

Maliseet Tribal Representative, Henry John Bear - Judiciary Committee LD
1626 Hearing submission of 15 February 2022 - Neither For, Nor Against

Greetings to our Tribal Chiefs, Tribal Elders, Chairman Senator Carney,
Representative Hartnet and other Members of your Esteemed, Maine State
Legislature's Standing Committee on the Judiciary.

My name is Henry John Bear. I am just one of many Tribal Elders. Today, I
speak not just for myself, but with the consent and authority of someone
much older: our 94 year-old, Maliseet Tribal Elder, Joseph Bernard, who
can not be with me today due to the risk of infection from COVID19. We are
two of some 15,000 plus Maliseet Nation members who comprise the greater,
Maliseet Nation; a Nation still situated within our "never surrendered"
and "never transferred", 13 million acre, Wulustoq or St. John River
watershed homeland, 5 million acres of which is known, in modern times, as
the Aroostook County, a portion of our 400 mile long and 200 mile wide
tribal territory. I am also, although now retired, the first and last
duly elected, Maliseet Tribal Representative sent to represent my
People ... all 15,000 Maliseet Nation members ... to the Maine House of
Representatives. There are certain issues with respect to the proposed, LD
1626, which prevents my being able to either support or to oppose the
Bill. This submission is, therefore, neither in support of nor in
opposition to LD 1626 for the following reasons:

My first reason is that, this bill is based, for the most part, on legal
fallacies and an unsupported, legal fiction as it purports to implement
the consensus recommendations of a recent Maine State Task Force on
Changes to the Maine Indian Claims Settlement Implementing Act, which does
not exist. The purported recommendations are the result of coercion and
have been foisted upon two economically desperate, southerly Tribes, and
upon a few Maliseet Nation Members from way up here in "Indian Country",
which, legally speaking, is located outside of the bounds of both the
United States and any other state, including the present-day, State of
Maine, and within our separate, Maliseet homeland.

This bill does not address the 1776 Treaty-based relationship between the
State and the Houlton Band of Maliseet Indians, nor it's relationship with
all the other 7 Maliseet Nation Tribal Governments and their Maliseet
Chiefs who are also situated within their portions of our "never
transferred" portions of our tribal homeland. It is a fact that all
Maliseet Indians are current Members of these 7 other Maliseet Indian
Bands. Both Clarissa Sabattis and myself are current members of these
other Tribal Governments. We are both subject to their tribal laws, other
Maliseet Chiefs and other Maiseet Tribal Councils I am a current Member of
the Maliseet Nation at Tobique. Ms. Sabattis is a Member of the Maliseet
Nation at Woodstock, both situated on the Canadian side of the
International Boundary line. We can not represent their legal and
political interests in the present proposal unless and until we receive
their authority to do so, which, I am confident in saying, has not yet
been obtained. These other, 7 Maliseet Indians Bands and these other
15,000 Maliseet Tribal Members will be equally affected by the proposed,
LD 1626, but they have not yet been invited to participate, nor have they
been consulted as is legally required by Law. There is no consensus,

because neither Clarissa Sabattis nor the State of Maine has any jurisdiction to obtain such consensus from those to be affected by the proposed LD 1626. This proposal fails to achieve or represent the required or stated consensus as only by inviting and including all of the affected parties representing the Maliseet, Mi'kmaq and other Treaty Parties and the United States of America can true consensus on the proposal be achieved, which has not occurred. This proposal is an attempt to go around both the civil and human rights of my People, but the Treaty rights and dispute resolution stipulations outlined in Sections 5, 6 and 7 of the still valid and enforceable, 1776 Treaty of Alliance and Friendship.

The Aroostook Band of Mi'kmaq are also not in agreement with this proposal and this is significant as they, too, are a Party to the same 1776 Treaty relationship entered into with the United States of America, and which is still binding on all U.S. citizens. The proposed bill, LD 1626 intends to affect them as well. The Mi'kmaq Nation represents some 145,000 plus Mi'kmaq Nation Members located within more than 40 separate Mi'kmaq Indian Bands, and they, too, have not been consulted nor invited into this, apparently, ill-conceived and ill-conducted process. No. There is no consensus by those most affected by this proposed bill, contrary to what the Bill states it represents. From it's introduction, the bill is fraught with these and the following further, critical and inescapable issues.

The second reason is with regard to the inaccurate statement that the Maine Revised Statutes, Title 30, chapter 601, which is titled AN ACT to Implement the Maine Indian Claims Settlement, was enacted by Public Law 1979, chapter 732, is referred to as "the Maine Implementing Act" or "MIA" was ever duly enacted, which never occurred as it's own Section 31 enactment clause was never complied with in 1980, as Governor Mills, Jerry Reid and Kaegn Smith well know. And, because the 1980 MIA he federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420, formerly codified at 25 United States Code, Sections 1721 to 1735, referred to as "the federal Settlement Act.", that "conditional" federal Settlement Act was nullified and could not ratify the Maine Implementing Act, and neither have been of any legal effect since before October 10, 1980.

The third reason for my now obvious tendency to be non-supportive of and in opposition to LD 1626 is that the true, concealed purpose of the State of Maine's reconsideration and rewriting of the Maine Implementing Act is not to establish that the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians enjoy the rights, privileges, powers, duties and immunities similar to those of other federally recognized Indian tribes within the United States. Maliseet Nation Members know that we do not want to be ill-treated and made subservient to the United States or to ANY state therein. It is, instead, to illegally, and without too much concealment to the learned eye, to attempt to finally enact the yet-to-be-enacted, 1980 Maine Implementing Act so that our 20 million acre Maliseet, Penobscot, and Passamaquoddy Nation's aboriginal land title can be legally and finally taken from us, and to impose, once and for all, currently non-existent federal and State criminal, civil and political jurisdiction over our Peoples as both Jared Golden, Janet Mills and Mr. Reid likely well know. This is not just a significant change from the current law, because there is no valid current law over Indians.

