cl. 3, and “only Congress can abrogate or limit an Indian tribe’s sovereignty.”⁵ Early in Supreme Court jurisprudence, the Court recognized Indian tribes as “nations” that entered into treaties with the federal government.⁶ The Supreme Court continues to acknowledge tribes as separate and independent from states.⁷

Over the years, the Supreme Court has recognized “[t]he tradition of Indian sovereignty over the reservation and tribal members.”⁸ “[T]his tradition is reflected and encouraged in a number of congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development.”⁹ The purpose behind the Indian Reorganization Act, for example, was to provide “a chance to develop the initiative destroyed by a century of oppression and paternalism.”¹⁰ Overall, “[a]mbiguities in federal law have been construed generously in order to

³ Amy Besaw Medford, Joseph Kalt, and Jonathan B. Taylor, *Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nations in Maine*, (2022) available at <https://ash.harvard.edu/publications/economic-and-social-impacts-restrictions-applicability-federal-indian-policies>.

⁴ National Congress of American Indians, Tribal Governance, available at <http://www.ncai.org/policy-issues/tribal-governance> (last viewed on Feb. 5, 2026).

⁵ *Penobscot Nation v. Fellencer*, 164 F.3d 706, 709 (1st Cir. 1999).

⁶ *Cherokee Nation v. Georgia*, 30 U.S. 1, 16-17 (1831).

⁷ See, e.g., *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (“For nearly two centuries now, we have recognized Indian tribes as ‘distinct, independent political communities.’”) (internal citations omitted).

⁸ *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143–44 (1980) (citing *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463, 481–483 (1976)).

⁹ *Id.* (citing, e.g., Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.*; Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 *et seq.*; the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.*).

¹⁰ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) (quoting H.R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934)).

comport with these traditional notions of sovereignty and with the federal policy of encouraging tribal independence.”¹¹

Indigenous sovereignty is good policy. Furthering tribal sovereignty “enables tribes to be self-determining governments, with the ability to tailor their laws to suit their unique cultures and traditions and to govern their lands without external interference.”¹² Other states’ experiences have “shown that the exercise and recognition of tribal sovereignty is beneficial to tribal-state relations and to all state citizens because it allows states and tribes to operate in an atmosphere of mutual respect and thereby to cooperate in mutually beneficial ways.”¹³

Conclusion

The recommendations of the Task Force are a laudable starting place to enhance Wabanaki sovereignty. For at least the past 25 years, the United States, numerous state and local governments, and countries around the world have dedicated themselves to protecting and promoting the rights of Indigenous peoples. This is reflected, for instance, in the signing of the United Nations Declaration on the Rights of Indigenous Peoples by every member of the United Nations. In Alaska, for instance, as recently as 1988, the Alaska Supreme Court held that the Native villages in Alaska are “not self-governing or in any meaningful sense sovereign.”¹⁴ Eleven years later, however, that court reversed itself and held that the Native villages in the State possess the inherent powers of self-government.¹⁵

These commitments and changes in other states stem from a recognition of the truth that many Indigenous peoples were historically treated unjustly and unfairly, and that all of us have an obligation and moral duty to respect Indigenous peoples and governments, and to promote Indigenous independence, recovery, freedom, and prosperity.

¹¹ *White Mountain Apache Tribe*, 448 U.S. at 144 (citations omitted); *see also id.* (stating “notions of sovereignty that have developed from historical traditions of tribal independence”).

¹² Letter from Chief Francis, Chief Sabattis, Chief Peter-Paul, Chief Nicholas, and Chief Dana, Task Force Report (Jan. 2020) at Appendix J.

¹³ *Id.*

¹⁴ *Native Village of Stevens v. Alaska Management & Planning*, 757 P.2d 32, 34 (Alaska 1988).

¹⁵ *John v. Baker*, 982 P.2d 738 (Alaska 1999).



LD 785 will restore some of the rights and powers the Wabanaki Nations enjoyed long before this place was ever called Maine. It would help put an end to many of the harms of legislation from 1980 and finally move our Wabanaki Nations closer to the same footing as all other federally recognized tribes.

We urge you to vote that LD 785 ought to pass.