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HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

APRIL 2, 2014

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S. 1474, S. 1570, S. 1574, S. 1622, AND S. 2160

WEDNESDAY, APRIL 2, 2014

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m. in room 628, Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

The CHAIRMAN. I will call the Committee back to order.

When I took over the chairmanship of this Committee, I committed to moving quickly on legislation referred to us in order to help move Indian Country forward. I believe the markup we just held and legislative hearings such as this are important steps in building that momentum.

I look forward to hearing the various perspectives on the bills discussed today and forging ahead with growing and supporting tribal sovereignty and self determination.

To that end, this afternoon, we are holding a legislative hearing on five pieces of legislation pending before this Committee. Each bill seeks to address a statutory misstep or to amend a process that is inhibiting the ability of tribes to control their own futures and to protect the well being of their people.

Among these bills, we will look at fixing an oversight in Alaska where tribal jurisdiction was cut short and the recently-passed Violence Against Women Act has failed to protect Alaska Native Women.

We will also look at our trust responsibility for providing health care to Native people. We need to ensure that the health of Indian people is not subject to the whims of political stonewalling, much like it was during the recent government shutdown and sequestration.

S. 1570, introduced by Senators Begich and Murkowski and joined by me and four more of our colleagues, would do just that by providing funding for Indian Health Service a full year in advance.

We will also look at S. 1574, a bill proposing to help consolidate and streamline Federal funding for tribal employment and training and related service programs in Indian Country. The bill would update and improve upon existing law which has allowed tribes to in-

tegrate their employment related funding and maximum program efficiency for over 20 years.

We will also look at two bills that, if passed, would help protect and support Native children. First, S. 1622, introduced by Senator Heitkamp, would establish a commission to fully determine the many problems affecting Native children and provide recommendations on how to best address those concerns.

Finally, we will look at S. 2160 which would help protect children from harm when they are taken from their homes and placed in the care of others in the foster care system. It is especially in these instances that we need to guarantee that children are not being removed from one unsafe environment only to be placed into another.

I think discussing these final two bills is particularly timely as yesterday was April 1 which marks the beginning of Child Abuse Prevention Month in this Country. I think we can all agree that the most precious natural resource we have is our children and the necessity to protect them and help them grow and develop in safe, supportive communities is a priority I know I share with my colleagues here on this Committee.

I have been on the record before stating my commitment to early childhood development and educational attainment for our children but we all know that children need to be safe, healthy and secure in order to truly benefit from the educational experience.

I am pleased to join my colleagues, Senator Heitkamp and Hoeven in addressing the needs of Native children through their respective bills and look forward to continuing this important dialogue on child safety not only this month but until we do not have to address it anymore.

All of these are important issues and I look forward to hearing from all the witnesses today on these bills. I look forward to debating these issues and determining how we can quickly move these bills forward for consideration of the full Senate.

The CHAIRMAN. With that, Ranking Member Barrasso, do you have a statement?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. I do, Mr. Chairman.

I want to thank you for holding this important hearing. It's so good to see our good friend and former colleague and former chairman of this Committee, Senator Dorgan. I very much enjoyed serving as Vice Chairman when he was Chairman of the Committee.

Also, Mr. Chairman, I would like to welcome to the Committee the students who are here from Lander Valley High School in Lander, Wyoming in Fremont County. They have been touring the Capitol and this is a very important issue to them, specifically one of the bills we are talking about today, the Native American Children's Safety Act, S. 2160, introduced by my good friend, Senator John Hoeven, of North Dakota.

Indian children are particularly vulnerable when foster care placements are not properly investigated. Senator Hoeven's bill will strengthen and clarify foster care placement requirements including the character investigations and background checks. These

minimum standards will promote consistency and address gaps in child protective services.

I recognize that not every potential situation of harm to Indian children can be prevented by this legislation, but this bill is a significant and meaningful step forward in the right direction. For that reason, I am proud to join Senator Hoeven in cosponsoring this bill. I look forward to working with you, Mr. Chairman, on all of these bills. Thank you for your leadership on these important matters.

I look forward to the testimony.

Thank you.

The CHAIRMAN. Thank you, Vice Chairman Barrasso. I appreciate your comments.

Does anyone else have a short opening statement? Senator Heitkamp?

STATEMENT OF HON. HEIDI HEITKAMP, U.S. SENATOR FROM NORTH DAKOTA

Senator HEITKAMP. First, I would like to thank Senator Tester and Vice Chairman Barrasso for holding the hearing today. Senator Tester, I appreciate your willingness to move this legislation before the Committee and thank all your staff for making this happen.

I also want to thank my friend and colleague, Senator Murkowski. I think one of the first times we ever met, we had a long conversation about the issue and the challenges involving Native American children. It was a bonding and important experience because it led to this bill.

When I was looking to introduce my first bill in the Senate, it only made sense that I introduce it with Senator Murkowski.

I have spent a lot of time in Indian Country in my time in public life in North Dakota. I used to come to Federal officials and ask consistently, what are you going to do to address these issues, what are you going to do to address these problems and the national shame of how we allow our Native American children to live, whether it is housing challenges, educational challenges or other safety challenges. When I got here, I realized I couldn't point the finger and ask anyone else other than myself.

Too often what we have done is we authorize programs and look at all of the things that we have done for years whether it's housing, education or public safety but we have never asked have we really improved the condition for Native American children, have we really changed outcomes?

I will tell you that the statistics would tell us we have not. We have not made them safer, we have not provided a higher quality of education, we have not decreased the despair that Native American children feel and, as a result, we have a population with horrible statistics, with one of the most challenging, the rate of suicide among our children, all children, children who live in Indian Country and off Indian Country.

I have to say I have been truly humbled by the bipartisan nature. I think everyone wants to solve this problem. I cannot believe in a country as great as America that if we don't all want to solve a problem, and we all want to work to solve the problem, that we

can't. The great promise of this legislation is that we are going to see a fast forward for changing the outcome, for changing the dynamics.

Finally, I want to express my great affection and appreciation for the work that Senator Dorgan has done. I think North Dakota has always produced Senators who care about people in Indian Country. You see that today with two bills being considered. I will tell you we have a rich heritage but we also have a great responsibility in our State and Senator Dorgan has taken that responsibility not only in his work here, but he has made it his life work to change this outcome. I want to thank him for appearing today on behalf of the bill.

The CHAIRMAN. Senator Hoeven.

STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Mr. Chairman, I would like to thank you for holding this hearing. I would also like to thank our Ranking Member for his comments, as well as your support on the Native American Children's Safety Act. Also, thank you, Senator Heitkamp, for your support on that legislation. I am pleased to join with you on your legislation as well.

I would like to welcome Senator Dorgan and also acknowledge your work on behalf of Native Americans and your leadership role.

Also, Chairman Ross McDonald, I'd like to thank the Chairman for being here today and his work on the Spirit Lake Reservation and for being here on behalf of not only the people on his reservation but across the Country.

Thank you so much, Chairman, for being here. I truly appreciate it.

The CHAIRMAN. Thank you all for your statements.

I would like to welcome our first panel. Senator Dorgan, as always, we try to limit you to five minutes but I know if goes a little longer, we won't gavel you down.

I will just say it is an incredible honor for me, especially sitting in this chair, to welcome Senator Dorgan back to this Committee. It was a little over seven years ago I came to my first Indian Affairs Committee meeting in the Senate and saw Chairman Dorgan chairing this Committee along with Craig Thomas, the fellow that John Barrasso came after.

I really learned issues that impact Indian Country like none before through the eyes of Byron Dorgan. I would just like to say before you begin your testimony, I want to thank you personally for everything you have done for this Committee, for me, and for Indian people across this Country.

With that, welcome, Byron, and you may proceed.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR (RETIRED) FROM NORTH DAKOTA; FOUNDER/CHAIRMAN, CENTER FOR NATIVE AMERICAN YOUTH, ASPEN INSTITUTE

Senator DORGAN. Mr. Chairman, thank you very much.

I wandered around here for 30 years in the Congress and haven't been back here much. I will tell all of you that when you leave, as you all will some day, the thing you miss is having the opportunity

every day to work with your friends in the Senate and the House. It is good to see all of you.

I am here because Senator Heitkamp asked whether I would come and testify on her legislation. I am happy to do that. I think what she and Senator Murkowski have introduced has great merit. I am pleased to see Senator Hoeven as well and know of your legislation which I also think has merit.

I want to talk a bit today about the legislation that has been introduced by Senator Heitkamp and Senator Murkowski. Let me say immediately the question people might ask is why this, why another commission, why another study?

Frankly, I think this commission is complementary to everything that is going on. I am the co-chair of the Task Force by the U.S. Justice Department on violence on Indian reservations with children. This is perfectly complementary to that.

This is complementary to the Center for Native American Youth which I created and we work every day on a range of these issues. This complements that. I kind of see this as taking a step back with collective fresh eyes from the Nation about what do we see here and how do we finally get our arms around it, kind of like a diagnosis. It is one thing to talk about these things. How do you better diagnose what it is and how you fix it?

We know there are children at risk in this Country, Native American children especially. We know of all the population that has been left behind, in my judgment, none have been left behind more quickly than American Indian children.

Despite the fact that all these promises have been made, all the treaties that have been signed, all the trust responsibility that bears on our shoulders, despite all of that, these kids have been left behind. The fact is, it is a national disgrace. Poverty rates, high school dropouts, teen suicide, you could go on and on to describe the circumstances that face these kids.

I want to mention to you just three children that symbolize, for me, the urgency with which all of us work on these issues. The first, Senator Heitkamp has seen this, this is from February 4, 1990. I remember the day it came out in the newspaper because it is a photograph of a young child, three years old. This young girl named Tamara Demearis was put in a foster home, by the way, by a social worker working 125 separate cases.

A drunken party ensued and this young girl had her leg broken, her arm broken, her nose broken and her hair pulled out at the roots at age three. She likely will bear those scars all of her life. This persuaded me to go to that reservation in February 1990 to find out what in the Hell was going on. It still happens across this Country. Despite all our best efforts, we still see these problems.

I was on the Pine Ridge Reservation about a year ago. I went to a shelter and met a 12 year old girl. At age 12, this young girl faced the following: her mother was dead from drug abuse, she didn't know who her father was; she had been in two foster homes, sexually abused in both; and now at age 12 was finally at long, long last safe in a shelter.

That shelter was facing the ignorance of sequestration which cuts the funding for the most vulnerable people in this Country. It

is unbelievable. I stood in that room looking at this 12 year old girl thinking; how can this Country allow this to happen?

Mr. Chairman, you and I were on the Crow Reservation when the grandmother of Ta'shon Rain Little Light walked forward in the crowd and held high above her head a photograph of her granddaughter, Ta'shon Rain Little Light who died in her mother's arms. She died of cancer and she had been to the health care facilities at the IHS on their reservation time and time and time and time again and was treated for depression until she died of cancer.

These three young children I described to you all suffered in what I think is a national disgrace, a circumstance where this is not some mysterious illness. We can fix this, but it is important to step back as the commission proposed by Senators Heitkamp and Murkowski offer to do, step back and take a look at all of these elements and try to see if we can put them together in a rational way that addresses the issues we know cause these problems.

Mr. Chairman, I created an organization called the Center for Native American Youth. That organization focuses on teen suicide prevention, education opportunity and more. This commission is complementary to what we do every day. This commission, in my judgment, will be very, very helpful.

This commission talks about the barriers, the obstacles, trying to evaluate explicitly what the elements are that we can put together that finally address the heart of this matter. We know it is poverty, it is dysfunctional homes, it is gangs that prey on these kids, drug issues. It is all of that, but we don't seem to have the capability to put together the solution or the set of recommendations that can come from this piece of legislation.

One of the things they are talking about is evaluating what all the Federal agencies are doing. It is interesting to me that I have been involved, as all of you have, in so many different pieces of legislation and at the Center for Native American Youth downtown here in Washington, D.C., we do a quarterly meeting and ask the Federal agencies to come and they come.

Sitting around the table, about 30 of them, 25 to 30 agencies, it is the first time they ever sat around the table together. All of them working on Indian issues, all of them working on issues dealing with Indian children, none of them having met before to talk about what they are doing.

We discovered at the same table that two Federal agencies were doing exactly the same thing on one reservation, spending a lot of money, and neither knew the other was there. Isn't that interesting? Not very interesting, it is pretty depressing.

That is why this legislation will get at all of those issues. It is why I think this legislation has very substantial merit.

I do want to mention to you, in some ways I hope the way this is written, and as I read it, I think it is possible, that you might also as an adjunct decide to chronicle the promises, the treaties, the signatures, the trust, and everything. Put it all together to evaluate what has been promised and proposed in law and treaty. These are solemn promises by the government and then what has been done relevant to those promises.

We know, for example, 50 percent of the health care that was promised is not met. Full scale rationing for health care for all In-

dians, including children. It should be front page, headline news on the Washington Post today but it is not because it happens very day, full scale health care rationing. It ought to bring tears to everyone's eyes.

Finally, let me say the overriding issue is funding. It is easy to talk about and hard to solve. The funding issue for foster care for social services, education, housing, health care as I just described are chronic. We have to find a way to get at it.

Let me conclude by saying that when we talk about all these things, I held some hearings, for example, on teen suicide and was told by parents and others don't do this, don't have public hearings on this subject because it is something that obviously we are ashamed of, it is a stain, don't do this.

As I said, we don't have any choice. This continues to happen. We have to shine all the spotlights on one spot and figure out not only what is happening, but how on earth do we fix it. My sense is that we can use this commission as well to chronicle all those promises that have been made and all the under funding that exists in these areas to try to figure out how to button this up, and finally, with recommendations and best practices, give some of these children some hope for the future.

Parents care about this, tribal officials care about this and when we talk about it, I don't want anyone to think there are tribal members and tribal councilmen who don't care. They do, they work very hard and so do parents, to try to fix these things but they need our help because we are the ones who made the promise and we are the ones not keeping it.

Let me say this commission idea is complementary to everything else that is going on but I think may well get us way down the road in terms of a new diagnosis and new prescriptions about how we finally fix this in a different way.

Mr. Chairman, thank you very much for inviting me.

The CHAIRMAN. Thank you, Senator Dorgan, for your testimony.

I have many questions. I am going to ask you one. For three years now and much time before that, for the last three years plus you have been working with the Center for Native American Youth. You have probably seen some stuff you wouldn't normally have seen.

If you could wave a magic wand and could ask Congress to do one thing that would help our Native youth or the whole population in general, what would it be?

Senator DORGAN. Obviously the future is education. We have a 50 percent high school dropout rate among Native American youth. That is pretty unbelievable. What kind of future does that consign someone to when you have that kind of dropout rate?

We have a program called Champions for Change where we bring in kids from around the Country who are champions—many of you have met them—really inspiring young kids, to kind of celebrate success. It is the case there are some kids out there succeeding but it is also the case that half these kids aren't making it through high school.

My first answer is always adequately fund these programs because we made the promise. The second is the future for these kids is education.

The CHAIRMAN. Senator Barrasso?

Senator BARRASSO. No questions, thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Not so much a question but a thanks. It is clear from your very impassioned remarks here this afternoon that the care and compassion you showed for American Indians, Alaska Natives, Native Hawaiians when you were chairing this Committee and I was privileged to sit as your ranking, that passion hasn't abated since you have left the Senate.

Even before you left, you and I discussed what you were doing to found the Center for Native American Youth and wanting to continue the focus on Native youth suicide and what we can do to make a difference.

I just want to publicly acknowledge and thank you for that. I think it is often easy to leave the rigors of what we do here day to day, and quite honestly some of the things that weigh heavily on our shoulders and our conscience, to know you have left from here and continue to do good things for so many around Country and truly those most vulnerable, I renew my commitment to work with you on not only the Native Youth suicide issues but what you can help Senator Heitkamp and I do to advance this children's commission.

I have great gratitude for what you do.

Senator DORGAN. Senator Murkowski, thank you very much.

I should mention to you all that Senator Murkowski was on the advisory board of the Center for Native American Youth when we created it three years ago. Thank you for that.

I don't know what is second, third, or fourth place in most peoples' lives but I know what is in first place. It is kids. If kids are not in first place, then there is something unbelievably warped about people. Children are our most important resource. We love them, we have responsibilities for them, we take care of them, but with respect to the children of the people who were here first in this Country, you go do these tours, we are doing a lot of youth tours now around the Country on Indian reservations and what you see are a lot of kids living in third world conditions.