There is no validly enacted 1980 Maine Implementing Act. No 1980 Maine Indian Claims Settlement Act (MICSA), and no valid, State of Maine title to our aboriginal titled land. In short, unless and until LD 1626 is adopted by the United States and the affected Tribal Nations ... all of them by way of a duly called tribal referendum for all 15,000 Maliseet Nation Members and all 145,000 Mi'maq Nation Tribal Members, and the members of the two smaller tribal entities at Old Town, Medockmeguk and Sipayk, there is absolutely no federal jurisdiction anywhere within Indian Country and no authority to enforce federal or State criminal, civil, tax or property-based laws on yet-to-be-transferred Indian lands or in relation to the harvesting of natural resources contained therein, or in relation to tribal gaming casinos or any form of tribal gambling. That the State is now publicly waving such economic opportunities in front of our faces in it's news releases speaks volumes as both an inducement and a further form of coercion directed at tribal communities that are economically oppressed in our own land by both the State of Maine and the United States of America. In short, neither have any legal authority to behave this way nor do they have any authority over Indian Affairs. Section 3 of the U.S. Constitution plainly reads that non-Indian trade "with Indians" was to be a power given to the federal government, and not the regulation of "Indians" who already had a Treaty agreement guaranteeing fair trade to secure for the Indians "the necessities and conveniences of life" and "for as long as the sun and moon shall endure". LD 1626 purports to finally secure the very "significant authority over Indian affairs" that the Bill states it will replace.

This is both a legal fallacy and horrible fiction. To carry out this significant "enactment of the yet-to-be-enacted-1980 MIA" by way of this, so-called, LD 1626 "Amendment", many provisions of Title 30, chapter 601 are discussed and "repealed" or "amended" to ensure a valid, 1776 Treaty is nullified, that Maliseet Nation Members lose their lawful, aboriginal title to 5 million acres of Maliseet land in our Wulustog (Aroostook) homeland worth some 20 billion dollars, that Maliseet hunting, fishing and gathering rights and activities, both commercial and ceremonial are forever extinguished, and that federal Indian law governs the rights, privileges, powers, duties and immunities of the tribe, nation and band will then ensue. This is completely repugnant to the clear intent of our existing 1776 Treaty of Alliance and Friendship with the United States of America, and to my People, I can assure you. I have had the privilege of being called upon to speak our Maliseet Nation perspective on our Treaties many times as both an elected, Maliseet Tribal official and as a Maliseet Tribal, Constitutional and International lawyer, practitioner and law professor over the past 30 years in international forums, a supreme court, and this very legislature and I can confidently tell you now that this proposal is fraught with inescapable issues, that there is no basis for amending the yet-to-be-enacted, 1980 Maine Implementing Act and this represents little short of a further abuse and coercion of our economically threatened, marginalized and desperate Peoples.

Under this duplicitous bill, the 1980 Maine Implementing Act will, in effect, be unwittingly ratified and this will finally trigger federal Indian law as applying with regard to the rights, privileges, powers, duties and immunities of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. "Federal Indian law" is defined in

this bill as the United States Constitution and all generally applicable federal statutes, regulations and case law and subsequent amendments thereto or judicial interpretations thereof, relating to the rights, privileges, powers, duties and immunities of federally recognized Indian tribes within the United States, but it does not specifically refer to the still valid, 1776 Treaty of Alliance and Friendship nor does it refer to the fact the the entire Maliseet Nation ... all 15,000 Maliseet Tribal Members are, generally, wholly located within Aroostook County and within the St. John River watershed, which is wholly outside of the legal boundaries of both the United States and the State of Maine. The definition of "Federal Indian Law" explicitly recognizes that federal Indian law can not extend to such Maliseet or tribal lands or Peoples, and never can as federal laws, which have been passed and amended never to extend to the Maliseet Nation by virtue of both the Treaty and as federal courts have interpreted the existing statutes and regulations and their application to federally recognized Indian tribes, nations, bands and other groups that are situated wholly within the United States of America. It is to be remembered that the State of Maine's, 1980 Maine Implementing Act did not and does not apply to the Maliseet Nation or it's Maliseet Members, nor to our Maliseet Tribal lands. There is NO language in that 1980 State Act, and for good reason.

At the time, and since then, the State of Maine's position was that the Maliseet People should not become "federally recognized" by the United States and could not be recognized by the State of Maine, and were then not recognized by the State in it's 1980 Act, because, among other reasons, the Maliseet People and our lands were situated wholly outside of the State of Maine, which was then and is now legally correct. In 1820, when the District of Maine became an independent State of Maine, it did not include in it's several, 1820-era, state maps any portion of land situated within our St. John River homeland, because all knew too well that the 1776 Treaty of Alliance and Friendship had forever secured those lands as belonging separately to the People of the Maliseet and other Nations. In 1980 legislative hearings, testimony indicates and legislative debate confirmed that Maliseet People would not be affected nor subject to their 1980 MIA. To this day, Maliseets are still not subject to it. The State now hopes to bribe and seduce a few desperate tribal members into their scheme to change this, but it won't and shouldn't work. A future look back on the history that such an abuse of my People had, again, occurred, but had finally succeeded in stripping away our civil, human, land and treaty rights will not be viewed well by our respective grandchildren.

