

TESTIMONY OF MICHAEL KEBEDE, Esq.

LD 554 - **Ought to Pass**

**An Act To Create Gaming Equity and Fairness
for the Native American Tribes in Maine**

Joint Standing Committee on Veterans & Legal Affairs
March 17, 2021

Senator Luchini, Representative Caiazzo, and members of the Joint Standing Committee on Veterans & Legal affairs, greetings. My name is Michael Kebede, and I am Policy Counsel 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. We urge you to support LD 554 because it will strengthen the sovereignty, independence, and dignity of Tribal Nations in Maine.

The Wabanaki¹ people's homeland once spanned much of what is now Maine and New Brunswick.² Native cultures were inextricably intertwined with the ability to enjoy and use broad swaths of ancestral land for planting, fishing, trapping, and hunting.³ When European settlers first arrived, the inhabitants of this region generously offered to share their lands.⁴ In response to their generosity, native lands were stolen,⁵ populations were decimated,⁶ and indigenous people were subjected to the most brutal and systematic campaign of genocidal acts ever to take place on the territory we currently inhabit.⁷ Instead of being able to roam freely as the seasons changed, the Nations that would benefit from this legislation were forcefully confined to tiny specks of their former land.⁸

Tribal Nations' traditional right to roam unimpeded throughout the land to fish, hunt, and live in accordance with traditional lifestyles has been severely limited.⁹ Houses, dams, roads, and cities fill the places that Wabanaki peoples once inhabited. Native communities have experienced tremendous poverty and cultural erosion. Wabanaki peoples used to create aqueous highways out of Maine's interconnected rivers.¹⁰ Now, they have to fight in court against the government to preserve their sustenance fishing rights.¹¹

This legislation would bring Maine law into conformity with federal law, which states that “a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.” 25 U.S.C. § 2701. It would ensure that the Wabanaki nations are treated the same as more than 500 other federally-recognized Tribal Nations. It is the inherent right of indigenous nations to use their land as they see fit.¹² Traditional ways of life have been severely restricted and are increasingly difficult in the face of ever-present intrusion. If Maine had historically provided for extensive development opportunities in native communities, gaming revenue might be unnecessary. It did not, and so many Wabanaki peoples need economic opportunity.¹³ This legislation creates one important way for Tribal Nations in Maine to provide such opportunities for their members.

We urge the committee to vote *ought to pass*.

¹ See WABANAKI PROGRAM OF THE AM. FRIENDS SERV. COMM., *THE WABANAKIS OF MAINE & THE MAR.: A RES. BOOK BY AND ABOUT PENOBSCOT, PASSAMAQUODDY, MALISEET, MICMAC, AND ABENAKI INDIANS* 7–10 (1989) (listing the groups collectively known as Wabanaki, and describing the nomenclatural shifts in how groups have identified and been described).

² See COLIN G. CALLOWAY, *THE ABENAKI* 15 (Frank W. Porter III, ed. 1989) (noting that “Before Europeans arrived, the Abenaki homeland covered most of northern New England[.]”).

³ 1 HARALD E.L. PRINS & BUNNY MCBRIDE, *ASTICOU’S ISLAND DOMAIN: WABANAKI PEOPLES AT MOUNT DESERT ISLAND 1500-2000* 9 (2015) (“[A] Wabanaki community of 300 persons required a territorial base of 300–3,000 square miles, which averages out to just over 1,600 square miles. To support itself on a long-term basis during seasons of natural resource abundance and scarcity, such a community would need a large foraging domain about equal to the territorial size of Hancock County.”).

⁴ See JOHN WESLEY HANSON, *HIST. OF GARDINER, PITTSTON AND W. GARDINER, WITH A SKETCH OF THE KENNEBEC INDIANS, & NEW PLYMOUTH PURCHASE, COMPRISING HIST. MATTER FROM 1602 TO 1852; WITH GENEALOGICAL SKETCHES OF MANY FAM.* 21 (1852) (They treated the first white men with the greatest kindness and hospitality. When the [] strangers came, and sought to buy their lands, they cheerfully sold them with an Indian title; giving them permission to occupy with the same privileges as themselves.”).

⁵ See PAULINA MACDOUGALL, *THE PENOBSCOT DANCE OF RESISTANCE: TRADITION IN THE HISTORY OF A PEOPLE* 89 (2004) (“The patent made Kenduskeag open to settlement without consent or purchase from the Pebobscots.”); see also CALLOWAY, *supra* note 2, at 60 (“Abenaki who remained in their homelands found themselves pushed onto less productive land.”); WABANAKIS OF MAINE, *supra* note 1, at 13 (noting that the vast majority of Maliseet land was never sold or transferred by treaty or deed); *Saint John River*, *WORLD HERITAGE ENCYCLOPEDIA EDITION*, (“Soon after, new survey maps were drafted, with First Nations deliberately left off, and many indigenous place names changed or Anglicized. By doing this, the [Maliseet] land appeared empty, and now fell under a category of adopted Roman law called *Terra Nullius*. This law allows any unoccupied land to be taken over by the finder.”). Available at, [http://www.self.gutenberg.org/articles/eng/Saint_John_River_\(Bay_of_Fundy\)](http://www.self.gutenberg.org/articles/eng/Saint_John_River_(Bay_of_Fundy)).

⁶ JAMES S. LEAMON, *REVOLUTION DOWNEAST: THE WAR FOR AM. INDEPENDENCE IN MAINE* 3–5 (1993) (describing how Maine’s native populations were systematically vanquished).

⁷ See FREDERICK MATTHEW WISEMAN, *THE VOICE OF THE DAWN, AN AUTOHISTORY OF THE ABENAKI NATION* 105 (2001) (describing how “Europeans like Robert Rogers attempted total ethnic cleansing by destruction of whole village populations.”); see also PRINS AND MCBRIDE, *supra* note 3, at 218 (“New England authorities offered extremely high bounty for Wabanaki Indians: 300 pounds for a scalp and 320 for a captive.”); *id.* at 217 (describing how two fisherman murdered a man and his son and celebrated by burning his canoe); *id.* at 218 (“On 18 June 1755, Massachusetts governor William Shirley proclaimed that ‘encouragements’ (bounties for Indian scalps) were offered ‘to such as should penetrate into the Indian country in order to captivate and kill the enemy Indians.’”)

⁸ See Pat Paul, *Captives of the System*, *WULUSTUK TIMES*, DEC. 2014 (describing how Maliseet people were prevented from moving throughout their traditional territory to fish, and detailing how their movements would be confined and controlled. Children were forcibly subjected to religious education, and prevented from learning traditional vocational skills.).

⁹ See WABANAKIS OF MAINE, *supra* note 1, at 13 (noting that Indian point has a population of about 600).

¹⁰ See PRINS AND MCBRIDE, *supra* note 3, at 29 n.39 (“To facilitate canoe travel along certain important routes, Wabanakis sometimes would not harvest beavers at certain streams and thus maintain higher water levels.”).

¹¹ See Oral Argument, *Penobscot Nation v. Frey*, Me, No. 16-1424, *reh’g en banc*, (1st Cir. 2020) (on file with the First Circuit Court of Appeals).

¹² See U.S. Const. art. I, § 8, cl. 3; *see also 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).

¹³ See U.S. CENSUS BUREAU, (listing median household income on some reservations under twenty-four thousand dollars per year. *Available at*, <https://www.census.gov/tribal/?st=23&aianihh=1530>