Then you ask the question, how do they get into that trouble? Why aren't they off to college? Why do they quit school? You try living in a three bedroom home with 24 other people and try and study at night. You try and live on a reservation where gangs are there or Mexican drug pushers are there. I should say drugs from Mexico are coming to the reservation, they are targeting them. It is a pretty hard life for some of these kids.

Despite all that, you see some kids who make you so proud it brings tears to your eyes, kids that go through unbelievable things. There is a young boy who started an organization called NERDS, Native Education Raising Dedicated Students. He is 16 years old and on the football team.

He saw a bunch of his friends getting Ds and Fs and thought, I am going to try to make it cool for them to get As and Bs. He started NERDS, it became a club and people joined this club. He

was telling us about kids he was playing football with who were getting Ds and Fs who are now getting As and Bs because they understood it was kind of fun to be a part of a people who were succeeding, part of a group that was succeeding.

When you find a young, teenage kid who creates an organization called NERDS to help his friends, then you think there is some hope out there. If they can do that, what can we do as legislators. I know you are going to be doing some tours of reservations and there is nothing like being there and talking to those young people and seeing it.

I know that you, like I, when you go to sleep at night, you want to lay your head on the pillow thinking, you know what, I did a little something to improve some lives today. When I decided to leave here, I chose to see if I could do it with kids because you have to start somewhere and these kids are our future.

Native American kids have been left behind. I think Senator Heitkamp and all of you around the table feel the same way. It is time to stop leaving them behind and have them become a part of the American dream as well.

The CHAIRMAN. Senator Begich?

STATEMENT OF HON. MARK BEGICH, U.S. SENATOR FROM ALASKA

Senator BEGICH. Senator Dorgan, it is good to see you.

I wasn't going to ask questions. I am always impressed and motivated and inspired when you come and speak, especially around American Indian and Alaska Native issues when it comes to youth. Thank you again for your passion, as always.

I want you to know that Tessa Baldwin, who was an intern in my office, came as one of your quality leaders and she produced. You are producing them. We are taking advantage of it too, an incredible inspiration in a program she founded, Hope for Alaska, to help young people in Alaska deal with suicide.

As you work with your foundation, you are planting seeds everywhere and I want to thank you for that.

As Senators, you know we travel quite a bit. I was in a hotel, I can't remember which city, and I was watching a late night show which showed two young Native women who play basketball, sisters. I think it was Louisville, if I remember correctly. I am seeing some heads shake so they know exactly what I am talking about.

Just watching that story, I was so impressed that the younger sister said she is going to finish college, get her degree. I think she has a 3.6. But she talked about the challenges of coming off the reservation into this unique experience. What she wants to do is go back to the reservation and inspire young people.

It was probably 15 minutes at most. They are great basketball players, incredible. Just to watch their enthusiasm not about the sport but how the sport is part of what they want to bring back with the education and the opportunity for young people, it was inspiring.

As I listened to you about inspiring young people, it is just impressive. It draws me to one of the things you did when you were here in the Indian Law and Order Commission that was established. As you know, its report has come out and it was pretty

amazing, not in a positive way. Alaska has a whole chapter which, on one hand, is very disappointing but on the other hand, we have an opportunity.

What is your advice? You were here for so many years but now looking in and watching what we do, how do we make sure. We had a hearing and we were glad we had it but what do we do to make sure the recommendations and ideas they have in that commission, as well as the future commission, to ensure they actually happen?

That is always the challenge around here. Just listening to you and thinking of the things we could be doing right this second, my worry is as we move forward, what do we do, how do we engage those recommendations groups like yours and others to make sure they happen?

Again, thank you for Tessa and creating a leader. Alaska is blessed because of that. She is doing great work because of you.

Senator DORGAN. Tessa Baldwin is extraordinary and Hope for Alaska, she is a champion for change.

I wanted to say one of my regrets is I don't think we do enough in our Congress of oversight hearings. Even if it is just one Senator, maybe not always the chairman, but one Senator coming to have an oversight hearing and you have one agency to come, sit here and answer the questions, what are you doing, what aren't you doing.

I think there is such a rich vein to be mined in the oversight of agencies on these Indian programs. This Committee could have the capability of doing that. I did not do as much of that. We were trying to get the Indian Health Care Improvement Act done, the Tribal Law and Order Act and diabetes extension and so on.

I think there is a rich vein to be mined on this issue of oversight. You don't have to have a full committee hearing to do it. You can have one or two Senators there and go at it and figure out what some of these agencies are doing.

Maybe they say we only have half the money that we need, so what are you doing with half the money. At least let's find out that.

Senator BEGICH. I will leave my questions at this point and say it is a good point, because I'm thinking the report, we have the commission and now it is up to agency implementation. Maybe the next step is to say here are the recommendations that were made, whichever agency it might be, you come back here, tell us what you are doing and I like your idea.

It doesn't matter how much they have but what are they prioritizing and how are they making that work. Thank you for that advice.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hoeven?

Senator HOEVEN. Senator Dorgan, thanks again for being here. You worked very hard on trying to prevent teen suicide among Native American youth both during your time in the Senate and now with the Center for Native American Youth. Would you talk just a minute about linkage as you see it between child safety and keeping children safe in foster homes which is what we seek to do with the Native American Children's Safety Act and suicide among our Native American youth? Could you talk about that linkage and

your thoughts on safety in terms of the home, foster care and so forth among Native Americans?

Senator DORGAN. I have been on Indian reservations and talked to a roundtable of students, maybe seniors in high school or juniors in high school, about ten of them, about what is your life like and what are your issues. Safety always comes up. There is always an issue of what is happening around them in their environment that causes them concern about their safety.

It is well documented that Indian children are far over represented in foster homes, which is another cultural issue. It is too easy for them to be put in foster homes.

Second, when they are put in foster homes, is the investigation done sufficiently to make sure they are putting these kids in safe homes? That is why I mentioned the case of Tamara Demearis. That is the case that has always kept me involved. The tears in this little girl's eyes were real tears. She was beaten severely, and should have never been in that home.

I talked to the woman who put her there. That woman was handling 125 cases. You can't handle more than 25 or 30 cases. Do you think she went to find out was this a safe home? She didn't do that, she didn't have the time, so this precious child was put in an unsafe circumstance.

Does that relate to teen suicide? Sure. I think there is not one trigger for teen suicide, there are a lot of triggers. There is the issue of safety and a wide range of things that confront these kids every single day: poverty, abuse, sexual abuse and so on. I think the suicide issue continues, in my judgment, to be very, very serious.

You have to keep talking about it and I think we will begin to see the reduction of rapes and teen suicide when we finally begin to see some progress in many of these other areas. That gets back to the underlying bill we were talking about and also the legislation you have introduced.

Senator HOEVEN. Thank you.

The CHAIRMAN. Senator Heitkamp?

Senator HEITKAMP. Thank you, Chairman Tester.

I have just a couple comments which I think Senator Dorgan covered quite well, the commitment we have from tribal leaders, whether it is elder groups or tribal councils, everyone wants to take this problem out into the open and start really beginning to examine the root causes and how we can change outcomes.

Senator Dorgan, I want to talk with you about how we make this issue of those kids, how many times do we hear those kids, but these are our kids, these are all of our kids, these are Americans. I sometimes think that it is very easy for people who don't have the experiences we have coming to Indian Country to say that's Heidi's problem or that's Byron's or Jon's problem. It is your problem; it is not our problem.

I think one of the reasons why this has been allowed to continue I we have not created a dialogue in this Country that says these are our kids and this is a shame when this happens. This is on us. This is on all of us because we are the adults.

How do we build that broader support beyond a Committee like this, beyond a room like this? How do we build the broader support, Senator?

Senator DORGAN. It is very hard to do. As you know, many of the Indian reservations, particularly in the northern Great Plains are far from population centers out of sight and the same in Montana. You land in Billings and drive down to the Crow Reservation and there is so much there that is not seen or not understood by the American people who have made a commitment to them.

It is very hard. The thing is, as difficult as it is, we cannot stop. This Committee is the location of a lot of the effort that has to continue to be made to say to the Country, you cannot allow this to continue. This is not fair. It is not even legal. You have actually signed treaties and made promises and passed legislation. I think you are touching on something that is really important.

To the extent that we can, make sure that you continue to say in the face of the American people, here is what exists and we have to change, we cannot allow this to continue.

Senator HEITKAMP. To close with a story, it is about a friend of ours, a guy named Al Lick who for years worked for the children of North Dakota. He was doing a program where he was trying to figure out how he could do early intervention, how he could do some prevention work. He was visiting across the State of North Dakota and every place he went, people would tell him, you can't do that, you can't do this, you can't do that and he got worn down.

Finally, the last place he went an elder approached him and said, you know, Mr. Lick, what you can't do and he thought here it comes again. He said, you can't give up. It is really important that we don't give up. It is really important that we don't forget or lose our sense of responsibility.

Thank you.

Senator DORGAN. Thank you very much.

Mr. Chairman, I have exhausted more time than you probably expected but thank you for inviting me. As I said, I don't get here very often, but when asked if I would come, of course I was happy to do that.

Thanks for being chairman and thanks to the Committee for spending time on this issue. I know there are plenty of other issues that command your attention.

The CHAIRMAN. Senator Dorgan, we all want to thank you for being here today. I know your schedule is busy and you took time out of it to come enlighten us and we very much appreciate that.

I would tell you to keep up with the leadership role you are in but we know that ain't going to change. Thank you very much for everything you have done and will continue to do.

I have to leave for another committee meeting. I hope to get my questions and be back. I am going to turn the chairmanship over to Senator Begich.

We will start with the second panel which is Native American representation. Go ahead, Senator Begich.

Senator BEGICH. [Presiding.] Thank you very much, Mr. Chairman. I look forward to conducting this next portion.

I would like to welcome the second panel to come forward. We have Natasha Singh, a Tribal Judge from Stevens Village in Alas-

ka; Margaret Zientek, Co-Chair, Tribal Workgroup working on integration of employment related funding from Federal agencies and the Honorable Leander R. McDonald, Chairman of the Spirit Lake Dakota Nation in North Dakota.

Welcome to all three of you. We appreciate it. We will start with Natasha and go down. Give your testimony and then we will be open for questions from members. Again, thank you all very much for being here this afternoon on the important legislation in front of us today.

Natasha?

STATEMENT OF HON. NATASHA SINGH, TRIBAL COURT JUDGE, STEVENS VILLAGE

Ms. SINGH. Distinguished members of the Committee, thank you for holding today's hearing on several bills of particular importance to Alaskan tribes.

My name is Natasha Singh. I am a Stevens Village tribal member, a tribal court judge, a foster mother and I am also general counsel for the Tanana Chiefs Conference. TCC is a health and social services tribal consortium that represents 37 federally recognized tribes of interior Alaska.

The focus of my testimony and why I am here today is to ask the Committee to use S. 1474 to make lasting changes in rural Alaska. This Committee recently reviewed the Law and Order Commission report. In that report, you got a glance at the horrors faced by some of the women and children living in rural Alaska.

Generations of Alaska Natives living in our villages have been ignored by the State's law enforcement and judicial systems, a fact which has created despair among tribal members.

This summer, I was in a village when an intoxicated man attempted sexual assault on a 13 year old girl. When the village leaders called the State troopers, they were told nothing could be done. This is the third time that I am aware of that this man has attempted sexual assault.

This man is currently still in the village, he regularly drinks and the community, the women and children have little protection from this individual. Do not allow this man to continue to terrorize his tribe. The time for positive congressional reform is long overdue.

As currently written, S. 1474 will do very little. That is why we ask Congress to amend the bill as written and to add the Alaska Safe Families and Villages Self Governance Tribal Law Project. This project will recognize the authority of tribal governments to deal in the first instance with issues of local domestic violence, sexual assault and alcohol and drug abuse.

That is what is needed, that is what the Commission called for and that alone is what Congress can do.

A major accomplishment of the bill as currently written is the repeal of S. 910 of the Violence Against Women Act. I really would like to thank Senators Murkowski and Begich for agreeing to repeal that section. Since the passage of that section last year and with the State's continued challenge to tribal court authority, we have seen that tribal courts are more hesitant to issue protective orders when it deals with non-members.

I would like to tell you today that if a woman in a village is the subject of domestic violence, the local tribal court must be assured that it may take lawful, immediate action against abusers regardless of tribal membership.

S. 910 has created such a problem and the cure is straightforward that we respectfully urge the Committee to include this provision in any relevant bill moving forward, including S. 919, the Tribal Self Governance legislation.

I would also like to briefly touch on S. 1574. I would like to praise the Committee for setting this as a high priority. It is a long-awaited bill that would make permanent the remarkably successful 477 Initiative. TCC fully supports the testimony you will hear from Margaret Zientek.

The 477 Initiative has proven to be a forward looking piece of legislation that permits tribes to consolidate employment and training programs authorized by different Federal statutes at different times and through different Federal agencies. Given the enormous nationwide success of the 477 Initiative, TCC strongly supports making it permanent.

TCC also supports enactment of S. 1570 which would authorize advance appropriations of the Indian Health Service. Sharp and unpredictable funding swings cause severe disruptions and hardships, not just for IHS and tribal providers, but for the patients who depend on the IHS system as their only source of health care.

The solution is to authorize advanced appropriations as Congress did years ago in connection with the Veterans Administration's medical accounts.

Thank you for the opportunity to testify today on these three important bills. In my experience as tribal court judge, I am confident enactment of an amended S. 1474 will help our communities reverse the disproportionate horrors experienced by our women and children.

Thank you for inviting me to testify. It has been an honor.

[The prepared statement of Ms. Singh follows:]

PREPARED STATEMENT OF HON. NATASHA SINGH, TRIBAL COURT JUDGE, STEVENS VILLAGE

April 2, 2014

Testimony of Natasha Singh, Tribal Court Judge, Stevens Village

Chairman Tester, Vice-Chairman Barrasso and distinguished Members of the Committee -- including our very own Senators Begich and Murkowski -- thank you for holding today's hearing on three bills of particular importance to Alaska Tribes and tribal organizations, but the most important of which is S. 1474. It is a privilege and honor to testify on a measure which has the potential to bring fundamental, lasting, profound and, most importantly, desperately needed change across rural Alaska, especially for people just like me: Alaska Native women.

My name is Natasha Singh. I am a Stevens Village tribal member and a tribal court judge. Most importantly, for over a year I have been a foster mother. Stevens Village is a very small Native village situated just north of Fairbanks on the Yukon River. I am also the General Counsel for the Tanana Chiefs Conference. TCC is an intertribal health and social services consortium of 37 federally recognized Tribes located in the Interior of Alaska. We serve approximately 13,000 tribal members living in our villages or in Fairbanks. Our territory occupies a mostly roadless area that is nearly the size of Texas, stretching from Fairbanks clear up to the Brooks Range and over to the Canadian border.

S. 1474

Just two months ago this Committee held an oversight hearing on The Indian Law and Order Commission Report: A Roadmap for Making Native America Safer. That report was a mix of new research and a summary of many past studies, all of which have documented all too well the severe crisis facing women and children in rural Alaska. It bears repeating that, as this Committee now knows, Native women constitute nearly one-half of all rape victims in Alaska, even though Native people are less than 20% of the total state population. In many villages, allof the Native women have been sexually assaulted at some point in their lives. In fact, Native women are 7 times more likely to be assaulted than non-Native women, and we are 12 times more likely to be physically assaulted than women in the rest of the country. Our children, too, are victims -- not just the victims of disproportionate domestic violence, child abuse and neglect, but sexual assault too. Fueling all this is the stunning statistic that 95% of all crimes committed in rural Alaska involve alcohol abuse.

Generations of Alaska Natives living in rural Alaska have been ignored by the state's public safety and justice systems, a fact which has created despair among tribal members. This summer I was in a village where an intoxicated man attempted to sexually assault a thirteen year-old girl. When the troopers were called, village leaders were told nothing could be done. This is the third time I know of that this man has attempted an assault. The man still lives and regularly drinks in the village, and the community and local women and children have very little protection from this individual.

Stevens Village, like most Tribes in Alaska, wants to focus its efforts on prevention and healing, rather than the prosecution and incarceration of "victim reactors," meaning those who assault because they were once assaulted. To end the perpetrator-victim cycle we need a justice system which understands our history and has the authority to protect tribal members and deter harmful activity. That system is the tribal system.

The interconnected scourges across rural Alaska of domestic violence, sexual assault and rape, child abuse and neglect, and alcohol and drug abuse are undeniable, both from the experts' statistics and from eyewitnesses like me, and the time for positive congressional reform is long overdue.