This bill restructures the procedures for addition of new land to tribal territories.

This bill eliminates the language in the Maine Implementing Act regarding takings of tribal land for public use under state law.

This bill creates a risk of significant legal liabilities for the State of Maine.

The Maine Implementing Act currently and illegally attempts to limit the criminal jurisdiction of the Passamaquoddy Tribal Court and the Penobscot

Nation Tribal Court as well as the potential criminal jurisdiction of the Houlton Band of Maliseet Indians Tribal Court. Federal Indian law will not apply and can not provide any jurisdiction for tribal courts unless the Tribes, after a duly called referendum approves such a dubious proposal, ratifies the proposed agreement represented by LD 1626, which, it is clearly unlikely to come to pass, especially given the fact that no compensation or offer of purchase for affected tribal lands has been made ... an offer that should reflect the current, 20 billion dollar, land value within our 5 million acre, Aroostook homeland. Otherwise, this bill will inequitably impose state-based limitations on the affected tribes and will unnecessarily recognize and adopt presently inapplicable federal Indian law within Maliseet Nation homelands, including the Indian Civil Rights Act of 1968, the Tribal Law and Order Act of 2010 and other federal laws addressing tribal court jurisdiction and the obligations of the tribal courts. Currently, Furthermore, the U.S. could not have jurisdiction, as our Maliseet Nation has applicable and enforceable 1725, 1726, 1749 and 1760 Treaty agreements with England and, later, Great Britain within the same tribal homelands, which are both binding upon my People and are legally inconsistent with the proposed, LD 1626; Treaties that the U.S. Founding Fathers were fully aware of at the time of entering into the 1776 Treaty with us.

Fourthly, the proposed LD 1626 proposes to enshrine the inherent inequities contained in the 1980 Settlement Acts, including the provision by the United States of America of 80 million dollars and 300,000 acres of State of Maine controlled land to evenly split between the two smaller, southerly tribes at Old Town, Medockmeguk and Sipayik, but provided NOTHING to the Maliseet Nation. Knowing the inequity and realizing a Maliseet Nation injunction was in the offing to quash their 1980 settlement proposal as being void and without a legal basis as regards Maliseet tribal lands, it was in a sharing spirit that those two tribes offered to provide our Maliseet Tribe with \$450,000 each to avoid further insult. But, that money was theirs to provide us from their settlement funds, and not a separate fund provided to the Maliseet Nation from the United States itself. Those moneys still belong to the two southerly tribes and will likely be returned to them by the Maliseet Nation in good faith and as circumstances permit in the near future.

This bill will, again, attempt to finally ratify the 1980 MIA state law in order to assume jurisdiction over tribal court jurisdiction, concurrent with the state courts, over offenses committed on tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the federal Tribal Law and Order Act of 2010. But it won't work. It's a legal impossibility.

This bill will not and can not retain current law providing that the exclusive authority of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians to exercise criminal jurisdiction over Indians on tribal lands remains at the discretion of the tribe, nation and band, because that law does not exist. The bill's assertion is, again, without a legal basis. Nor can it assert that to the extent that the tribe, nation or band does not exercise, or terminates its exercise of, exclusive criminal jurisdiction, the State has exclusive jurisdiction

over those matters. This demonstrates the fact that this bill represents nothing but a blatant power and jurisdictional grab. Ignoring the Law of Nations and the 1776 Treaty and the Sovereignty of my People and our Tribal Governments, the bill baselessly asserts that, unlike the yet-to-be-enacted, 1980 MIA, this bill, LD 1626, recognizes each tribal government's authority to define all crimes and juvenile offenses committed on its tribal lands over which the tribal court has exclusive or concurrent criminal jurisdiction. This bill, again and without a legal basis, insists upon the authority of the State to define all crimes and juvenile offenses committed on tribal lands over which state courts have exclusive or concurrent jurisdiction.

This bill then states that it recognizes federal Indian law regarding the exclusive jurisdiction of tribes to regulate fishing and hunting by tribal citizens of all federally recognized Indian tribes on tribal lands, but it does not recognize tribal lands not-yet-legally-transferred by the Tribes to the State or to the United States, which includes some 20 million acres of still-owned-by-virtue-of-aboriginal-title-lands north and eastward of Augusta and the Kennebec to this day. This bill amends the Maine Implementing Act to restore and affirm the exclusive jurisdiction of tribes to regulate fishing and hunting by nontribal citizens on tribal lands, but does not cede to the State any authority of the Maine Indian Tribal-State Commission to regulate fishing on boundary waters under current law.

This bill then proposes relinquishing non-existent State jurisdiction with respect to the regulation of fishing and hunting by both tribal and nontribal citizens on tribal lands. The State, solely to be benevolent in this scheme and for conservation purposes, proposes that it may regulate tribal members engaged in such activities off tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved tribal treaty rights, but does not define specifically which treaty rights it is referring to in the bill. The logical assumption is that it is referring to ALL such treaty rights, including the 1776 Treaty, which specifically limits U.S. jurisdiction and guarantees, "for as long as the sun and moon shall endure" these very activities and all trade in relation thereto, which LD 1626 threatens to nullify without any jurisdiction or legal basis.

