

TESTIMONY OF ROBERT CHECKOWAY OF FREEPORT,  
A STATE MEMBER OF THE MAINE INDIAN TRIBAL-STATE COMMISSION,  
REGARDING L.D. 785

(Neither for nor against, and solely in his personal capacity)

*To the Honorable Members of the Judiciary Committee:*

Since 2019 I have been a member of the Maine Indian Tribal-State Commission (MITSC). I am the only member appointed by the Governor in 2019 to seek and serve re-appointment in 2025, and one of two state-appointed members now serving. However, the views expressed here are my own, and do not necessarily reflect the views of the Commission, nor the Governor.

MITSC was created by the Maine Implementing Act, part of the 1980 Land Claims settlement acts. Its statutory directive, among other functions, is to

continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

30 M.R.S.A. 6212(3). It has made many such reports over the years since then and has been consistently critical of the effect of the 1980 statutes on the native tribes; see generally <https://www.mitsc.org/mitsc-library-complete>. However, it has never proposed the kind of omnibus reforms presented by these bills. MITSC was granted a seat on the 2019 Task Force and followed those proceedings closely, but once the Task Force delivered its recommendations the Legislature effectively pre-empted the area and the Commission has deferred to it as a matter of comity and practicality.

Indeed, once a bill was before the Legislature it became a political issue making action by the Commission difficult, since no delegation has been granted any authority to negotiate on behalf of their respective governments. Moreover, since 2024 the Commission has only included two State members, limiting the breadth of its spectrum of views and making meaningful consensus harder to establish. Commission bylaws in any event require at least seven days' notice prior to any action, making participation especially difficult.

Even without that, however, I have personally formed several independent opinions which may inform the current debate; I limit my remarks to those which I do not expect to be raised by others.

First, MITSC has published several reports over the years on the problems raised by existing law. (See, e.g., <https://www.mitsc.org/library/assessment-of-the-intergovernmental-saltwater-fisheries-conflict-between-passamaquoddy-state-of-me>, June 17, 2014.) Among the most serious of these is the uncertainty created by present law over marine fisheries. The 1980 reforms enacted in settlement of the Land Claims cases pending at the time of enactment do not establish such rights, and the pending measure does not address them. Legislators, tribal governments and citizens generally should not expect the pending measure to solve the problems.

The proposed measure would not reverse the effect of *Penobscot Nation v. Frey*, 3 F.4th 484 (1st Cir. 2021, *en banc*; *cert. den.*, \_\_\_ U.S. \_\_\_); legal title to the Main Stem of the river and

riverbed will remain vested in the State, subject to the rights of natives to fish for their own sustenance as recognized in that opinion.

Next, while the proposed reforms are expected to allow the native tribes and citizens greater powers to engage in business and commerce, they are generally silent on the power of State and tribal governments to levy taxes, a shortcoming expressly noted by the Task Force Report. If the measure is enacted, I urge all parties to seek agreement on the issues promptly, rather than deal with them case by case, in court.

Finally, I note that LD 785, sec.61, would require the Commission to advise a working group establishing a mechanism for alternative dispute resolution. Although some form of ADR is a good idea, it is sufficiently important to require independent consideration. MITSC is not staffed or funded to provide substantial start-up services, but with proper support might be able to offer some forms of ADR itself. The proposed measure does not provide any mandate submitting any class of disputes to jurisdiction, and presumably any proposal will require further legislative action to adopt and implement any proposal. I suggest further consideration of a “standalone” measure implementing any such forum.

I am grateful for the opportunity to offer these limited insights.

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