The status quo in our villages is unacceptable in any civilized country. It is unacceptable in America. And, it is unacceptable in Alaska. The Law and Order Commission's report repeats what has been amply documented for decades: that (1) the state judicial and law enforcement system does not serve rural Alaska well, and (2) due to reasons of funding, size, remoteness, hub centralization, and deep cultural divides, that system will never serve rural Alaska well. What is needed is a new world order in rural Alaska, but one that is an old world order in Indian policy, and one that is very familiar to this committee: enhanced tribal self-determination at the local level.

Forty-four years ago President Nixon proclaimed an enlightened new federal policy of tribal self-determination, and Congress responded with scores of new initiatives designed to make self-determination a reality and a success for the Nation's Indian tribes. In time, one small volume of the federal code grew to four, and in due course many Tribes across the country made enormous strides toward greater self-determination. Yet some of the most important of these initiatives have missed Alaska villages. Sometimes it has been through neglect, such as a land claims settlement that overlooked the need to preserve local tribal government authority regardless of changing land titles. At other times it has been through affirmative action, such as the mistaken enactment of Section 910 of the Violence Against Women Act. But fortunately, these legal errors can be corrected, and new legal rules established that will support and add to the tools Alaska tribal governments need to protect women and children from sexual and domestic violence, and to address the root causes of alcohol and drug abuse. To the significant extent that Congress's decisions in the past have contributed to the status quo, Congress can make new decisions today to change the status quo.

And that is why I am here today. I ask the Committee to use S. 1474, with important amendments I will discuss, as a vehicle to make real and lasting change across rural Alaska.

As currently drafted, the bill is largely focused on encouraging more partnerships with the State of Alaska. In these provisions, the bill essentially encourages the State to look to our Tribes for pretrial diversion services, so that offenders who enter the state system can be diverted into tribally-supported activities which could result in prosecutions being dropped and, hopefully, better outcomes and fewer incarcerations. This very modest proposal does not authorize anything new, because the State and the Tribes already have the power to negotiate such agreements. In fact, for the past few months TCC and the State have been negotiating precisely such an agreement. My point is that federal legislation is not needed to enable such tribal-state agreements to be negotiated.

What is needed is federal legislation which recognizes the authority of our tribal governments to deal in the first instance with issues of local domestic violence, sexual assault, and drug and alcohol abuse. That is what is needed, that is what Commission after Commission has called for, and that is what Congress, alone, can accomplish.

This is why TCC, in coordination with other regional tribal consortiums in Alaska, Individual Tribes, and the Alaska Federation of Natives, has called upon Congress to amend S. 1474 to add an Alaska Safe Families and Villages Self Governance Tribal Law Project. This Project would --

- recognize the authority of qualified and participating Alaska Tribes to exercise jurisdiction, concurrent with the State, in matters relating to child abuse and neglect, domestic violence, drug-related offenses, and alcohol-related offenses;
- define the local village community in which such jurisdiction would apply;
- assure that such jurisdiction reaches all perpetrators residing or located in the village;
- require tribal governments to comply with the Indian Civil Rights Act;
- specify the sanctions participating tribal governments could impose;
- establish strict qualifications for tribal governments to participate in the project, including a detailed planning phase and ultimate certification by the Attorney General;
- assure maximum notification and opportunity for the State to comment on any tribal application;

- require the Attorney General to report to Congress annually on the Project, setting forth the Attorney General's assessment and recommendations, and requiring the Attorney General to consult with the participating Tribes and with the State;

- assure that nothing in the law would be deemed to alter any preexisting jurisdiction of the State, nor to diminish any pre-existing jurisdiction of any participating Tribe;

- assure that the Project will not create any "Indian country" jurisdiction that may not already exist;

- assure that a participating Tribe's authority would be limited to civil jurisdiction, absent an intergovernmental agreement with the State providing otherwise;
- assure tribal access to Bureau of Indian Affairs funding otherwise available to 'Lower 48' Tribes for tribal court and law enforcement programs; and

- provide for the Attorney General to furnish training and technical assistance to Alaska Tribes on tribal court development.

Such measures, taken on this limited and regulated basis, is an important -- indeed vital -- first step in securing to Stevens Village and other Alaska Tribes the tools necessary to realize greater local self-determination and to deal specifically with issues of domestic violence and drug and alcohol abuse. Local control in these areas will assure that (1) actions are taken by the authorities having the greatest local knowledge; (2) actions can be taken locally to intervene in unstable conditions which, if unchecked, would otherwise lead to criminal acts, assaults or worse; (3) actions can be taken by those who are in the best position to swiftly respond to developing situations.

The project I have outlined here would provide Alaska Tribes with an essential set of tools necessary to address drug and alcohol abuse, and we believe will contribute meaningfully to a substantial reduction in domestic violence, sexual assaults, child abuse and neglect, and violence against women. But to achieve these goals, S. 1474 must be amended. As currently drafted (and but for section 6), the bill will accomplish almost nothing. To be clear, S. 1474 must be amended.

Before leaving S. 1474, I want to offer special praise to Senator Murkowski and Senator Begich for agreeing to repeal section 910 of the Violence Against Women Act. Section 910 has cast a serious cloud over the ability of our tribal courts to adopt, to enforce and to secure enforcement though state courts of tribal restraining orders. As a result of Section 910, combined with continuing (albeit unsuccessful) challenges by the State against the application of tribal laws to parents of tribal children, tribal courts are reluctant to take actions against abusers of village women and children where the abuser is not a member of the Tribe. This is tragic, and sets Alaska Tribes apart from all other Tribes <u>for no sound reason in policy or logic</u>. If a woman in a village is the subject of domestic violence, the local tribal court must be assured that it can lawfully take immediate action against the abuser, regardless of his tribal membership. Women like me deserve at least

that much protection. To leave women who are assaulted by non-member men with no recourse and no protection except from a state machinery that is hundreds of miles and days away is unconscionable.

Thank you Senator Murkowski and Senator Begich for recognizing that section 910 is producing very real and very negative impacts for village women, and for agreeing to repeal section 910 as swiftly as possible. This is not a theoretical problem; it is real. As our former President, Chief Isaac, urged this Committee earlier this year, section 910 has created such a problem, and the cure is so straightforward, that we respectfully urge the Committee to include this provision in any relevant bill that is moving forward, including S. 919 (the tribal self-governance legislation).

S. 1574

I would also like to offer a few remarks on S. 1574, a long awaited bill that would make permanent the remarkably successful "477 Initiative." (See Pub. L. 102-477, 25 U.S.C. § 3401.) TCC and 11 other Alaska 477 Tribes and tribal organizations fully support the testimony being provided today by 477 Tribal Work Group Co-Chair Margaret Zientek of the Citizen Potawatomi Nation, and I will therefore keep my supplemental remarks brief.

The 477 Initiative has been proven to be a brilliant and forward-looking piece of legislation that permits Tribes to consolidate employment and training programs that have been authorized by different federal statutes at different times and through different federal agencies. The Initiative authorizes participating Tribes to combine these diverse programs into a single, cohesive and complementary tribal program that is responsive to local needs and conditions, to describe that consolidation in a single Plan, and (once the Plan is approved by the Interior Department) to operate these diverse programs as a single integrated program and to account for all of the Tribe's financial and programmatic activities against the requirements of the approved Plan. Funds and missions are merged; overhead, reporting requirements and administrative requirements are massively reduced; and tribal beneficiaries receive efficient and integrated services that make sense. Agency 'silos' are replaced with a single, integrated and sensible approach that is more efficient and effective to administer.

The brilliance of the original 477 Initiative continues today, and should be a model for similar initiatives in other areas. The federal government may work in silos, but there is no reason why Tribes should have to replicate those inefficiencies. Like the 60 plus other 477 programs serving over 250 Tribes across the Nation, TCC's experience with the 477 Initiative has resulted in magnified and optimized employment and training for the entire region, focusing on hard-to-serve clients and moving hundreds from public assistance to unsubsidized employment.

Given the enormous nationwide success of the 477 Initiative, TCC strongly supports making the 477 Initiative permanent, as proposed in S. 1574. Amendments should clarify and assure that the efficiencies intended in the original enactment are preserved, such as accountability against Plan requirements (rather than multiple separate statutory or

regulatory requirements); consolidated financial accountability though the Single Audit Act (rather than by source of program funds); and implementation of the 477 Initiative though existing Indian Self-Determination Act agreements. TCC also supports adding new provisions that would strengthen the 477 Initiative consistent with core principles of tribal self-determination, such as provisions regarding the resolution of disputes, matching and cost participation requirements, remedies for disputes, clarified cost principles, carryover authority, interest earnings, and rules of construction (among others). TCC recommends that such provisions be added to S. 1574, together with provisions that would lay the groundwork for the expansion of the Initiative to other agencies, and we are very pleased that the Committee's remarkable staff has been working tirelessly to develop amendments along these lines.

An enormous amount of work has gone into improving the 477 Initiative and into the development of amendments that will further secure the achievements of the past and lay the groundwork for expansion of this remarkable initiative in the future. For Tribes and tribal organizations like TCC which face severe economic challenges and employment barriers, the 477 Initiative has proven to be a critically-needed and rare success story. Making it permanent will be a great legacy for the 113th Congress. TCC praises the Committee for setting this bill as a high priority for enactment this year.

S. 1570

TCC also supports enactment of S. 1570, which would authorize advance appropriations for the Indian Health Service. As this Committee well knows, IHS and the Veterans Administration are unique within the federal government because these two agencies provide direct medical services. For this reason, maximizing the effectiveness and integrity of the IHS system demands steady and predictable funding. Sharp and unpredictable funding swings cause severe disruptions and hardships, not just for IHS and tribal providers, but for the patients who depend on the IHS system as their only source of health care. The IHS system must not be forced into lock-down or suspension every time the annual appropriations cycle limps along to final enactment.

These concerns are not theoretical. Over the past 16 years only once has the IHS appropriation been timely enacted. In all other years, appropriations have been delayed, often for months (as was the case again this fiscal year). Final funding levels remain unknown and unknowable even though services must continue. When final appropriations do arrive, often extreme mid-year shifts must be made to conform with unexpected new funding decisions. In short, the ability of IHS and tribal organizations to safely plan and deliver health care services is severely compromised by the current appropriations process, and that strain compounds the challenges IHS and Tribes face in providing adequate care within a woefully underfunded environment.

With people's lives literally on the line, this is unacceptable. Fortunately, it is also easily remedied. The solution is to authorize advance appropriations, as Congress did four years ago in connection with Veterans Administration medical accounts. That precedent is particularly apt here, given the parallels between the VA and IHS direct care systems.

Advance appropriations are a budget-neutral and common sense solution to the serious problems created for the IHS system by the often dysfunctional annual appropriations cycle. TCC therefore respectfully urges this Committee to move forward with S. 1570 at the earliest opportunity.

* * *

Thank you for the opportunity to testify today on these three important bills. TCC and all of the other tribal organizations and Tribes in Alaska will be directly impacted by these measures, and all three should be a priority for enactment in this Congress.

That said, nothing I have discussed today is as singularly important as moving forward swiftly with an amended S. 1474. As our former President Chief Isaac said to this Committee a few weeks ago, our women and children cannot wait. Every day brings new tragedy from child abuse and neglect, domestic violence, sexual assault, and alcohol and drug abuse. Fortunately, it is well within Congress's power to enact sensible policies to help turn this around.

Increased tribal self-determination to combat these challenges is not a panacea, but it is the linchpin to the effective implementation of all other solutions. Increased health aide training, promotion of safe houses and community awareness, direct and telehealth counseling and training, enhanced VPSO and TPO services, all are additional parts of the solution. But these measures will fall far short of their goal if we do not build on the foundation of tribal self-governance and local control. Solutions from outside have been tried and they have failed; we know what will not work.

Enactment of an amended S. 1474, will help our communities reverse the disproportionate horrors visited upon our women and children, conditions which persist precisely because our Tribes lack the tools they need to do something about them. Our Tribes want to step up and help themselves; please secure to them, as you have all other American Indian Tribes, the basic tools our Alaska Tribes need to do that. Please help us to help ourselves.

Thank you again for inviting me to testify on the greatest challenges facing rural Alaska today. It has been an honor to appear here before you.

Senator BEGICH. Thank you very much.
Margaret?

STATEMENT OF MARGARET ZIENTEK, CO–CHAIR, P.L. 102–477 TRIBAL WORKGROUP

Ms. ZIENTEK. Hello. I am Margaret Zientek. I am co-chair for the Public Law 102–477 Tribal Workgroup.

For the past 14 years, I have served 60 tribes across the Nation, 477 tribes, representing 250 tribal nations. For 16 years, I have had the privilege of serving my own tribe, the Citizen Potawatomi Nation, as assistant director for our Public Law 102–477 program. For the past two years, I have served as a tribal member of the Administrative Flexibility Workgroup.

I thank you for this opportunity today to speak in support of S. 1574. Tribal workgroup members strongly support Senators Murkowski and Begich and co-sponsors in a bill that will make perma-

nent and amend the Indian Employment Training and Related Services Demonstration Act of 1992, as amended.

The 477 Initiative provides a critical foundation for maximizing the effectiveness of diverse tribal employment, training related services and the law allows for consolidation of funding streams from the Department of the Interior, the Department of Health and Human Services and the Department of Labor.

The 477 Initiative also provides flexibility for tribes to tailor the consolidated service into a single program that meets local community needs. It reduces administrative redundancy by merging program and financial reporting requirements while still adhering to the Government Performance Results Act.

In fact, to date, the 477 Initiative received the highest OMB PART rating of any program in Indian Country.

In fiscal year 2012, the 477 programs in total reported approximately 44,000 people served with a 99 percent positive employment or education outcome. Of those who entered unsubsidized employment, they achieved an average of $7.00 per hour wages, tax paying citizens. Over 30 percent of the adults served were cash assistance recipients, TANF or BIA general assistance recipients.

The Citizen Potawatomi Nation for the past three years reports a total of over 5,000 people served with 40 percent receiving unsubsidized employment with average earnings gain of $4.50 per hour. Additionally, through the economic development portion of the 477 bill, we have created 122 new jobs in our community.

For two years, I have been meeting with the Administrative Flexibility Workgroup and it has become clear that problems lie in key and targeted issues regarding the terminology in the original Act. The 477 tribes agree strongly with Senators Murkowski and Begich and other co-sponsors of the bill.

It is time for Congress to amend the 477 Act, make this landmark legislation permanent, build on pass successes, expand type and sources of funding eligible to be included in the 477 plan, and address issues that have arisen in recent years.

The 477 Tribal Workgroup strongly supports S. 1574 and looks forward to working with this Committee to improve the bill's provisions. Key elements of the bill are reaffirmation of Congress' intent, continue to receive funds through contracts and amendments pursuant to the Indian Self Determination Act, but tribes are not required to maintain separate records, tracing services or activities conducted under an approved plan back to individual Federal programs, nor are they required to track audit expenditures by original program sources.

The Federal funds can be combined and integrated in order to achieve the program goals set forth in an approved 477 plan and eliminate any ambiguities on this point and that tribes can allocate funds directly to support economic development and creation of jobs.

Additionally, 477 tribes recommend the following provisions. Expand the scope of the original demonstration project to include competitive formulas, block grants, and designated funds. Expand to include employment training and related social services programs from other Federal agencies and address the timely approval of 477 plans, regulation waivers and dispute resolution so there are

clear rules and clear forms for resolving disagreements and insert provisions that allow a tribe the option of utilizing their negotiated, indirect cost rate rather than applying separate administrative caps from each funding source if a tribe should so choose

Without congressional reaffirmation of the fundamental purposes of the original Act to allow tribes to reallocate their funds within the 477 plan in order to address local issues and programmatic needs in the most effective manner possible, 477 will not continue to reach its full potential.

S. 1574 can address all of these problems, restore and strengthen Congress' original vision of this important initiative. On behalf of the 477 Tribal Workgroup, we urge Congress to act with dispatch in finalizing the bill and quickly move to mark up.

Thank you for this opportunity to address both S. 1574 and I also stand in support of my colleagues here on this panel in what they have to say today.

[The prepared statement of Ms. Zientek follows:]

PREPARED STATEMENT OF MARGARET ZIENTEK, CO-CHAIR, P.L. 102–477 TRIBAL WORKGROUP

My name is Margaret Zientek, and I appear today as Co-Chair of the 477 Tribal Work Group. I am also a tribal representative on the Pub. L. 102–477 Administrative Flexibility Workgroup (AFWG), and serve as the Assistant Director for the Citizen Potawatomi Nation Employment and Training Program, of which I am an enrolled citizen. Thank you for this opportunity to present written testimony in support of S. 1574, a bill to make permanent and to amend the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Pub. L. No. 102–477, 25 U.S.C. § 3401.