This bill will be construed to ratify the 1980 Maine Implementing Act and create the appearance of binding state law to recognize and adopt inapplicable federal Indian law to Indian Peoples on and within "yet-to-be-legally-transferred-tribal-lands" not yet part of either the U.S. or any state, including the State of Maine, by providing that: tribes have exclusive jurisdiction to tax tribal members and tribal entities on their respective tribal lands, including entities owned by a tribe or tribal member; tribes, tribal members and tribal entities are not subject to state and local sales taxation on tribal lands; tribal members who live on their respective tribal lands are not subject to state income tax for income earned on their respective tribal lands; tribal lands are not subject to state and local real property tax; tribes have concurrent jurisdiction to tax nonmembers on tribal lands; powers that the Tribes already possess by virtue of their own Sovereign status under the

International Law of Nations as recognized and agreed upon in the previously mentioned Treaties of 1725, 1726, 1749, 1760 and 1776.

This State of Maine bill audaciously and outrageously purports to amend state law to restore to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, but not recognizing nor including the entire, 15,000 member, 7 Maliseet Band Government entities of the greater Maliseet Nation, the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on tribal lands; powers and authority our Maliseet Nation governments already possess. This is pure trickery and an insult.

This bill amends nothing, but creates state law to explicitly bind and exclude Indians and unsurrendered and not-yet-transferred Indian lands affected by providing that, for the purposes of the federal Settlement Act, Section 6(h), any law or regulation of the United States 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 applies to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their members and is deemed not to affect or preempt the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters.

This bill does not amend any valid law, but creates state law to finally and explicitly provide that for the purposes of the nullified, federal Settlement Act, Section 16(b), the provisions of any federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations or tribes or bands of Indians, apply to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their members and is deemed not to affect or preempt the application of the laws of this State, including application of the laws of this State to lands owned by or held in trust for Indians or Indian nations, tribes or bands of Indians, regardless of whether such federal law is specifically made applicable within this State. This bill intentionally intends to exclude and marginalize yet-to-be-affected Indians and make them completely and utterly subservient to a State that is expressly telling us they intend to control us and our lands contrary to their own U.S. federal and Maine State Constitutions. See Article 10, Section 5, subsections 1 - 5 that legally requires, as a condition of Maine becoming an independent state from the State of Massachusetts Bay, that it comply with treaties made with Massachusetts and the United States as of 1820. Non-compliance with such treaties, in effect, nullifies Maine's claim to both sovereignty and statehood.

Finally, the bill attempts to establish a process for consultation between tribes and state agencies, provides that the State may enter into cooperative agreements with tribes, provides for an annual assembly of the Governor and the tribes, provides for the development of a dispute resolution process to facilitate resolution of disputes between the State and tribes and provides for the development of an agreement to be known as "the Bicentennial Accord" to establish principles for State-tribal relations, but completely ignores current legal requirements,

including the provisions contained in the highest law of the land, the U.S. Constitution, Article 3, the previously mentioned, 1820 Maine State Constitution, Article 10, and Sections 5, 6, and 7 of the 1776 Treaty of Alliance and Friendship which provides a still mandatory dispute resolution process should "any misunderstanding or outrage" occur as between the Indians and the citizens of the United States of America. The State is openly defying current law ... treaty law ... including it's own, highest law of the land.

This outrageous and clearly exploitative bill can not and should not receive your vote to pass in this Committee. Even if it were to be adopted, it purports to take effect 120 days after adjournment of the First Special Session of the 130th Legislature only if, within 90 days after adjournment of the First Special Session of the 130th Legislature, the Secretary of State receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to its provisions; the Governor and the Council of the Penobscot Nation that the nation has agreed to its provisions; and the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to its provisions. But, this enactment provision is, itself, illegal and unattainable within 120 days if Maliseet tribal ratification law and tradition is to be complied with and that such occurs only after full consultation and consent is obtained by all Maliseet Tribal Members situated within ALL Maliseet Nation communities in our 20 million acre, Wulustog (Aroostook) Nation homeland. The Treaty of 1776 with the United States of America took a full 13 months to ratify with all Maliseet Tribal members within this same homeland. No period short of that would be acceptable given the fact that this Bill purports to entirely extinguish these hard fought treaty rights and land protections. I trust you will all agree.

No. Unlike all other federally recognized Indians in the United States, it is, to quote a noted jurist, "an inescapable fact" that the State of Maine has no jurisdiction to impose any jurisdiction on we Indians. Neither does the U.S. federal government, and nor did they ever want to impose itself on us. This relationship was and is unique to the Maliseet Tribe and those who are attached to us. We are and have never been subjects to U. S. jurisdiction. Again, this relationship can be juxtaposed with the U.S. treaty relationships that were concluded with the westerly tribes utilizing the model treaty and so-called, Treaties of Peace clearly stipulating Tribal Submission to U.S. authority. No such submission to U.S. jurisdiction has ever occurred nor was or is it required in order to continue our current "alliance" and "friendship" since 19 July, 1776. We, the St. John River Indians (present day Maliseet Nation) would never have signed any Treaty with the United States in 1776 as was reported to General George Washington by Massachusetts Bay, Executive Council President, James Bowdoin on 30 July, 1776, nor entered into any agreement with either Massachusetts Bay or the United States that would have required us to relinquish our lands and our sovereign, governance authority to the United States of America or any of it's political subdivisions, including the State of Maine. Don't expect, just because you are now more populated and strong, that we should, can or will do so now, especially given the many historical, legal and contemporary reasons outlined above.