As Co-Chair for the 477 Tribal Work Group, I speak today on behalf of over sixty 477 programs representing and serving over 250 Tribes across the United States. The Citizen Potawatomi Nation has operated a 477 program for almost two decades, and I have served in my national capacity for over ten years. This bill takes the crucial steps to make the very successful demonstration project permanent, provides more detailed processes that build on the experience of the past decades of implementation, and opens up the opportunity to add other programs.

The 477 Initiative established by Pub. L. 102–477 has been essential for the development of effective and efficient tribal services to increase employment and training in Indian country. The 477 Initiative is formally administered by the Office of Indian Energy & Economic Development (OIEED) in the Department of the Interior (DOI). The program provides a critical foundation for maximizing the effectiveness of diverse tribal employment, training and related service programs that would otherwise be available to Tribes only by dealing with a panoply of federal agencies issuing multiple contracts or grants.

The law allows for the consolidation of funding streams from thirteen separate programs located in the U.S. Departments of the Interior; Health& Human Services (DHHS); and Labor (DOL). Thanks to the 477 Initiative, these programs are consolidated into a single tribal employment and training program. By this means, the 477 Initiative provides critical flexibility for Tribes and tribal organizations to tailor the consolidated activities into a single new program that best meets the unique local needs of their respective communities.

At the same time, it eliminates administrative redundancy by merging program and financial reporting requirements, all while still adhering to the Government Performance Results Act's stringent accountability standards. Tribes, alone, decide which programs or combination of programs to combine into a 477 Plan. This structure affords maximum local flexibility and full accountability, which accounts for the fact that the 477 Initiative has to date received the highest OMB PART rating of any program in Indian Country.

In FY 2012, DOI–OIEED reported a total participant base of 43,991 people. Thanks to the 477 Initiative, over 99 percent of these adults and youth achieved positive employment or education outcomes, earning an average $7.00 increase in hourly wages. Over one-third of the adults had been on a Cash

Assistance Program such as TANF or BIA General Assistance at the time they entered their tribal 477 program. These data reveal a remarkable success story.

477 Tribes target services to the most needy, in order to reduce the strain on the public assistance programs. The goal of every 477 Program is to enable our people to be self-sufficient. Some Tribes report that the Cash Assistance Program percentages exceed well over 50 percent of those they serve. Tribes and tribal organizations can include TANF and Child Care as well as WIA and BIA funds in their 477 Program, creating a holistic approach that removes multiple barriers to service delivery and positive client outcomes.

The Citizen Potawatomi Nation's 477 Program: The Citizen Potawatomi Nation (CPN) has participated in the 477 Initiative since 1996. We have been able to achieve enormous administrative savings and provide extended services to our participants as a direct result of the Act's provisions. During just the past three years, CPN's 477 program has served over 5,000 people, of whom over 40 percent achieved unsubsidized employment, with an average earnings gain of $4.50 per hour.

For over two decades, the 477 Initiative has offered success to some of the areas with highest unemployment in the country. Because of 477, Tribes and tribal organizations have produced outcomes far beyond those of their neighboring States because they have been able to consolidate the resources of diverse programs in ways that make the most sense at the local level. They have moved tribal members from cash assistance to unsubsidized employment. And they have accounted for 477 program activities according to the Plan approved by the Department of the Interior.

The Pub. L. 102–477 Administrative Flexibility Work Group: In 2011, our Tribal Work Group and many individual Tribes and tribal organizations went to Congress to respond to two new programmatic changes being pressed by DOI and HHS. First—and despite no intervening problems—the agencies suddenly wanted to cease transferring 477 program funds to participating Tribes and tribal organizations through Indian Self-Determination Act contracts or compacts. Second—and again, despite no intervening problems, and despite extraordinary PART and GPRA scores—the agencies now wanted to impose a new accounting practice that would essentially destroy the 477 Initiative by demanding that participating Tribes and tribal organizations account separately for the receipt and expenditure of each stream of agency funding going into a 477 Plan (rather than following the historic practice of accounting for and independently auditing these funds on a consolidated basis).

The House and Senate appropriations conferees meeting on the FY 2012 Interior appropriations bill instructed the agencies, including OMB, to engage in consultations with the 477 Tribes and tribal organizations to reach "consensus" and "permanently resolve" these issues. The federal agencies and the 477 Tribes agreed to try to resolve their differences over these new issues, and that effort, in combination with the President's Administrative Efficiency Executive Order, led to the formation of the P.L. 102–477 Administrative Flexibility Work Group (AFWG). This group met weekly and included policy and program representatives from DOI, DHHS, DOL, and the Office of Management and Budget (OMB), as well as representatives from 10 affected Tribes and tribal organizations. The tribal representatives were designated to participate on behalf of all the tribes and tribal organizations involved in the Initiative, and included the co-chairs of the 477 Tribal Work Group.

In the meantime, the agencies agreed to temporarily suspend all changes, allowing 477 funds to continue being transferred thru self-determination agreements, and suspended any supplemental financial reporting requirements. In due course, the agencies and tribal participants reached consensus on a number of issues, but were never able to "permanently resolve" their disagreements over the fund transfer and reporting issues due to a fundamental difference over the proper interpretation of the 477 statute.

Necessity for Amendments to 477 Act. Thanks to the joint and comprehensive review of the 477 Initiative, the Tribes and the agencies developed a better understanding of the language and purpose of the 477 Act, the history of the Act's implementation, and the historic process for the submission and approval of 477 Plans. However, despite extraordinary efforts, consensus was never reached regarding key interpretive issues. Since the disagreements were less about policy than they were about the terms Congress employed in the original enactment, clarifying amendments should resolve these issues.

For now, the agencies have agreed to continue transferring funds through self-determination agreements, without actually committing in writing to do so. As for financial issues, the agencies continue to disagree with the Tribes' longstanding understanding that 477 Plans can and do provide for the consolidation and re-budgeting of all covered federal funds in order to best meet the local priorities and needs of the Tribe, all as specified in the Plan. Tribal representatives have also expressed

concern with new reporting requirements that may force Tribes to increase administrative costs, change data collection practices and software, and create new problems where none has previously existed. In sum, the 477 Initiative is not a problem needing fixing; it is a resounding success story that needs to be preserved strengthened and emulated elsewhere.

Tribal representatives have consistently advocated for building on the status quo, because the status quo has resulted in extraordinary success. This includes reporting in aggregate and not by fund source; tribal authority to re-budget and reallocate program funds as specified in an approved Plan; implementation that does not require Tribes to create or maintain new or additional records or to incur new administrative costs; use of a pilot program to test efficiency and cost effectiveness of 477 Plans; accountability against the requirements of the Plan; continued funding through self-determination contracts and compacts; and permanent elimination of any OMB requirement (such as was proposed in the suspended OMB 2009 Circular A–133 compliance supplement) to do supplemental accounting by fund source.

For these reasons, the 477 Tribes and tribal organizations strongly agree with Senator Murkowski and Senator Begich and the bill's other co-sponsors that it is time for Congress to amend the 477 Act, to make this landmark legislation permanent, to build upon past successes for a better future; to expand the types and sources of funding eligible to be included in a 477 Plan; to establish additional protective procedures as outlined below; and to address new issues that have only arisen in recent years. The 477 Tribal Work Group strongly supports S. 1574, and looks forward to continuing to work with the Committee to improve upon the bill's provisions in the coming days and weeks.

One major area of confusion has been a matter of semantics, in particular what is meant by the word "program" in the context of the 477 law. To help clarify this confusion, we suggest that the federal level 477 operations be called the 477 "Initiative," that the tribal operations under the 477 law be referred to as a 477 "Plan," and that the federal programs constituting the components of each Tribe's or tribal organization's plan be termed the "programs." Clarification along these lines would significantly resolve some of the confusion that has recently arisen over how to interpret the law.

We praise the Committee for introducing the bill, which resolves the disagreements that remain with the agencies and lays the groundwork for the most critical elements Indian country needs in these amendments, including:

1. Reaffirmation of Congress's intent that Tribes and tribal organizations carrying out consolidated programs under the Act through an approved Plan may continue to receive their funds through contracts and agreements awarded pursuant to the Indian Self-Determination Act, and may continue to use those 477 funds on allowable activities authorized pursuant to each Tribe's approved 477 Plan.

2. Reaffirmation of Congress's original intent that Tribes and tribal organizations are not required to maintain separate records tracing services or activities conducted under an approved Plan back to individual federal program sources, nor are they required to audit expenditures by original program source. Congress should reiterate that Single Agency Audit Act audits, which audit funds on a consolidated basis, are sufficient to assure accountability in the expenditure of these funds, as has long been the case.

3. Reaffirmation that federal program funds can be combined and integrated in order to achieve the program goals set forth in an approved 477 Plan, and elimination of any ambiguity on this point.

4. Reaffirm that tribes can allocate funds to directly support Economic Development and creation of jobs.

These three provisions would "permanently resolve" the outstanding disputes that have arisen between the 477 Tribes and the federal agencies, and ensure that the spirit and intent of the original 477 Act, as carried out for two decades, will remain in place and be implemented consistently across future administrations.

In addition, the 477 Tribes recommend that the bill also include provisions that address tribal efforts to achieve a number of long-term goals related to work force development in Indian Country.

For example, legislation should include a mechanism to identify eligible employment, training and related social service programs from other federal agencies on which Tribes and tribal organizations might draw to supplement their efforts and to add to their Plans. To do this, the scope of the original demonstration program should be expanded in two ways: (1) to cover a wider range of departmental and agency funds, including competitive funds, formula funds, block grants, and des-

ignated funds; and (2) by specifying a wider range of funding types, including funds for job training; welfare to work and tribal work experience; creating or enhancing employment opportunities; higher education; skill development; assisting Indian youth and adults to succeed in the workforce; encouraging self-sufficiency; familiarizing individual participants with the world of work; facilitating the creation of job opportunities; and any services related to these activities.

Finally, the 477 Act should also be amended to address timely approval of 477 Plans, regulation waivers and dispute resolution, so that there are clear rules and clear forums for resolution of disagreements about the 477 Act, and insert provisions that allow a tribe the option of utilizing their negotiated indirect cost rate, rather than applying separate administrative caps to each funding source.

Summary and Conclusion. It is has become clear in recent years that the 477 Initiative will not reach its full potential until Congress reaffirms one of the fundamental purposes of the original Act—to allow Tribes and tribal organizations to reallocate their funds within their approved 477 Initiative in order to address local issues and programmatic needs in the most effective manner possible. In part, this may be due to ambiguous language in the 477 law which only recently has been identified. Whatever the reason, acknowledging tribal authority and responsibility to meet local needs by reallocating funds as needed is exactly the point and strength of the 477 Initiative. It is precisely this flexibility that has allowed us to be so successful. It is precisely this flexibility that must be retained and strengthened. The silos that exist elsewhere must not be resurrected here.

S. 1574 can address all of these problems and restore and strengthen Congress's original vision of this important initiative. We respectfully urge Congress to act with dispatch in finalizing the bill and moving to mark-up. The 477 Tribal Work Group and our members Tribes stand ready and willing to work with this Committee to adopt amendments that will provide a sound and unambiguous foundation for the 477 Initiative in the 21st Century. It is imperative that the 477 Initiative get back on track, that it continue to meet the needs of tribal members and operate much in the manner that it successfully operated from its inception in 1992, and that is be established as a foundation for expansion and emulation in other areas.

We are deeply grateful for this Committee's unwavering support for the 477 Initiative, and we look forward to working with the Committee to see this important bill enacted this year.

Thank you for this opportunity to address S. 1574.

Senator BEGICH. Thank you very much.

Chairman McDonald?

STATEMENT OF HON. LEANDER R. MCDONALD, PH.D., TRIBAL CHAIRMAN, SPIRIT LAKE TRIBE

Mr. MCDONALD. I would like to begin by thanking Chairman Jon Tester and distinguished members of the Senate Committee on Indian Affairs for the opportunity to present testimony on tribal concerns and issues relevant to children safety and more specifically to the proposed Native American Child Safety Act.

I want to also recognize our Senators from the great State of North Dakota and thank them for inviting me to come and share a bit of our perspective from the tribes in North Dakota.

My name is Leander Russell McDonald. I am Chairman of the Spirit Lake Tribe located in northeastern North Dakota. The Spirit Lake Reservation was established by the treaty of 1867 and currently consists of more than 250,000 acres of land with just over 7,200 enrolled members. Our reservation population is approximately 6,200 people consisting of enrolled members, non-enrolled members and non-Indians.

Most of the enrolled members of the Spirit Lake Dakota Nation reside either on the Spirit Lake Reservation or within the immediate area.

Child protection services continue to a priority for our Nation. In Dakota, children are called Wakanheza, which translates to sacred

being. They are considered sacred to us as they are recognized as newly coming from the Creator.

This perspective guides us as individuals, tribal leaders and elected officials to do everything within our power to develop legislation that fosters their protection and welfare. The Spirit Lake Tribe has been highlighted in the media over the past two years as a result of the child protection issues experienced by our community.

On October 1, 2012, the Spirit Lake Tribe retroceded a Public Law 93–638 Child Protection Services program back to the Bureau of Indian Affairs due to the inability of the Tribe to address serious deficiencies identified in a detailed corrective action plan issued by the BIA in April 2012.

Limited budgets, difficulties retaining qualified staff and lack of placement options for children in crisis are among the factors that have contributed to the issues we continue to face within our community. The Tribe continues to administer the Title IV–E Foster Care of the Indian Child Welfare Act and family preservation programs under the Spirit Lake Tribe Social Services Program.

All four of these programs are recognized as critical and interrelated to the protection of American Indian children for many of the reservations throughout the Nation.

In 2011 and 2012, the Spirit Lake Tribe lost three very young children to homicides. These homicides devastated our community and exposed system-wide flaws and inconsistencies in our system. I have come to believe that these inconsistencies are not specific to the Spirit Lake Tribe but are rather the norm across many reservations within our region.

Unfortunately, the Spirit Lake Tribe had to lose one of our grandchildren to learn that background checks for all adult members of the household must be mandatory to ensure the safety of all children placed in relative and foster care homes. We do not wish to remove children from one dangerous environment only to place them in another.

Equally important, we have come to understand that we must hold professionals accountable when they are not following tribal existing law.

This brings me to the proposed Native American Child Safety Act currently introduced by Senators Hoeven and Tester and cosponsored by Senators Barrasso and Heitkamp.

The proposed legislation would, among other things, expand background check requirements for all adults residing in prospective foster care homes where Native American foster care children are to be placed by tribes or the Bureau of Indian Affairs.

This legislation would bridge an existing data gap identified within our communities and provide a necessary step to ensure that all adults residing with children in the foster care system are proper screened. The legislation also promotes consistency by creating minimum safety standards for children in foster care by also requiring new adults joining the household to also have background checks.

We respectfully request that the procedures used to implement the legislation not be duplicative, costly nor a source of frustration to possible foster parents or caregivers. Potentially, up to three ju-

risdictions may be involved in the care and placement of Native Children. Relatives and other caregivers may be required to undergo tribal, State, and Federal background checks, dependent upon where the placement is located.

Furthermore, requiring independent background checks for the same individuals based upon care type, i.e., foster care, relative care, guardianship or kinship care, seems unnecessarily duplicative and needs to be addressed. A comprehensive background check that could be applied regardless of care type would suffice to safeguard the children being placed while not being a burden on the individuals seeking to provide care.

Equally true is the fact that all tribes have child abuse and neglect registries and accessing confidential information on existing registries will need to be addressed to ensure that the purpose of this legislation can be realized.

I expect that an obstacle to this end may be that tribal convictions are not consistently included in the National Crime Information Center database. The process for completing criminal background checks is likely to be cumbersome and in some instances, unreliable as long as data relevant to criminal histories is housed in separate places. This fact will need to be addressed in order to have a truly comprehensive criminal background check completed.

In closing, I would like to add that while background checks for adults in homes is a necessary part of the effort to safeguard our children, this cannot be the only effort. Federal support for tribal programs and service agencies that are adequately staffed and trained is also imperative.

Ongoing Federal support to enhance tribal courts, develop culturally appropriate service for children and families and improved collaboration across tribal, State and Federal jurisdictions is necessary. Strong and stable tribal justice systems and services are an important part of enforcing our tribal laws in a culturally appropriate way and are also important to making sure that the service providers working in our community are following our tribal laws.

I would like to thank you for the invitation to speak to you today. I trust this testimony will be taken under advisement as you continue to develop legislation that will help to safeguard the children within our tribal communities.

Mitakuye Owasin from all my relatives. Thank you.

[The prepared statement of Mr. McDonald follows:]

PREPARED STATEMENT OF HON. LEANDER R. MCDONALD, PH.D., TRIBAL CHAIRMAN, SPIRIT LAKE TRIBE

I would like to begin by first thanking Chairman Jon Tester and distinguished members of the Senate Committee on Indian Affairs for the opportunity to present testimony on tribal concerns and issues relevant to children's safety, and more specifically, to the proposed Native American Child Safety Act.

My name is Leander "Russ" McDonald, Chairman of the Spirit Lake Tribe, located in northeastern North Dakota. The Spirit Lake Reservation was established by the Treaty of 1867 and currently consists of more than 250,000 acres of land. We have just over 7,200 enrolled members. Our reservation population is approximately 6,200 people, consisting of enrolled members, non-enrolled members, and non-Indians. Most of the enrolled members of the Spirit Lake Dakota Nation reside either on the Spirit Lake Reservation or within the immediate region.

Child protection services continue to be a priority for our Nation. In Dakota, children are called *Wakanheza*, which translates to sacred being. They are considered sacred as they are recognized as newly coming from the Creator. This perspective

guides us as individuals, tribal leaders, and elected officials to do everything within our power to develop legislation that fosters their protection and welfare. The Spirit Lake Tribe has been highlighted in the media over the past two years as a result of the child protection issues experienced by our community.

On October 1, 2012, the Spirit Lake Tribe retroceded a Public Law 93–638 Child Protection Services (CPS) program back to the Bureau of Indian Affairs (BIA) due to the inability of the Tribe to address serious deficiencies identified in a detailed corrective action plan issued by the BIA in April 2012. Limited budgets, difficulties retaining qualified professionals, and lack of placement options, for children in crisis are among the factors that have contributed to the issues that we continue to face within our community. The Tribe continues to administer the Title IV–E Foster Care, the Indian Child Welfare Act (ICWA), and Family Preservation programs, under the Spirit Lake Tribe Social Services Program. All four of these programs are recognized as critical and interrelated to the protection of American Indian children for many of the reservations throughout the Nation.

In 2011 and 2012, the Spirit Lake Tribe lost three very young children to homicides. These homicides devastated our community and exposed system-wide flaws and inconsistencies. I have come to believe that these inconsistencies are not specific to the Spirit Lake Tribe, but are rather the norm across many reservations within our region. Unfortunately, Spirit Lake Tribe had to lose one of our grandchildren to learn that background checks for all adult members of the household must be mandatory to ensure the safety of all children placed in relative and foster care homes. We do not wish to remove children from one dangerous environment only to place them in another, and equally important, we have come to understand that we must hold professionals accountable when they are not following existing law.

This brings me to the proposed Native American Child Safety Act that is currently being introduced by Senator Hoeven, Senator Tester, and co-sponsored by Senator Barrasso and Senator Heitkamp. The proposed legislation would, among other things, expand background check requirements for all adults residing in prospective foster care homes when Native American foster care children are to be placed by Tribes or the Bureau of Indian Affairs. This legislation would bridge an existing gap that has been identified within our community and provide a necessary step to ensuring that all adults residing with children in a foster care setting are properly screened. The legislation also promotes consistency by creating minimum safety standards for children in foster care by also requiring new adults joining the household to also have background checks.

We respectfully request that the procedures used to implement the legislation not be duplicative, costly, nor a source of frustration, to possible foster parents or caregivers. Potentially, up to three jurisdictions may be involved in the care and placement of Native Children. Relatives and other caregivers may be required to undergo tribal, state, and federal background checks, dependent upon where the placement is located. Furthermore, requiring independent background checks for the same individuals based upon "care type" (i.e. foster care, relative care, guardianship, or kinship care) seems unnecessarily duplicative and needs to be addressed. A comprehensive background check that could be applied regardless of "care type" would suffice to safeguard the children being placed while not being a burden on the individuals seeking to provide care.

Equally true is the fact that not all tribes have child abuse and neglect registries and accessing confidential information on existing registries will need to be addressed to ensure that the purpose of this legislation can be realized. I expect that an obstacle to this end may be that tribal convictions are not consistently included in the National Crime Information Center database. The process for completing criminal backgrounds is likely to be cumbersome and in some instances unreliable as long as data relevant to criminal histories is housed in separate places. This fact will need to be addressed in order to have a truly comprehensive criminal background check completed.

In closing, I would like to add that while background checks for adults in the homes is a necessary part of the effort to safeguard our children this cannot be the only effort. Federal support for tribal programs and service agencies that are adequately staffed and trained is also imperative. Ongoing federal support to enhance tribal courts, develop culturally appropriate services for children and families, and improve collaboration across tribal, state and federal jurisdictions is necessary. Strong and stable tribal justice systems and services are an important part of enforcing our tribal laws in a culturally appropriate way and are also important to making sure that the service providers working in our community are following our tribal laws. I would like to thank you for the invitation to speak to you today. I trust this testimony will be taken under advisement as you continue to develop legislation that will help to safeguard the children within our Tribal communities.

Senator BEGICH. Thank you all very much.

I know we all have questions, so let me go ahead and start.

First, Natasha, thank you for being here. I know for our Alaskan friends who come all the way from Alaska, it is not an easy trip and it is very warm here today in comparison. We appreciate your being here.

Your written testimony and your verbal testimony are both powerful and helpful. Sometimes we have to read between the lines what people want us to think they are presenting. Not with you, you were very direct, so I want to follow up on a couple things.

I want to read pieces from a letter I know the Alaska Federation of Natives sent to Congressman Young. I am going to read this and ask you a question or two. In 2012, the Alaska Federation of Natives sent a letter to Congressman Young that states that the State of Alaska is entrenched and made policy choices that "under-fund rural Alaska and cripple the capacity of rural Alaska, especially tribal governments, to implement local solutions." It continues to say that "dismal statistics point to the failure of the State of Alaska to protect its citizens."

First, do you agree with AFN's statement in general?

Ms. SINGH. Yes, I wholeheartedly agree.

Senator BEGICH. I know we have discussed and you testified on 1474, the Alaska Safe Family and Villages Act, I have introduced each session trying to change a few things. You commented that there are additional amendments that are needed to make it stronger. Do you believe that because of these comments that AFN made as well as the Commission just came out with an incredible report that was presented at AFN, if I remember correctly, and was pretty devastating to say the least? Do you think this legislation, with additional amendments you suggest and others might suggest, would give us those tools to combat the issues of violence and crime within our villages in Alaska?

Ms. SINGH. Yes. As currently written, mostly the bill is encouraging agreements with the State of Alaska and with our tribes but Federal legislation isn't for that. In fact, TCC is in a negotiated agreement with the State right now regarding our tribal courts. The State of Alaska has agreements across the State in different pockets with tribes.

We need those amendments, the tribal courts need that concurrent jurisdiction and authority.

Senator BEGICH. Enforcement powers?

Ms. SINGH. Exactly.

Senator BEGICH. If you just have those agreements, I don't want to put words in your mouth, but want to make sure I am hearing you right. For example, the situation you just gave me regarding the trooper situation, you may not see a change as dramatic as you need which is you want to have a better justice system?

Ms. SINGH. Exactly, a law enforcement and justice system both.

Senator BEGICH. Part of that is critical to ensure that Section 910 is repealed?

Ms. SINGH. Yes, it is very important.

Senator BEGICH. We have strengthened the law, you negotiate with the State but if we don't repeal Section 910, you still have some conflict of your authority or potential power?

Ms. SINGH. Yes.

Senator BEGICH. Is that a fair statement?

Ms. SINGH. Yes.

Senator BEGICH. I appreciate this is something to look for as we move to mark up, some of those suggestions I know you have in your testimony but even more specific legislative language because if we could strengthen it that you are not solely depending on the State to make a decision, because to be frank with you, in my opinion, the State has not been very supportive of tribes in Alaska. Is that fair?

Ms. SINGH. Yes.

Senator BEGICH. You need some assistance from the Federal Government so you can create some additional tools in the toolbox for justice within your own communities. Is that a fair statement?

Ms. SINGH. Yes.

Senator BEGICH. You can add these amendments but if you don't take out Section 910 or repeal it, you are not there yet?

Ms. SINGH. No.

Senator BEGICH. You have to repeal 910 and add some additional amendments that will add meat to this, is that fair?

Ms. SINGH. Yes.

Senator BEGICH. One by itself won't do it.

Second, I want to thank you. My sister is a foster parent and I know what that is like. Every holiday season when I am at the house, I am not sure who is going to be additional in the home but it is always a great experience because those kids come back, even when they are no longer foster kids, and participate in our family on many different levels. It is an incredible power to see that with these young people given a home that is safe and clean.

I thank you for your personal commitment.

Lastly, as a judge, do you see, not only in your community but throughout Alaska, other tribal court judges or others that work in the field are looking for this tool? It is not just TCC but throughout Alaska as AFN has said? Is that fair from your personal conversations?

Ms. SINGH. Yes. Just yesterday I was emailing with a coalition we have across the State of tribal court judges, attorneys and tribal leaders precisely on my testimony. They all fully support it.

Senator BEGICH. Very good.

I know there are others. I want to go through the list with folks who got here in order of attendance but let me also say I want to talk with you at some point and Andrea Well who is behind me, and see if we can get some of that very specific language we can start thinking about inserting in this bill so it really creates the tools we need.

We know the State is not going to agree with what we are going to do here but at the end of the day, we hope they will because this is about creating justice and a better system for Alaska Native people.

Thank you.

I have Senator Heitkamp and Senator Murkowski and then Senator Hoeven, in that order. Senator Murkowski?

Senator MURKOWSKI. Thank you.

Thank you to each of our witnesses for traveling and your testimony, but also for what got you here to provide the testimony which is clearly a passion in your respective areas.

I want to note your comments on your Native word for children being sacred. I think if we all kept that in mind, perhaps we wouldn't be dealing with many of these problems that face this Committee. Thank you for your leadership there.

I know our Alaska tribes want to look at this background check issue to ensure our Native children are as safe as we can possibly keep them.

Margaret, I thank you for what you have done in your capacity as co-chairperson of the Tribal 477 Workgroup. You noted the impact that we have from successful application of the 477 program in Alaska. The 477 program is operated by CITC, the Cook Inlet Tribe. It provides services to a native population of 40,000, transitions over 2,100 TANF recipients from welfare to work, providing them with skills and allowing them an opportunity to earn an average hourly wage of over $11.53.

CITC provided 8,989 job seekers with career exploration training and job search assistance, 4,767 of those job seekers were placed in jobs.

What we see coming from these programs is exactly why we need the advocacy. Thank you for that and for your work and working with Gloria O'Neil and so many on these very important issues. I appreciate that.

I don't have any questions for you because I agree with everything that you have said.

Natasha, I want to use my time to perhaps provide some baseline which I think is going to be critical. Senator Begich is right, we recognize there is conflict between our tribes and the State in terms of areas of jurisdiction.

We also recognize that without funding for our tribal courts, this is going to be exceedingly difficult to advance. I am trying to work to establish some baseline funding for our tribal courts in Alaska so that resources are available to continuously operate our courts, and invest in the training of our tribal court judges and our staff. I hear from so many that they are so desperately needed. Assistant Secretary Washburn is sitting behind you and will get this question from me when he comes before the dais.

I am the top Republican on Interior appropriations and we are looking very critically at how we can establish base funding for our Alaska tribes. I would like you to try to provide the Committee today, if you cannot do it today, we can get information later, what you figure the average cost to run a successful tribal court in one of your villages is?

What I am trying to establish is to provide the Administration an estimate of the need and what will adequately, hopefully beyond adequately, fund our tribal court system in the State of Alaska. Do you have any baselines you can share?

Ms. SINGH. I don't off the top of my head have a baseline. Most of our tribal courts right now have volunteers, our judges are volunteers. Some of our clerks might get paid but some of our clerks are volunteers. Our social workers, it is had to retain them because they get paid very little.

Knowing the State system of social and child protection, if you go into a State court in a child protection case and you are sitting there with probably six attorneys and usually eight State-appointed attorneys. When tribal courts have those cases, none of those attorneys are present, and you are not paying for any of that, the court costs, the flying back and forth from the village to an urban center. In child protection alone, you save, in one hearing, thousands of dollars.

I look forward to getting to you specific figures but it would depend on the size of the tribe and how many cases they are taking on an annual basis.

Senator MURKOWSKI. I appreciate that. I would appreciate it if your folks could really try to put some thought into some hard numbers because this is something I think we need to be able to establish to the Administration because the need is clearly there. It is not just for the day to day operation; it is for the training. We have the conferences that go on and you have to be able to bring in the folks. There is a very clear need here for greater resources to be directed.

Rather than just pulling numbers out of the air, we need to work to identify what our baseline might be.

I have a couple other questions. My colleague has returned. Senator Heitkamp has yielded to me, so if we have an opportunity for a second round, I would like to do that.

Senator BEGICH. Thank you very much.

Let me go to Senator Heitkamp and then Senator Hoeven.

Senator HEITKAMP. I will be very brief.

For those of you who look at this, I will say that no one needs to be a second class citizen. Everyone has a right to be safe in their homes and when they are not safe in their homes, they have a right to see the perpetrator brought before a court of law, convicted and appropriately punished. That is a basic human right we have in this Country.

When it is denied, you lose faith and you begin to believe maybe we are not part of this Country because what does it mean to be an American, what does it mean to be a part of this Country. I pledge to you that I will do everything that I can to assist in this effort to bring a broader justice not only to Alaska Natives but to all of Indian Country. It is appalling what we have allowed to happen.

I want to turn to Chairman McDonald who didn't brag enough about himself, so I will brag a bit about him. He stepped into a very difficult situation and has brought I think such a wonderful sense of community back to tribal government and has led his people in very small ways but very important ways to knowing we all are working on this together.

Thank you, Senator Hoeven, for the invitation to Chairman McDonald. I think it is so critical that we show progress.

To that end, I want to talk about what is happening right now with BIA sourced funding, whether those resources have been adequate, how we are managing the 4E responsibilities and the foster care responsibilities and coordination. How would you grade child social services right now at Spirit Lake?

Mr. MCDONALD. Coming from education, I think right now we are around a D. I think we are below average and I think there is yet a lot of work to be done and we need to continue to build that foundation.

Senator HEITKAMP. How do we get to a C, then a B and then an A?

Mr. MCDONALD. I think the first part of it is trying to get staffed up. I think on both the tribal and BIA sides, we are having difficulties in filling positions with qualified individuals. Once we are staffed to what funding allows, then consider getting us to the point where should be funded.

I think we are about halfway there on the funding side right now. I think if we had double the workers, we wouldn't be where we are right now, or double the resources in regard to where we are right now. I think that would help them to that end.

I heard the testimony by Senator Dorgan. I agree with him that we have caseloads that are overwhelming to the caseworkers that we do have. They are overwhelmed and are just trying to get the work done. Part of the importance of this bill is that we still need to get the work done in a safe way to protect those children when we do place them in homes.

The other part that the Senator talked about was the importance of them having the resources to do that. It is across the board. It is not just the social services piece of it; it is the court piece and having adequate funding to do that; it is the law enforcement piece so we can investigate those issues that the people are filing 960's on, and the criminal investigation piece.

I do want to say some good words about Mr. Washburn, Lillian Sparks and Marian McMullen, the Administration of Children and Families from your office, from Senator Heaven's office and from Native American Youth. All these guys have volunteered resources to help us pull this together. The National Resource Center for Children helped us do an assessment so we could see where we are.

I am a former researcher and because of the training, we have an assessment of where we and develop that plan and move forward. Failure to plan is planning to fail. If we put a good plan in place and build that foundation, I think we will be in a better position to do right for our children.

We are doing two things at the same time. One is trying to fix what has happened in the past and build that foundation while trying to build something for the future. We are doing double duty when that foundation should have already been built.

I think we have quite a bit of work in front of us. I think the important part of a bill such as this is that it helps to ensure that the laws are going to be followed, and the laws are going to be in place in order to help build that foundation.