I would conclude by respectfully thanking all of you for reading this, my submission, on LD 1626, on hearing us out, and for treating me good today. I would also like to express my thanks to all of those who may have expressed support for the tribes and all good faith efforts of the representatives of the State of Maine and the United States of America in these proceedings. I have read through many of the submissions in advance and we are struck by both the good intentions and kindness contained in your messages. Yes. I, too, am concerned about reducing misunderstanding, conflict and sharing our homeland, but not at the cost of our human, civil, political, sovereign and treaty rights. No. Not ever.

If I were sitting on this Committee with you, and after giving due consideration to the informatiion and perspective I've shared with you here today and after consulting with Mr. Reid and other learned persons regarding this information and perspective as confirmation of the truth of what I have shared with you, I'd seriously consider voting, "Ought not to pass".

Again, thank you.

All my Relations...Nidlayig.

Hon. Henry John Bear, LL.B., LL.M.
Maliseet Tribal Representative to the Maine House of Representatives
(Retired)
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Maliseet Tribal Rep. (Retired) Henry Bear
Aroostook Treaty Education Center
LD 1626

Maliseet Tribal Representative, Henry John Bear - Judiciary Committee LD 1626
Hearing submission of 15 February 2022 - Neither For, Nor Against

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This bill does not address the 1776 Treaty-based relationship between the State and the Houlton Band of Maliseet Indians, nor it's relationship with all the other 7 Maliseet Nation Tribal Governments and their Maliseet Chiefs who are also situated within their portions of our "never transferred" portions of our tribal homeland. It is a fact that all Maliseet Indians are current Members of these 7 other Maliseet Indian Bands. Both Clarissa Sabattis and myself are current members of these other Tribal Governments. We are both subject to their tribal laws, other Maliseet Chiefs and other Maliseet Tribal Councils I am a current Member of the Maliseet Nation at Tobique. Ms. Sabattis is a Member of the Maliseet Nation at Woodstock, both situated on the Canadian side of the International Boundary line. We can not represent their legal and political interests in the present proposal unless and until we receive their authority to do so, which, I am confident in saying, has not yet been obtained. These other, 7 Maliseet Indians Bands and these other 15,000 Maliseet Tribal Members will be equally affected by the proposed, LD 1626, but they have not yet been invited to participate, nor have they been consulted as is legally required by Law. There is no consensus, because neither Clarissa Sabattis nor the State of Maine has any jurisdiction to obtain such consensus from those to be affected by the proposed LD 1626. This proposal fails to achieve or represent the required or stated consensus as only by inviting and including all of the affected parties representing the Maliseet, Mi'kmaq and other Treaty Parties and the United States of America can true consensus on the proposal be achieved, which has not occurred. This proposal is an attempt to go around both the civil and human rights of my People, but the Treaty rights and dispute resolution stipulations outlined in Sections 5, 6 and 7 of the still valid and enforceable, 1776 Treaty of Alliance and Friendship.

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is significant as they, too, are a Party to the same 1776 Treaty relationship entered into with the United States of America, and which is still binding on all U.S. citizens. The proposed bill, LD 1626 intends to affect them as well. The Mi'kmaq Nation represents some 145,000 plus Mi'kmaq Nation Members located within more than 40 separate Mi'kmaq Indian Bands, and they, too, have not been consulted nor invited into this, apparently, ill-conceived and ill-conducted process. No. There is no consensus by those most affected by this proposed bill, contrary to what the Bill states it represents. From its introduction, the bill is fraught with these and the following further, critical and inescapable issues.

The second reason is with regard to the inaccurate statement that the Maine Revised Statutes, Title 30, chapter 601, which is titled AN ACT to Implement the Maine Indian Claims Settlement, was enacted by Public Law 1979, chapter 732, is referred to as "the Maine Implementing Act" or "MIA" was ever duly enacted, which never occurred as its own Section 31 enactment clause was never complied with in 1980, as Governor Mills, Jerry Reid and Kaegn Smith well know. And, because the 1980 MIA the federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420, formerly codified at 25 United States Code, Sections 1721 to 1735, referred to as "the federal Settlement Act.", that "conditional" federal Settlement Act was nullified and could not ratify the Maine Implementing Act, and neither have been of any legal effect since before October 10, 1980.

The third reason for my now obvious tendency to be non-supportive of and in opposition to LD 1626 is that the true, concealed purpose of the State of Maine's reconsideration and rewriting of the Maine Implementing Act is not to establish that the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians enjoy the rights, privileges, powers, duties and immunities similar to those of other federally recognized Indian tribes within the United States. Maliseet Nation Members know that we do not want to be ill-treated and made subservient to the United States or to ANY state therein. It is, instead, to illegally, and without too much concealment to the learned eye, to attempt to finally enact the yet-to-be-enacted, 1980 Maine Implementing Act so that our 20 million acre Maliseet, Penobscot, and Passamaquoddy Nation's aboriginal land title can be legally and finally taken from us, and to impose, once and for all, currently non-existent federal and State criminal, civil and political jurisdiction over our Peoples as both Jared Golden, Janet Mills and Mr. Reid likely well know. This is not just a significant change from the current law, because there is no valid current law over Indians.