Senator HEITKAMP. I am out of time but I want to make the point that no one should be so discouraged that we are looking at safety in foster homes. That is critical and is an important part of that network. The goal here of a broader look is to prevent children from going into foster homes.

We forget that children are in foster homes for a reason. They are coming out of a situation that is not safe or they wouldn't be seeking homes in foster care. This should not in any way diminish

our goal that we are trying to avoid children having to be placed in foster care long term.

Senator BEGICH. Mr. Chairman, next in line was Senator Hoeven and then Senator Murkowski had a couple quick questions and then back to you because you are the Chairman.

The CHAIRMAN. [Presiding]. Thank you.

Senator HOEVEN. Thank you, Mr. Chairman.

Chairman McDonald, thank you for coming today and thank you for your willingness to testify on the Native American Children's Safety Act.

We actually put this legislation together because of reports of child abuse on the Spirit Lake Reservation prior to your serving as chairman. In fact, there was an article in the New York Times in September 2012 which detailed an incident in which a woman tried to burn down her house with her five year old daughter inside. The daughter was then put into a foster home where a registered sex offender was living. The same article identified several convicted rapists who have been in custody of children.

This legislation is about making sure foster homes are safe, not only on our reservations in North Dakota, but across the Country. This is legislation we passed in the State for non-Indians when I was governor. It is all about making sure that we have background checks on all adults in a foster home before children are placed in that foster home, but also having recertification by the BIA to ensure if new adults move into that foster home that they are checked as well and that all reservations have a standard to ensure children's safety.

If you could comment for a minute on what you are doing on the Spirit Lake Nation right now to ensure that these background checks are done and then talk for a minute about how your relationship is going with the BIA as you work with them in terms of administration of the tribal social services program.

Mr. MCDONALD. I lost the first part.

Senator HOEVEN. The first part is talk about how you are doing the background checks now, what you are doing to make sure the background checks are done. The second part is talk about the relationship with the BIA.

Mr. MCDONALD. We have been following this for a while. What happened about the timeline was not the incident that you spoke about but another incident where a child was placed in a relative care home and when they did the background check on the relative, the grandfather whose home the grandchild was being placed in, but they didn't do the background check on the rest of the adults in the home.

The wife of the grandfather was a younger lady and had some charges on her and assault was one of them. Then there were some alcohol-related charges. What happened is she ended up throwing this kid down an embankment and the kid ended up dying. She was sentenced in September and I believe she got 30 years.

The other part is we still lost a child. If background checks had been done on the entire household, that would never have happened.

Since I have been there, we nailed that down. We did hire a social service director who did implement those policies or followed

those policies to make sure the whole household was background checked which was happening in the State of North Dakota but not on our reservation because it was relative care.

We said not only for foster care placement should this occur, we follow State guidelines because we want to get the Title IV youth funds in order to provide foster care some resources to take care of these kids, but on the relative care side, we weren't doing that because we were just placing them in relative care.

I am an example of that. We got called from social services about six years ago and they said, we are going to place these kids off the reservation some place unless you guys are able to take them, so we took them. As far as I know, there were no background checks conducted. They placed them with us and they to a safe home and they are with us yet.

They came and did a home assessment on our house. That was about it and we didn't see them. We went back to court a couple times and the parents didn't show up, so they are still with us. We are not questioning that because they are our kids now. We don't want to go back to court and the parents haven't approached us, so they are still with us.

I think there are some cases where these kids have gone into safe homes such our example, but I think for the most part, we want to be sure that is the case for all of our kids. That is the importance of this bill.

Another example happened in coordination with the State and that is why I shared what I shared in the testimony that State background checks, not with the former foster care placement person, but the previous one, the State background check was done but she didn't do the tribal records, she only did the State database.

Because she didn't the tribal records, and they don't share, so the kid was placed or a foster care license was granted to a foster care home but there were some questionable charges on this individual who received a license. We didn't know that. We placed kids in that home. Luckily the kid was safe in the home but there should have been background checks across the board in all jurisdictions.

That is why again it is so important for us to make sure this happening and there is some kind of comprehensive database accessible to everybody to ensure the safety of our children.

On the second part, the Bureau of Indian Affairs, I met with Mr. Washburn just recently at the NCAI meeting. For the most part, I think we have had good interactions with them. I think locally we are in the same boat because they can't fill those positions. The tribal council asked that they lift the American Indian preference on those positions in order for us to get the positions filled but they are still not filled.

Senator HOEVEN. Again, I want to thank you for being here today and thank you for your work on the Spirit Lake Reservation. That is something we will get a chance to talk to Secretary Washburn about.

Thank you again for being here and for your efforts.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

I have said in this Committee, in writing and before the Committee and repeat again, how much I support the policy position that our tribal court's protective orders should be honored in our Native villages. Natasha, the words you used were it appears that there is more hesitancy to issue protective orders out there on our non-Natives.

I know that you are working TCC and continuing its discussions, you mentioned in conversation with Senator Begich, between the State regarding diverting misdemeanors and felony cases to tribes for remedies. Can you give me some indication, I know you are still underway in discussions, so if you haven't clearly defined it yet, I understand, have you been able to determine what kinds of crimes the State would be willing to divert to tribes?

Ms. SINGH. Sure. We have a list I would be willing to share with you. It is pretty low level domestic violence and alcohol related offenses. I know don't see an Assault 4 charge in there right now, so we will be speaking to the State about including that.

I think it is a modest start but we are positive. We know it is a small step. The difference between an agreement we are working out with the State and some of the amendments we have proposed is that the amendments would be concurrent jurisdiction. The agreement is just delegated authority where a defendant would in effect admit guilt and then the tribal court would sentence, admit guilt with State violations. It is a pretty good list.

Senator MURKOWSKI. Is the State willing to work with you on the assault piece?

Ms. SINGH. I think so. They have been very open in the discussion altogether. It has been a learning curve for them. The first draft of the agreement is significantly different than what we have now.

Senator MURKOWSKI. Again, I appreciate all that you are doing on behalf of so many, not only on the issue as it relates to the public safety piece but what you are doing to help advance the legislation we are talking about with 477, advance appropriations. Your leadership is greatly appreciated.

I know that you have been working with both our staffs to really keep us apprised of all the events. Thank you. Keep at it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

I apologize for not being here, there was another hearing I had to get to. I want to thank you for your testimony and thank you for making yourselves available for questioning. I thank you for your commitment to Indian Country. Hopefully we can call on you again for your perspectives and input as we take up important pieces of legislation for Indian Country.

Thank you all for your time.

I would like to welcome the final panel of the day which consists of Assistant Secretary, Indian Affairs, Kevin Washburn and Commissioner of the Administration for Native Americans, Lillian Sparks.

Mr. Washburn and Ms. Sparks will be offering the Administration's perspective on legislation today. Both are regulars here in the Senate Indian Affairs Committee. We appreciate their flexi-

bility and their perspective as we look to the Administration for their perspective on these five bills.

I think we will start with you, Kevin. You can give your testimony and then Lillian, you can give yours. Then we will have some questions. You may proceed.

STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. WASHBURN. Chairman Tester and Senator Heitkamp and other members of the Committee, thank you. You have a bunch of important bills before you today.

This is an interesting experience for me because my co-witness was my intern a few years back and now she is a presidentially-appointed, Senate confirmed official over at HHS. It makes me proud to be sitting here. As a teacher, it is a neat thing.

Let me go through the bills we have. I apologize, we got our testimony to you very, very late. There was a lot of negotiation back and forth within the Administration over these bills. We try to cooperate as best as we can with the Administration and speak with one voice. Sometimes the cooperation goes on and on and on. That is where we were today, so I apologize. I know that has been an issue for the Chairman.

The CHAIRMAN. You can pause the clock for a second.

I am glad you brought that up. It is an issue. I have been pretty nice about it. I will get crankier as time goes on if it doesn't change. I appreciate you bringing it up. I was going to bring it up in my opening statement, so thank you for reminding me because I would have remembered before time went on.

For a number of reasons, it helps us help you and if we don't have it, we cannot do that. Thank you.

Mr. WASHBURN. We know that. Thank you, Chairman. You are very gracious. If you wouldn't file controversial bills, it wouldn't be so hard. Thank you.

[Laughter.]

Mr. WASHBURN. S. 1474, introduced by Senators Begich and Murkowski, the Alaska Safe Families and Villages Act, the Administration supports this bill. We are grateful for both the Alaskan Senators' leadership on this.

As the Indian Law and Order Commission report recently showed, we have serious problems in Alaska and really need to work on fixing those. In law enforcement, coordination is everything between State, Federal and tribal officials, so we strongly support that effort.

Within the BIA, we have been doing a lot. We have actually started bringing village public safety officers to our Indian Police Academy in Artesia, New Mexico to help the State police in training those people. That is not an adequate solution so we are grateful to support that bill.

I don't need to say a whole lot more about that since we support it.

Let me now turn to S. 1574, the bill that would modify the 477 program. You just had Margaret Zientek before you and Natasha Singh. They have both exercised great leadership on these issues.

Margaret has been working tirelessly on our Administrative Flexibility Workgroup to help move these issues forward. We are grateful for her support and her testimony here today.

We have a lot of interest in this bill and strongly support tribal self determination. And 477 is one of our important tribal self governance, self determination programs.

Public Law 102–477 was enacted in 1992 as a demonstration project. It has clearly demonstrated that it is a good approach, so it no longer needs to be a demonstration project. It has established itself. It has granted tribal governments much more flexibility to apply government programs through a lot of important tribal Federal programs such as temporary aid to needy families, TANF, child care and various other programs that address education and joblessness.

So 477 has definitely demonstrated its value. More than 265 tribes and Native villages are participating in 477. That doesn't sound like a demonstration project anymore; it is something that is firmly established. We give out more than $80 million a year in grants to tribes through the 477 programs.

Let me explain a bit about the programs. Through 477, tribes offer roughly ten different Federal programs they can bring under one umbrella. That means that a tribal citizen that needs these programs doesn't have to go to ten different tribal offices to apply for each of these programs.

Someone who needs TANF, job training and maybe need to get their GED can go to one office, fill out one application and those services can come to them through that one office. Rather than having these siloed in multiple different offices within the tribe, they can bring all these together. That is the value of 477. It is a beautiful thing and really does support tribal self governance and tribal flexibility in addressing serious problems.

I believe it strongly improves service to Indian Country to Indian citizens.

A frequent challenge in all these programs, especially when you grant flexibility to tribes, is getting the data to show the work is doing good, that you can show each of these programs is effective and when you blend them together, it makes a lot harder to collect that data.

You all ask for that data, Congress asks for that data and OMB asks for that data, so it is an important subject to collect that data so we can prove these programs work so we can justify greater appropriations to the appropriations committees. That is a challenge that has always been there.

You heard Senator Dorgan a bit ago talk about how he found there were two Federal programs on one reservation that weren't even talking to each other. This is the kind of program that solves that problem. It puts most social programs under one roof, so it is a very good thing. We have some issues with the bill but are delighted to work with you to solve some of those problems.

Let me turn to S. 1622, the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act. Senator Heitkamp, we are proud to say that we strongly support your bill. There is no area that needs greater attention than this.

There has been recent evidence. The Indian Law Commission provided some good attention on important issues and has helped provide some potential solutions to those problems. This kind of commission we think can do exactly the same thing and provide further suggestions.

We are working very hard to update our Indian child welfare guidelines at the BIA and also our child protection handbook. Those are two ideas that are sort of complementary to what you are doing, along with some of the stuff Senator Dorgan talked about.

We thank you for your bipartisan leadership with Senator Murkowski to try to move this forward and get some bright minds looking at this to find solutions. We strongly support your bill.

I did hear you say in your opening statement that you now have to point your finger at yourself to get things done. You have never been shy about pointing the finger at us either but we welcome that. We are grateful for your leadership on these issues, especially the ones related to children.

I have gone way over my time, Mr. Chairman. Let me say one final thing. S. 2160, Senator Hoeven's Native American Children's Safety Act, we are going to withhold judgment on the exact details of this bill but we certainly support Senator Hoeven's intentions in introducing this bill. We need a bit more time to look at it.

Senator Hoeven has worked really hard on the Spirit Lake issue, as has Senator Heitkamp, so he has a sense of the problems out there. We would like to work with him on this bill as we move forward.

Why don't I stop there and await your questions.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Tester, Vice-Chairman Barrasso, and Members of the Committee, my name is Kevin K. Washburn and I am Assistant Secretary-Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department's views, on S. 1474, S. 1574, S. 1622, and S. 2160.

S. 1474, the "Alaska Safe Families and Villages Act of 2013"

The Department supports S. 1474, a bill to encourages the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, and to reduce alcohol and drug abuse. This bill involves matters that are under the jurisdiction of the Department of Justice and we defer to the Department of Justice's testimony on this bill.

S. 1574, the "Indian Employment, Training and Related Services Consolidation Act of 2013"

S. 1574 is a bill to "amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources." As discussed below, the Department supports the goals of Indian self-determination. We would like to work with the Committee to address certain provisions of the bill, as described more fully below.

Public Law 102–477 is a self-determination statute that allows tribes greater control over delivery of social-welfare and workforce-development services. It permits eligible tribes and Alaska Native organizations to consolidate into a single plan employment-and-training-related, formula-funded federal grant monies from ten different programs within our Department's Bureau of Indian Affairs and Bureau of Indian Education, and the Departments of Labor (DOL) and Health and Human Services (DHHS). The "477" program allows participating tribes to save administra-

tive time and expense because they are no longer required to submit individual program plans and reports-affording more support for job placements and case management.

Public Law 102–477 designated our Department to be the lead agency to administer this program. We are proud, too, that in FY 2013, we disbursed approximately $87 million in grants for this program to 265 participating tribes, most of which are tribes in Alaska.

The Public Law 102–477 program has operated for over two decades as a demonstration project and has demonstrated that it should be permanent. When agencies collaborate to surmount bureaucratic obstacles, consolidate programs, and deliver desperately-needed services on a one-stop basis, we can more promptly and efficiently address joblessness and social distress in Native communities.

To provide additional flexibility to tribes under P.L. 102–477, the P.L. 102–477 federal partners have worked in cooperation with tribal representatives since November 2011 as a "Public Law 102–477 Administrative Flexibility Work Group" (AFWG). Between November 2011 and January 2014, the AFWG met by teleconference or in person approximately 30 times and we are happy to report on the group's accomplishments: (1) a streamlined plan-approval process that uses an agreed upon checklist for tribes and the federal agencies; (2) simplified financial reporting based on agreed-upon cost categories instead of dollar for dollar reporting; (3) an agreed upon narrative report allowing tribes to highlight their program activities; (4) agreement that a Tribe with a 477 plan may use funds made available under the law for economic development, including providing private sector training placement.

During the last face-to-face meeting on January 24, 2014, the AFWG agreed to move forward to consultation on the reporting forms. DOI held consultation on Thursday, March 13, 2014, at the National Congress of American Indians Executive Council Winter Session. AFWG federal and tribal members attended the consultation and tribal workgroup members commented on the forms and listed the many accomplishments of the workgroup. The 60-day period to comment on the proposed reporting forms closes on April 15, 2014.

We are pleased to support the goals of Indian self-determination, and we would like to work with the Committee to address concerns in S. 1574 to this end.

S. 1574 provides a 90-day time limit for an affected federal agency to decide on a tribal request for a waiver of statutory, regulatory, or administrative requirements that prevent the tribe or tribal organization from efficiently implementing its plan. We understand why tribal governments would want to have a fixed time limit for such decisions. However, this provision gives us pause. In light of our need to interact not just with tribal governments, but also other federal partners, we believe that 90 days may not be a sufficient amount of time for proper deliberation and collaboration among the federal partners. We would like to discuss this with our federal partners.

We look forward to working with Senator Murkowski and the Committee to modify S. 1574 to achieve its goal of further streamlining federal delivery of employment, training and related services to tribes that urgently need them.

One of the reasons that the 477 program is so successful is that it requires federal agencies to cooperate to better deliver services to tribes. The Department would like to work with the Committee to modify certain provisions of S. 1574 that seem to subvert that spirit of cooperation by giving the Secretary of the Interior the exclusive authority to approve or disapprove a proposed plan without the input of other affected federal partners. This also pertains to the provisions that would approve a plan if the Secretary took no action on it within 90 days of receiving it.

The plan-approval process has been an issue in the past. However, this issue recently has been addressed through a cooperative process between federal partners and tribal representatives. The AFWG met extensively on the plan-approval process and streamlined the P.L. 102–477 plan-review process by creating a checklist for tribes and federal agencies to use when developing, renewing, and approving plans. The checklist is already in use. Under this new process, our agency has twenty days to review a plan for completeness, after which we submit it to the other affected federal agencies for their review. Each of them has 30 days to submit its comments and recommendations to us. After we receive those comments, we organize a teleconference that includes all of the relevant tribal and federal stakeholders. The point of that discussion is to ensure that the plan is approvable. We then have 30 days to render a partial or full approval of the plan.

We also look forward to discussing further to provisions in the bill that would prohibit a tribe or tribal organization from being required to submit any additional budget, report, audit, supplemental audit, or other documentation after its plan is approved. There are a number of reports that are not contemplated in an approved plan that must later be submitted. One example is the year-end Financial Assist-

ance and Social Services Report, which is critical for determining welfare assistance payments. This provision could be clarified to specify the kinds of documentation that could not be solicited from a tribe once a plan is approved to ensure that they are not otherwise required by law. We note that the AFWG has worked on this issue as well, and has adopted measures to ensure that plans are complete.

We look forward to working with the Committee to modify the provision of S. 1574 that eliminates certain conditions on tribes or tribal organizations using funds under this Act for job-creation and economic-development activities and would require instead, that those expenditures be consistent with their plans. This provision is unnecessary if the bill also contains the provision limiting waiver decisions to 90 days.

We are fully supportive of the objective that employers who provide work-based training should be incentivized to provide permanent employment to people who successfully complete a training program. However, we are concerned that compelling employers to hire a "work experience" or "on-the-job" trainee could be a disincentive for them to take part in these programs. Thus, we would like to work with the Committee on provisions needed to strike the proper balance here.

We also look forward to working with the Committee on the provision limiting the timeframe for the Bureau of Indian Affairs (BIA) to transfer funds to participating tribes after receiving the funds from the originating federal agency. Once these funds are electronically transferred to our agency, we are diligent in disbursing them as quickly as possible. We note that we cannot disburse these grant funds until we obtain a signed grant amendment from the grantee's tribal chairman. This exchange can take time depending on a number of factors, including tribal leadership's availability.

We would also like to note that roughly half of 477 grantees receive funding that is disbursed, not through Public Law 93–638 contracts but through Annual Funding Agreements administered by our Department's Office of Self-Governance. Because the Office of Self-Governance disburses money through Annual Funding Agreements, not grant amendments, allowances would have to be made for that office's particular funding regime and disbursement timeline.

S. 1622, the "Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act"

The Department supports S. 1622 which would establish the Alyce Spotted Bear and Walter Soboleff Commission on Native Children. Children are a most sacred and valuable resource for Tribes and Indian families. Tribal preservation depends on protection and support of Indian families and children.

Native American children are the most at-risk population in the United States and are in that vulnerable position because of unaddressed poverty; insufficient access to services in health, education, social services, mental health, legal and other needs. The rates of suicide, foster care, and exposure to violence for Native American children are unacceptable.

We are currently working on initiatives that are complementary to the goals of S. 1622. The Department is presently working with DHHS, the Department of Justice, and the Substance Abuse and Mental Health Services Administration on updates to the BIA Child Protection Handbook which is used by social workers, health care providers, law enforcement, courts, and educators in Indian Country. The Handbook provides guidance on indicators of child abuse, reporting requirements, and the assembly and function of child protection teams in Indian Country.

The Department is also re-examining the Bureau of Indian Affairs Guidelines for State Courts, providing guidance to state courts in interpreting the 1978 Indian Child Welfare Act (ICWA). The guidelines, now more than 30 years old, have not been updated since there were originally enacted, shortly after passage of ICWA. We hosted a listening session with tribal leaders on March 11, 2014 and have another listening session scheduled at the National Indian Child Welfare Association's National Conference on April 15, 2014. Our comment deadline is April 30.

These two updates are important pieces of the overall effort to address Indian child welfare issues, but S. 1622 goes beyond these efforts. This bill recognizes the need for a more collaborative and holistic approach across the federal government and the private sector to better define the issues and make recommendations for meaningful and lasting solutions. The bill includes a plan for measurable outcomes, stronger data, and implementation of best practices. It also includes Tribal youth voices that need to be heard.

We are happy to work with Senator Heitkamp and the Committee on this bill as it moves forward.

S. 2160, the "Native American Children's Safety Act"

The Department supports the principles S. 2160, which amends the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings.

The safety of Native children is a Department priority. The Native American Children's Safety Act recognizes the importance of the safety of Native children through establishing standards in background checks. We note that all placements made with Bureau of Indian Affairs funds require a background check. This bill would expand the requirement to all placements made through the tribal courts. We look forward to working with the committee to create consistency in the requirements of background checks. The IV–E background-check requirements are slightly inconsistent with those in this bill. The Department of Health and Human Services also notes the difference. We are happy to work with the Committee to align the requirements to avoid creating two different standards.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

The CHAIRMAN. Lillian, you are up.

STATEMENT OF HON. LILLIAN SPARKS ROBINSON, COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. ROBINSON. Thank you. Good afternoon, Chairman Tester and Senator Heitkamp.

It is my honor to appear before the Committee on behalf of the Department of Health and Human Services to provide testimony on bills that affect American Indian and Alaska Native children and families.

I serve as the Commissioner for the Administration for Native Americans which is part of the Administration for Children and Families at HHS. I am also a member of the Rosebud Sioux Tribe.

My testimony will focus on two of the bills before the Committee today, S. 1574, the Indian Employment Training and Related Services Consolidation Act of 2013 and S. 2160, the Native American Children's Safety Act.

Since November 2011, tribal representatives of 477 projects, along with our Federal partners, have been meeting to address issues concerning the law, reporting requirements and auditing requirements related to 477 projects. We have always said we must find a way to balance the need for flexibility and accountability to accomplish the goals of 477 projects.

I am pleased to report that in January, the 477 Workgroup agreed to submit new reporting forms and instructions to the Paperwork Reduction Act review process as well as to convene a concurrent tribal consultation.

Our joint collaborative effort has resulted in developing a checklist to help facilitate the process of reviewing proposed 477 plans making it possible for tribes to submit a single plan, identifying flexibilities within the law to allow tribes to consolidate a significant amount of their 477 funds for the purpose of supporting economic development, developing a financial reporting form that moves away from the dollar for dollar reporting and moves to reporting based on functional categories including child care, education, employment and training services and also fostering a much improved and strengthened trust based relationship between the tribes and the Federal partners.

This represents a significant achievement for all parties and resolves many of the differences of opinion over operation of the 477 projects.

S. 1674 would amend the 477 program in several ways we would like to flag for your attention for additional consideration.

The Secretary of Interior will have exclusive authority to approve or disapprove a plan submitted by an Indian tribe or tribal organization versus collaboration that currently happens. Tribes will have the authority to incorporate any provision of the Indian Self Determination and Education Assistance Act into their 477 plans, although ISDEAA is not applicable to the types of HHS grant funds included in the 477 demonstration projects.

There is language in the bill that suggests that S. 1574 would allow funds to be spent for purposes other than their statutory purposes of the underlying program. Once a plan has been approved, S. 1574 would allow tribes to operate approved consolidated programs without being required to submit any documentation.

The limitation on reporting requirements could prevent agencies from understanding the types of services being offered with the funds, what service gaps remain and whether the programs have a positive impact in Indian Country.

We have worked with our colleagues at Interior and other Federal agencies on a report which was submitted to Congress on April 1. This report outlines the main accomplishments we have made as well as a plan for regular 477 discussions with the tribes.

HHS and our partners would welcome input from the Committee on ways in which we can continue to improve the 477 program.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 provides tribes the opportunity to apply to operate a Title IV–E program. Since passage of the law, we have approved the Port Gamble S'Klallam Tribe of Kingston, Washington, the Confederated Salish and Kootenai Tribes of Pablo, Montana and the South Puget Intertribal Planning Agency of Shelton, Washington to operate a Title IV–E program.

The Fostering Connections Act also authorized one-time grants of up to $300,000 for tribes to assist in development of tribally operated Title IV–E planning. Twenty-two tribes or consortia of tribes have received those grants so far.

Tribes that receive funds through Title IV–B and IV–E for child welfare programs are required to license foster family homes and child care institutions and conduct criminal and child abuse background checks.

S. 2160 would require tribes to operate programs under both Title IV–E and the Department of Interior authorities to apply two separate sets of criteria for background checks for foster family homes. For example, Title IV–E does not exempt emergency placements from the requirement that prospective foster family providers complete a fingerprint-based check of the National Crime Information Database.

We would be happy to work with the Committee to align these important requirements and to ensure the safety of children placed in out of home care.

I very much appreciate the Committee's interest in the issues raised by both bills. I look forward to working together on both

bills and to continue finding ways to improve services provided in our American Indian and Alaska Native communities and to ensure the safety of children.

I would be happy to answer any questions.

[The prepared statement of Ms. Robinson follows:]

PREPARED STATEMENT OF HON. LILLIAN SPARKS ROBINSON, COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman Tester, Vice Chairman Barrasso, and members of the Committee, it is my honor to appear before this Committee on behalf of the Department of Health and Human Services (HHS) to provide testimony on bills that would affect American Indian and Alaska Native children and families. I am a member of the Rosebud Sioux Tribe which is located in South Dakota, and I serve as the Commissioner for the Administration for Native Americans (ANA), which is part of the Administration for Children and Families (ACF) at HHS.

My testimony will focus on two of the bills before the Committee today: S. 1574, the "Indian Employment, Training and Related Services Consolidation Act of 2013", and S. 2160, the "Native American Children's Safety Act." We continue to review S. 1570, "to amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service (IHS) by providing 2-fiscal-year budget authority."

Public Law 102–477

HHS participates in the demonstration program established under Public Law (P.L.) 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992. This program allows tribes to establish demonstration projects to coordinate their Department of the Interior (DOI), HHS, Department of Labor (DOL), and Department of Education employment, training, and related services programs into a single, comprehensive program with consolidated administrative functions. The Department of Education does not currently participate. The law authorizes, but does not require, Federal agencies to allow grant-funded programs to be included in "477" projects.

In 2014, there are 62 grantees, representing 265 tribes, operating demonstration projects that include DOI, HHS, and DOL programs. HHS has three participating programs: the Temporary Assistance for Needy Families (TANF) program, the Child Care and Development Fund (CCDF) program, and the Native Employment Works (NEW) program. The great majority of funding in 477 projects comes from TANF and CCDF grant funds. While the specific amounts vary across projects, total funding in FY 2013 was $60 million with approximately 55 percent of those funds coming from TANF ($33 million), 40 percent coming from CCDF ($24 million), and five percent coming from NEW ($2.8 million).

Since November 2011, tribal representatives of 477 projects, along with officials of the Office of Management and Budget, DOI, HHS, and DOL have been meeting to address issues concerning the law, reporting requirements, and auditing requirements related to 477 projects. I am pleased to report that, in January, the 477 work group agreed to submit new reporting forms and instructions to the review process governed by the Paperwork Reduction Act, as well as to convene a concurrent tribal consultation. This represents a significant achievement for all parties and resolves many of the differences of opinion over operation of the 477 projects. As a result of this agreement, tribes will benefit from consistency in the way in which 477 projects are reviewed and will be subject to more flexible reporting requirements. The Federal agencies will benefit from strengthened relationships and greater assurance that public funds are being spent in the best interest of tribal members and the public.

The workgroup's accomplishments include: (1) identifying flexibilities within the law that allow tribes to consolidate a significant amount of their 477 funds for the purpose of supporting economic development; (2) fostering a much-improved and a strengthened trust-based relationship between the tribes and participating Federal agencies; and (3) developing a financial reporting form with instructions that move away from dollar-for-dollar reporting and move to reporting based on functional categories, including child care, education, and employment and training services for example.

For a number of years, there has been disagreement between the tribes and some Federal agencies about auditing and reporting requirements governing P.L. 477 projects. The disagreement stems from the fact that the Federal agencies, including

HHS, have interpreted the program statute to mean that, when a program participates in a project, program funds must be used for the purposes for which they were authorized, and program statutory and regulatory requirements apply, unless waived.

In contrast, a number of tribes interpret the statute to mean that, when a program participates in a 477 project, its funds can be used for any allowable activity under an approved 477 plan. A number of tribes also assert that 477 projects fall under at least some of the terms of P.L. 93–638, the Indian Self-Determination and Education Assistance Act (ISDEAA), which could allow for redesign and reallocation of funds and could make the projects qualify for contract support costs, among many other benefits of the ISDEAA; but the ISDEAA does not apply in this context for HHS funding. The ISDEAA allows tribes to take over Federally-run programs, not to contract for grant programs that were never carried out directly by the Federal Government. The HHS programs, functions, services, and activities that tribes can contract for under the ISDEAA are those that certain Federal agencies administer for the benefit of Indians because of their status as Indians. The application of the ISDEAA to the TANF program was litigated in *Navajo Nation v. Department of Health and Human Services*, in which the Ninth Circuit Court of Appeals found in favor of HHS and determined that the ISDEAA does not apply to TANF funds, primarily because tribes are not the exclusive beneficiaries of the funds and so TANF is not a program "for the benefit of Indians because of their status as Indians". The same would apply to CCDF funds. In fact, this applies to all ACF programs, including Head Start and foster care, with the possible exception of the ANA programs that I administer as Commissioner.

Tribal Early Learning Initiative (TELI)

ACF is pursuing additional ways, beyond the 477 demonstration program, to coordinate and simplify programs. Since the fall of 2012, ACF has been implementing the Tribal Early Learning Initiative (TELI). The TELI is a partnership between ACF and four American Indian tribes that have Head Start/Early Head Start, Child Care, and tribal Home Visiting grants. The four participating tribes are the Choctaw Nation of Oklahoma, the Confederated Salish and Kootenai Tribes in Montana, the Pueblo of San Felipe in New Mexico, and the White Earth Nation in Minnesota. The purposes of the TELI are to support tribes that wish to coordinate tribal early learning and development programs; create and support seamless, high-quality early-childhood systems; and raise the quality of services to children and families across the prenatal-to-age-five continuum.

Over the past year and a half, TELI grantees have made major strides in improving their early-childhood systems and services. Grantee activities have included jointly creating a community-based resource directory, convening joint professional-development opportunities and trainings for staff, reviewing and agreeing on common assessment tools, creating a single tribal early-learning program-enrollment form, conducting joint dental services across programs, and investing in a data system to allow for better coordination and sharing of relevant data across programs. TELI tribes' fruitful partnerships across Home Visiting, Head Start, and Child Care have made them models for other tribes and Federal programs.

The Indian Employment, Training and Related Services Consolidation Act of 2013

S. 1574 would amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to give the Secretary of the Interior the exclusive authority to approve or disapprove a plan submitted by an Indian tribe or tribal organization to integrate Federal employment, training, and related services, including services under programs that Interior does not administer, into a consolidated and comprehensive program. The provisions in legislation expand the 477 program well beyond the initial purpose of integrating employment and training programs. For example, it could permit the use of Head Start funding to support job training instead; and appears that it would allow for opting out of the important bipartisan reform of Head Start that requires low-performing programs to improve or face grants being put out for competition. We believe that this policy should be maintained as part of the Administration's effort to improve and expand early-learning programs for all children.

The bill would give tribes the authority to incorporate any provision of the Indian Self-Determination and Education Assistance Act (ISDEAA) into their 477 plans and, at the request of tribes, to disburse the funds through ISDEAA contracts (bill, § 5; proposed § 5(b) of the 1992 Act). Since its inception, the ISDEAA has not been applicable to the types of HHS grant funds that are included in 477 demonstration projects. The Ninth Circuit Court of Appeals has already ruled that that the

ISDEAA does not apply to grants like TANF grants because tribes are not the exclusive beneficiaries and so it is not a program "for the benefit of Indians because of their status as Indians", as the ISDEAA requires. The ISDEAA allows tribes to take over Federally-run programs (for example, when a tribe contracts to run a hospital that IHS had been operating), not to contract for grant programs never carried out directly by the Federal government. Under the ISDEAA, tribes receive Contract Support Cost funding because the Congress sought to avoid reductions in program resources when Federal programs are transferred to tribal operation. For HHS grant programs, the Federal government has never carried out the programs, and the grants are not designed to be all-inclusive of costs. States and tribes already have broad flexibility to carry out the TANF and CCDF programs. Providing contract support costs, along with program redesign authority and other benefits, to a tribe administering block grant funds to provide cash assistance and other support services to its program recipients would not be consistent with how these grants have been used historically or the current statutory purpose of contract support costs.