There is no validly enacted 1980 Maine Implementing Act. No 1980 Maine Indian Claims Settlement Act (MICSA), and no valid, State of Maine title to our aboriginal titled land. In short, unless and until LD 1626 is adopted by the United States and the affected Tribal Nations ... all of them by way of a duly called tribal referendum for all 15,000 Maliseet Nation Members and all 145,000 Mi'maq Nation Tribal Members, and the members of the two smaller tribal entities at Old Town, Medockmeguk and Sipayk, there is absolutely no federal jurisdiction anywhere within Indian Country and no authority to enforce federal or State criminal, civil, tax or property-based laws on yet-to-be-transferred Indian lands or in relation to the harvesting of natural resources contained therein, or in relation to tribal gaming casinos or any form of tribal gambling. That the State is now publicly waving such economic opportunities in front of our faces in its news releases speaks volumes as both an inducement and a further form of coercion directed at tribal communities that are economically oppressed in our own land by both the State of Maine and the United States of America. In short, neither have any legal authority to behave this way nor do they have any authority over Indian Affairs. Section 3 of the U.S. Constitution plainly reads that non-Indian trade "with Indians" was to be a power given to the federal government, and not the regulation of "Indians" who already had a Treaty agreement guaranteeing fair trade to secure for the Indians "the necessities and conveniences of life" and "for as long as the sun and moon shall endure". LD 1626 purports to finally secure the very "significant authority over Indian affairs" that the Bill states it will replace.

This is both a legal fallacy and horrible fiction. To carry out this significant "enactment of the yet-to-be-enacted-1980 MIA" by way of this, so-called, LD 1626 "Amendment", many provisions of Title 30, chapter 601 are discussed and "repealed" or "amended" to ensure a valid, 1776 Treaty is nullified, that Maliseet Nation Members lose their lawful, aboriginal title to 5 million acres of Maliseet land in our Wulustog (Aroostook) homeland worth some 20 billion dollars, that Maliseet hunting, fishing and gathering rights and activities, both commercial and ceremonial are forever extinguished, and that federal Indian law governs the rights, privileges, powers, duties and immunities of the tribe, nation and band will then ensue. This is completely repugnant to the clear intent of our existing 1776 Treaty of Alliance and Friendship with the United States of America, and to my People, I can assure you. I have had the privilege of being called upon to speak our Maliseet Nation perspective on our Treaties many times as both an elected, Maliseet Tribal official and as a Maliseet Tribal, Constitutional and International lawyer, practitioner and law professor over the past 30 years in international forums, a supreme court, and this very legislature and I can confidently tell you now that this proposal is fraught with inescapable issues, that there is no basis for amending the yet-to-be-enacted, 1980 Maine Implementing Act and this represents little short of a further abuse and coercion of our economically threatened, marginalized and desperate Peoples.

Under this duplicitous bill, the 1980 Maine Implementing Act will, in effect, be unwittingly ratified and this will finally trigger federal Indian law as applying with regard to the rights, privileges, powers, duties and immunities of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. "Federal Indian law" is defined in this bill as the United States Constitution and all generally applicable federal statutes, regulations and case law and subsequent amendments thereto or judicial interpretations thereof, relating to the rights, privileges, powers, duties and immunities of federally recognized Indian tribes within the United States, but it does not specifically refer to the still valid, 1776 Treaty of Alliance and Friendship nor does it refer to the fact the the entire Maliseet Nation ... all 15,000 Maliseet Tribal Members are, generally, wholly located within Aroostook County and within the St. John River watershed, which is wholly outside of the legal boundaries of both the United States and the State of Maine. The definition of "Federal Indian Law" explicitly recognizes that federal Indian law can not extend to such Maliseet or tribal lands or Peoples, and never can as federal laws, which have been passed and amended never to extend to the Maliseet Nation by virtue of both the Treaty and as federal courts have interpreted the existing statutes and regulations and their application to federally recognized Indian tribes, nations, bands and other groups that are situated wholly within the United States of America. It is to be remembered that the State of Maine's, 1980 Maine Implementing Act did not and does not apply to the Maliseet Nation or it's Maliseet Members, nor to our Maliseet Tribal lands. There is NO language in that 1980 State Act, and for good reason.

At the time, and since then, the State of Maine's position was that the Maliseet People should not become "federally recognized" by the United States and could not be recognized by the State of Maine, and were then not recognized by the State in it's 1980 Act, because, among other reasons, the Maliseet People and our lands were situated wholly outside of the State of Maine, which was then and is now legally correct. In 1820, when the District of Maine became an independent State of Maine, it did not include in it's several, 1820-era, state maps any portion of land situated within our St. John River homeland, because all knew too well that the 1776 Treaty of Alliance and Friendship had forever secured those lands as belonging separately to the People of the Maliseet and other Nations. In 1980 legislative hearings, testimony indicates and legislative debate confirmed that Maliseet People would not be affected nor subject to their 1980 MIA. To this day, Maliseets are still not subject to it. The State now hopes to bribe and seduce a few desperate tribal members into their scheme to change this, but it won't and shouldn't work. A future look back on the history that such an abuse of my People had, again, occurred, but had finally succeeded in stripping away our civil, human, land and treaty rights will not be viewed well by our

respective grandchildren.

This bill restructures the procedures for addition of new land to tribal territories.

This bill eliminates the language in the Maine Implementing Act regarding takings of tribal land for public use under state law.

This bill creates a risk of significant legal liabilities for the State of Maine.

The Maine Implementing Act currently and illegally attempts to limit the criminal jurisdiction of the Passamaquoddy Tribal Court and the Penobscot Nation Tribal Court as well as the potential criminal jurisdiction of the Houlton Band of Maliseet Indians Tribal Court. Federal Indian law will not apply and can not provide any jurisdiction for tribal courts unless the Tribes, after a duly called referendum approves such a dubious proposal, ratifies the proposed agreement represented by LD 1626, which, it is clearly unlikely to come to pass, especially given the fact that no compensation or offer of purchase for affected tribal lands has been made ... an offer that should reflect the current, 20 billion dollar, land value within our 5 million acre, Aroostook homeland. Otherwise, this bill will inequitably impose state-based limitations on the affected tribes and will unnecessarily recognize and adopt presently inapplicable federal Indian law within Maliseet Nation homelands, including the Indian Civil Rights Act of 1968, the Tribal Law and Order Act of 2010 and other federal laws addressing tribal court jurisdiction and the obligations of the tribal courts. Currently, Furthermore, the U.S. could not have jurisdiction, as our Maliseet Nation has applicable and enforceable 1725, 1726, 1749 and 1760 Treaty agreements with England and, later, Great Britain within the same tribal homelands, which are both binding upon my People and are legally inconsistent with the proposed, LD 1626; Treaties that the U.S. Founding Fathers were fully aware of at the time of entering into the 1776 Treaty with us.

Fourthly, the proposed LD 1626 proposes to enshrine the inherent inequities contained in the 1980 Settlement Acts, including the provision by the United States of America of 80 million dollars and 300,000 acres of State of Maine controlled land to evenly split between the two smaller, southerly tribes at Old Town, Medockmeguk and Sipayik, but provided NOTHING to the Maliseet Nation. Knowing the inequity and realizing a Maliseet Nation injunction was in the offing to quash their 1980 settlement proposal as being void and without a legal basis as regards Maliseet tribal lands, it was in a sharing spirit that those two tribes offered to provide our Maliseet Tribe with \$450,000 each to avoid further insult. But, that money was theirs to provide us from their settlement funds, and not a separate fund provided to the Maliseet Nation from the United States itself. Those moneys still belong to the two southerly tribes and will likely be returned to them by the Maliseet Nation in good faith and as circumstances permit in the near future.

This bill will, again, attempt to finally ratify the 1980 MIA state law in order to assume jurisdiction over tribal court jurisdiction, concurrent with the state courts, over offenses committed on tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the federal Tribal Law and Order Act of 2010. But it won't work. It's a legal impossibility.

This bill will not and can not retain current law providing that the exclusive authority of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians to exercise criminal jurisdiction over Indians on tribal lands remains at the discretion of the tribe, nation and band, because that law does not exist. The bill's assertion is, again, without a legal basis. Nor can it assert that to the extent that the tribe, nation or band does not exercise, or terminates its exercise of, exclusive criminal jurisdiction, the State has exclusive jurisdiction over those matters. This demonstrates the fact that this bill represents nothing but a blatant power and jurisdictional grab.

Ignoring the Law of Nations and the 1776 Treaty and the Sovereignty of my People and our Tribal Governments, the bill baselessly asserts that, unlike the yet-to-be-enacted, 1980 MIA, this bill, LD 1626, recognizes each tribal government's authority to define all crimes and juvenile offenses committed on its tribal lands over which the tribal court has exclusive or concurrent criminal jurisdiction. This bill, again and without a legal basis, insists upon the

authority of the State to define all crimes and juvenile offenses committed on tribal lands over which state courts have exclusive or concurrent jurisdiction.

This bill then states that it recognizes federal Indian law regarding the exclusive jurisdiction of tribes to regulate fishing and hunting by tribal citizens of all federally recognized Indian tribes on tribal lands, but it does not recognize tribal lands not-yet-legally-transferred by the Tribes to the State or to the United States, which includes some 20 million acres of still-owned-by-virtue-of-aboriginal-title-lands north and eastward of Augusta and the Kennebec to this day. This bill amends the Maine Implementing Act to restore and affirm the exclusive jurisdiction of tribes to regulate fishing and hunting by nontribal citizens on tribal lands, but does not cede to the State any authority of the Maine Indian Tribal-State Commission to regulate fishing on boundary waters under current law.

This bill then proposes relinquishing non-existent State jurisdiction with respect to the regulation of fishing and hunting by both tribal and nontribal citizens on tribal lands. The State, solely to be benevolent in this scheme and for conservation purposes, proposes that it may regulate tribal members engaged in such activities off tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved tribal treaty rights, but does not define specifically which treaty rights it is referring to in the bill. The logical assumption is that it is referring to ALL such treaty rights, including the 1776 Treaty, which specifically limits U.S. jurisdiction and guarantees, "for as long as the sun and moon shall endure" these very activities and all trade in relation thereto, which LD 1626 threatens to nullify without any jurisdiction or legal basis.

This bill will be construed to ratify the 1980 Maine Implementing Act and create the appearance of binding state law to recognize and adopt inapplicable federal Indian law to Indian Peoples on and within "yet-to-be-legally-transferred-tribal-lands" not yet part of either the U.S. or any state, including the State of Maine, by providing that: tribes have exclusive jurisdiction to tax tribal members and tribal entities on their respective tribal lands, including entities owned by a tribe or tribal member; tribes, tribal members and tribal entities are not subject to state and local sales taxation on tribal lands; tribal members who live on their respective tribal lands are not subject to state income tax for income earned on their respective tribal lands; tribal lands are not subject to state and local real property tax; tribes have concurrent jurisdiction to tax nonmembers on tribal lands; powers that the Tribes already possess by virtue of their own Sovereign status under the International Law of Nations as recognized and agreed upon in the previously mentioned Treaties of 1725, 1726, 1749, 1760 and 1776.

This State of Maine bill audaciously and outrageously purports to amend state law to restore to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, but not recognizing nor including the entire, 15,000 member, 7 Maliseet Band Government entities of the greater Maliseet Nation, the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on tribal lands; powers and authority our Maliseet Nation governments already possess. This is pure trickery and an insult.

This bill amends nothing, but creates state law to explicitly bind and exclude Indians and unsundered and not-yet-transferred Indian lands affected by providing that, for the purposes of the federal Settlement Act, Section 6(h), any law or regulation of the United States 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 applies to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their members and is deemed not to affect or preempt the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters.

This bill does not amend any valid law, but creates state law to finally and explicitly provide that for the purposes of the nullified, federal Settlement Act, Section 16(b), the provisions of any federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations or tribes or bands of Indians, apply to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their members and is deemed not to affect or preempt

the application of the laws of this State, including application of the laws of this State to lands owned by or held in trust for Indians or Indian nations, tribes or bands of Indians, regardless of whether such federal law is specifically made applicable within this State. This bill intentionally intends to exclude and marginalize yet-to-be-affected Indians and make them completely and utterly subservient to a State that is expressly telling us they intend to control us and our lands contrary to their own U.S. federal and Maine State Constitutions. See Article 10, Section 5, subsections 1 - 5 that legally requires, as a condition of Maine becoming an independent state from the State of Massachusetts Bay, that it comply with treaties made with Massachusetts and the United States as of 1820. Non-compliance with such treaties, in effect, nullifies Maine's claim to both sovereignty and statehood.

Finally, the bill attempts to establish a process for consultation between tribes and state agencies, provides that the State may enter into cooperative agreements with tribes, provides for an annual assembly of the Governor and the tribes, provides for the development of a dispute resolution process to facilitative resolution of disputes between the State and tribes and provides for the development of an agreement to be known as "the Bicentennial Accord" to establish principles for State-tribal relations, but completely ignores current legal requirements, including the provisions contained in the highest law of the land, the U.S. Constitution, Article 3, the previously mentioned, 1820 Maine State Constitution, Article 10, and Sections 5, 6, and 7 of the 1776 Treaty of Alliance and Friendship which provides a still mandatory dispute resolution process should "any misunderstanding or outrage" occur as between the Indians and the citizens of the United States of America. The State is openly defying current law ... treaty law ... including it's own, highest law of the land.

This outrageous and clearly exploitative bill can not and should not receive your vote to pass in this Committee. Even if it were to be adopted, it purports to take effect 120 days after adjournment of the First Special Session of the 130th Legislature only if, within 90 days after adjournment of the First Special Session of the 130th Legislature, the Secretary of State receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to its provisions; the Governor and the Council of the Penobscot Nation that the nation has agreed to its provisions; and the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to its provisions. But, this enactment provision is, itself, illegal and unattainable within 120 days if Maliseet tribal ratification law and tradition is to be complied with and that such occurs only after full consultation and consent is obtained by all Maliseet Tribal Members situated within ALL Maliseet Nation communities in our 20 million acre, Wulustog (Aroostook) Nation homeland. The Treaty of 1776 with the United States of America took a full 13 months to ratify with all Maliseet Tribal members within this same homeland. No period short of that would be acceptable given the fact that this Bill purports to entirely extinguish these hard fought treaty rights and land protections. I trust you will all agree.

No. Unlike all other federally recognized Indians in the United States, it is, to quote a noted jurist, "an inescapable fact" that the State of Maine has no jurisdiction to impose any jurisdiction on we Indians. Neither does the U.S. federal government, and nor did they ever want to impose itself on us. This relationship was and is unique to the Maliseet Tribe and those who are attached to us. We are and have never been subjects to U. S. jurisdiction. Again, this relationship can be juxtaposed with the U.S. treaty relationships that were concluded with the westerly tribes utilizing the model treaty and so-called, Treaties of Peace clearly stipulating Tribal Submission to U.S. authority. No such submission to U.S. jurisdiction has ever occurred nor was or is it required in order to continue our current "alliance" and "friendship" since 19 July, 1776. We, the St. John River Indians (present day Maliseet Nation) would never have signed any Treaty with the United States in 1776 as was reported to General George Washington by Massachusetts Bay, Executive Council President, James Bowdoin on 30 July, 1776, nor entered into any agreement with either Massachusetts Bay or the United States that would have required us to relinquish our lands and our sovereign, governance authority to the United States of America or any of it's political subdivisions, including the State of Maine. Don't expect, just because you are now more populated and strong, that we should, can or will do so now, especially given

the many historical, legal and contemporary reasons outlined above.

I would conclude by respectfully thanking all of you for reading this, my submission, on LD 1626, on hearing us out, and for treating me good today. I would also like to express my thanks to all of those who may have expressed support for the tribes and all good faith efforts of the representatives of the State of Maine and the United States of America in these proceedings. I have read through many of the submissions in advance and we are struck by both the good intentions and kindness contained in your messages. Yes. I, too, am concerned about reducing misunderstanding, conflict and sharing our homeland, but not at the cost of our human, civil, political, sovereign and treaty rights. No. Not ever.

If I were sitting on this Committee with you, and after giving due consideration to the informatiion and perspective I've shared with you here today and after consulting with Mr. Reid and other learned persons regarding this information and perspective as confirmation of the truth of what I have shared with you, I'd seriously consider voting, "Ought not to pass".

Again, thank you.

All my Relations...Nidlayig.

Hon. Henry John Bear, LL.B., LL.M.

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