Third, S. 1574 would give agencies with programs involved in a 477 demonstration project broad waiver authority. That authority currently exists under P.L. 102–477 but S. 1574 would take it a step further by requiring an agency dispute-resolution process as well as potentially creating a right to appeal a waiver denial to Federal district court. The language is unclear but there is some suggestion that the same appeal right applies to the denial of a 477 plan itself. We would like to work with the Committee to better define how waiver disputes would be resolved and the flexibility necessary to create economic development projects under the 477 program.

Fourth, S. 1574 would allow tribes to operate approved consolidated programs without being required to submit any additional budget, report, audit, supplemental audit, or other documentation (§ 4 of bill; proposed § 4(b) of the 1992 Act). We note that there is language in the bill that refers to the Department of the Interior creating a single report but it is difficult to reconcile that concept with the broad language providing that no report or audit is required. Prohibiting agencies from obtaining supplemental reports or audits could significantly limit our ability to be responsible stewards of public funds for important programs such as TANF, CCDF and NEW. The limitation on reporting requirements could prevent agencies from understanding the types of services being offered with the funds, what service gaps remain, and whether the programs have a positive impact in Indian country. Fundamentally, taxpayers deserve to know how their funds are being used and what outcomes they are getting for these investments.

As instructed by the Congress in the explanatory statement accompanying the Consolidated Appropriations Act, 2014, we have worked with our colleagues at DOI and other Federal agencies on a report, submitted to Congress on April 1, that outlines the many accomplishments we have made, an explanation for why we could not come to full agreement on several issues, and laying out a plan for regular discussions on 477 issues with tribes. HHS and our partner agencies would welcome input from the Committee on ways in which we can continue to improve the 477 program.

Children's Bureau Grants to Tribes

Today, many tribes operate some form of child-protection service programs and many have tribal codes, court systems, and child-welfare programs. Historically, tribes have obtained much of their child-welfare funding through the states, or through grants from the Department of the Interior's Bureau of Indian Affairs. However, the Children's Bureau, within ACF, now offers more direct funding opportunities for tribes than ever before through several grant programs.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 provided Federally- recognized Indian tribes, tribal organizations, and consortia of Indian tribes with the option to apply to operate a title IV–E program. Since passage of the law, we have approved the Port Gamble S'Klallam Tribe of Kingston, Washington; the Confederated Salish and Kootenai Tribes of Pablo, Montana; and the South Puget Intertribal Planning Agency of Shelton, Washington to operate a title IV–E program.

The Fostering Connections Act also authorized one-time grants of up to $300,000 to tribes to assist in the development of a tribally operated title IV–E plan. Twenty-two tribes or consortia of tribes have received those grants, totaling approximately $6.4 million, since 2009.

The Fostering Connections Act also provided both tribes that operate a title IV–E program and tribes that have a title IV–E cooperative agreement or contract with the state title IV–E agency, the option to apply to receive funds directly from HHS

to operate a John H. Chafee Foster Care Independence (CFCIP) and/or Educational Training Voucher Program (ETV). The CFCIP and ETV programs provide funds to help older youth in foster care and youth who were formerly in foster care acquire training and independent living skills so they can become self-sufficient. In fiscal year (FY) 2014, four tribes will receive a total of $111,500 in funds through the CFCIP and ETV programs.

Additional funds, under the Stephanie Tubbs Jones Child Welfare Services Program, are available to tribes to improve their child-welfare services with the goal of keeping families together. In FY 2014, 189 tribes will receive a total of $6.3 million in funds through the program.

Funds are also available for eligible tribes under the Promoting Safe and Stable Families (PSSF) Program to assist with family support, family preservation and support, time-limited family reunification services, and services to support adoptions. In FY 2014, 135 tribes will receive $10.3 million in funding through the program.

S. 2160, the "Native American Children's Safety Act"

Tribes that receive funds through title IV–E and IV–B for child-welfare programs are required to license foster family homes and child-care institutions and conduct criminal and child-abuse background checks. The "Native American Children's Safety Act" would require tribes that operate programs under both title IV–E and Department of the Interior authorities to apply two separate sets of criteria for background checks for foster family homes. Having to implement two different laws and regulations for licensing and background checks for foster-care placements is likely to cause confusion for tribes that operate a title IV–E or IV–B program or have a IV–E agreement with the state. For example, title IV–E does not exempt emergency placements from the requirement that prospective foster family providers complete a fingerprint-based check of the National Crime Information Database. We would be happy to work with the Committee to align these important requirements and to ensure the safety of children placed in out-of-home care.

I very much appreciate the Committee's interest in the issues raised by both bills. I look forward to working together on both bills and to continuing to find ways to improve services provided in our American Indian and Alaskan Native communities and to ensure the safety of their children. I would be happy to answer any questions.

The CHAIRMAN. Thank you both very much for your testimony.

Correct me if I am wrong. S. 1474, you support?

Mr. WASHBURN. We support the principles behind 1474. Yes, we support that.

The CHAIRMAN. The IHS Advanced Appropriations Act, S. 1570, you support that?

Ms. ROBINSON. Sir, we are currently reviewing that and would be happy to take back any questions and get back to you with regards to our position.

The CHAIRMAN. I will get back to that in a second.

S. 1574, you like the ideas but you want to flush them out some more, is that pretty much what I gather?

Mr. WASHBURN. Yes, sir.

The CHAIRMAN. S. 1622, you support?

Mr. WASHBURN. Yes, absolutely.

The CHAIRMAN. S. 2160, you want more time to review, is that correct for both of you? I don't want to put words in your mouth.

Ms. ROBINSON. Right. We agree with the priority review, we agree with the goals. We just want to make sure that it is in line with the IV–E and IV–B programs.

The CHAIRMAN. Thank you very much.

I will touch very briefly on advanced appropriations because it is the simplest of all the bills. It is advanced appropriations. In my opinion, it makes perfect sense. As I said before, I serve on the VA Committee and they have advanced appropriations. Quite frankly,

it works pretty darned well. The only way that bill got through the process was with support not only from the veterans' service organizations but from the department.

This has been out there for a while. It is not so complicated. I would really like to get your opinion on whether it is a yea or a nay as we move forward. It will help with issues like sequestration and government shutdowns and give some certainty to a budget that needs certainty.

I could put a time frame on it if you want but as soon as possible, okay.

Lillian, is the Administration afraid that tribes will divert program funds to other tribal 477 programs for other purposes? Why would the Administration approve the plan in the first place?

Ms. ROBINSON. I think that is a great question. I think it is not so much a fear that we are afraid program dollars will be used for purposes outside the program, but we want to make sure we are accountable with regards to the types of services we provide, not just in the plan but we are also accountable to the community we are serving as well.

We would be able to reject the plan but at the same time, we feel there is additional pressure within S. 1574 to approve plans that would include programs outside 477. In particular, I would be happy to give examples and follow up with you.

The CHAIRMAN. You have a responsibility for oversight but the bottom line is that if that is a concern, we ought to be able to figure it out before going in.

Ms. ROBINSON. I agree. I think that is something we would be willing to work with the workgroup to figure out how we would be able to incorporate those types of plans.

The CHAIRMAN. On the 477 issue, if filing one application for client services is a good idea, why doesn't wanting tribes to report financial data all together, why isn't that a good idea, either one of you?

Ms. ROBINSON. I believe that through the workgroup we have begun looking at how we might be able to have not just one plan but also one report. We do think that is a good idea. We think 477 is a success and want to be able to have one report that has the data as well as one plan.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Following up on the 477 conversation, as far as the independent audits go, do you agree that the independent audits required by the single agency audit and that apply to all these funds, including 477, is the right accounting method for these funds?

Mr. WASHBURN. Senator Murkowski, I believe I would say yes. I think we do feel we do a good job auditing these programs.

Senator MURKOWSKI. If they do a good job auditing, then why do these funds need to be audited more rigorously than funds that go into patient health care or trust resources? What is the difference there in terms of how they are treated?

Mr. WASHBURN. There are a lot of regulatory aspects of this whole 477 program. We have to have plan approval in the first place. We have an annual report from each tribe describing what they did during the year. We have a single audit which is really

careful to look at all the financial aspects and we occasionally do program reviews and site visits also.

We feel like there is a pretty strong approach to how we regulate these programs. We believe they are well regulated.

Senator MURKOWSKI. Doesn't it appear there is a level of inconsistency if you are auditing some more rigorously than other accounts? We want to have a level of accountability, most certainly, but I think we also want to make sure it is not unduly burdensome at the same time I think is where I am going with this point.

Let me ask you would you agree that self governance and self determination tribes have achieved sufficient accountability to be responsible for the redesign and the re-budget of their programs and funds within a Title IV compact or Title I contract, either of you?

Mr. WASHBURN. They absolutely have demonstrated these programs work and they do a very good job with these programs. Each of the programs has to give up something. When these programs go under a 477 plan, the agency that owns that program has to give up some control. That is a hard thing because they feel a lot of ownership for those programs. It is hard to give up that ownership and that control. We are at various stages in sort of being able to do that.

Senator MURKOWSKI. I think you can see where I am going with it. If we are saying that we are agreeing with our self governance and self determination tribes we have this level of accountability, it is tough to discern whether there is any real policy reason why tribes shouldn't have the exact same authority for 477 funds within a 477 plan.

We appreciate the good work that the task force and the working group have put together but this is something I would sure like to find some result for. I would certainly agree with the Chairman with regard to his comments about the advance appropriations within IHS.

As you point out, Mr. Chairman, it is working on the veterans' side, we see that benefit. The trust responsibility, the obligation that we have to our first peoples, and seems to me that we ought to be able to advance this.

Secretary Washburn, I mentioned in my questions to Natasha that I was going to pose somewhat the same question about funding for our tribal courts. I have asked you before about BIA's policy about not funding tribes in Public Law 280 States.

We have tribal courts in Alaska and they are making tremendous advances and advantages but with very little funding. Again, our tribal court judges train alongside our State court judges. Our tribes really need to have annual funding for operation of their courts.

As I mentioned, I am going to be looking within the Interior Appropriations Subcommittee as to how we might be able to facilitate this and I would urge you to put together some kind of action plan regarding funding for our tribal courts in Alaska on an annual basis.

If you and I want to sit down and have a bit more conversation about this, it is something we have to address. The issues of jurisdiction are very difficult and complicated but I worry a great deal that we might be able to resolve that and yet if we haven't done

anything to help facilitate the operations and administration of these tribal courts, we are not going to be nearly as far along as we should.

If you don't have an action plan in our back pocket you want to present right now, I am happy to work with you and your folks more on this but it is something I really think we need to get to work on.

Mr. WASHBURN. Senator Murkowski, thank you for your leadership on this. Justice needs to come to Alaska too for sure. Again, I think the Indian Law and Order Commission report demonstrated that we have some issues there.

You did mention you are the Ranking Member on Interior Appropriations. If I were to go back to the office and say, let's fund tribal courts, my people and OMB would say, give me some data, explain the problem to me. Frankly, it is a little bit influx right now. We do have some tribal courts but we have this fledging sort of idea about criminal jurisdiction in those tribal courts that Natasha talked about and your bill may help, so things are a bit in flux.

What would help me, I think, and I am not really authorized to ask for this so I am not asking for it, I am giving you drafting service, I guess.

Senator MURKOWSKI. Understood.

Mr. WASHBURN. You are the Ranking Member on Interior Appropriations, one thing you could do is ask us for a study and provide a little bit of money to fund that study because it is quite complicated. There are 229 Alaska Native villages. How many courts do we need?

One thing the tribes in Alaska do really well is work well together, they cooperate on some many things and would that be a model we could use? We don't know unless we talk to them. It is a huge new initiative. One step to addressing it would be to fund a study for this coming fiscal year and go from there and the following year see what does this look like.

If I walked back and said I need $15 million to start funding tribal courts in Alaska, they would say, where is your data. I am sort of recommending baby steps. I think that might be a path.

Senator MURKOWSKI. I appreciate that. I think it is something we need to continue to visit. I kind of asked Natasha for a little homework on her end too, so I think we have some work but I would like to continue to pursue this with you in greater detail.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Heitkamp?

Senator HEITKAMP. Thank you.

I have just a couple comments and a couple of points.

I obviously really appreciate your support of our commission bill. Lillian, you were a great help when we were drafting and obviously we are very grateful for all of the support and all the input that went into it.

I want to talk a bit about the 477 program. It is not something I am all that familiar with but when I hear people say, well, they liked their programs and they feel proprietary towards their programs, that raises our awareness and we say, you know what, we all have enough problems, we don't need to hog them.

If the Native American Commission bill is going to work, we know we are going to have to be much more collaborative to hear 37 agencies. When you spread the responsibility, there is no accountability. We are trying to get an arm around how do we hold agencies accountable when we hear things like we like our programs, we don't and they don't want to collaborate.

I think we are only here because internal discussions haven't worked. If there is one thing that we can take out of this on the 477 program is if you don't feel under fire when you get here because there were lots of opportunities to collaborate before you got here to present a plan. As a result of this hearing, I hope what will happen is exactly that.

I want to talk a little bit about forward funding because I didn't worry during the shutdown one bit about what was going to happen at the VA or with our Medicare and Medicaid recipients because they are forward funded.

Why is it that every program we look at, when the short end of the lollipop comes, it is always in the Native American programs? What we are saying is, health care is too critically important to not forward fund it. Once again, you get the sense that is a second class citizen because we are not going to fund you the way we would veterans, the way we would seniors or people under the Medicaid programs. We are quite serious about a forward funding for Indian health and for health care.

With that said, I think once again the need to look not only at forward funding but parity and I know, Lillian you probably looked at number after number about parity per Native American who is served in the Indian Health Service compared to someone who is at Medicare levels, at Medicaid levels, at veteran service levels.

We know that Native American health care programs are grossly under funded and the population is unserved leading to tons of other problems. When we look at catching up, whether it is background checks for foster care or forward funding, we have to step back and say, how can we do this better. I would suggest that having 30 agencies looking at Native American children programming is not doing it better.

My final comment is, I hear over and over again this is broader to the Administration and maybe to us a little bit. There are nonprofits in my State who are deathly afraid of applying for a four, five or fifty thousand dollar grant because they tell me the cost of compliance will be half of that.

We have not come to grips with how we balance the cost of compliance against the risk of fraud. I think in some ways we have maybe overreached on the fraud side and as a result, we have people going unserved. Yes, it is important that we have accountability but it also is important that this money gets spent where the Congress intended and where the American people intended it to be spent and not on compliance burdens and unnecessary overhead.

I think you see that discussion all the way through what we have talked about today. I look forward to hearing more collaboration on the 477 program. I even look forward to getting a final commitment on forward funding. I appreciate your support and your passion for Native American children.

The CHAIRMAN. Thank you, Senator Heitkamp. I very much appreciate those comments.

We have two votes starting right now so we will wrap this up.

There are five bills on today's docket we dealt with in this hearing: 1474, support; 1622, support. It is April 2. I would like to get the applicable departmental response back on 1570, 1574 and 2160 by the end of the month as to what needs to be done with those bills to get the departmental support if anything.

With that, I want to thank Senator Begich for taking over the chairmanship while I was gone. I want to thank all the witnesses today. I appreciate all of your commitment to the issue. I want to thank Kevin Washburn and Lillian Robinson for their service and what you do every day. We very much appreciate it.

I would note the hearing record will remain open for two weeks from today.

With that, the hearing is adjourned.

[Whereupon, at 4:34 p.m., the Committee was adjourned.

A P P E N D I X

PREPARED STATEMENT OF DIMITRI PHILEMONOF, PRESIDENT/CEO, ALEUTIAN PRIBILOF ISLANDS ASSOCIATION

My name is Dimitri Philemonof, President/CEO for the Aleutian Pribilof Islands Association ("APIA"), representing thirteen federally recognized tribes of the Aleutian Pribilof Islands region, Alaska. On behalf of our thirteen-member Board of Directors, I wish to present this supplemental testimony for the record in support of legislation to amend the 477 Act,[1] S. 1574, the *Indian Employment, Training and Related Services Consolidation Act of 2013*, and in order to respond to the written testimony of Lillian Sparks Robinson. *See* Statement of Lillian Sparks Robinson, Commissioner, Administration for Native Americans, Administration for Children and Families, U.S. Department of Health and Human Services, Before the Committee on Indian Affairs, United States Senate (April 2, 2014) ("Statement of Lillian Sparks Robinson"). (My initial testimony was submitted for the hearing on April 2, 2014.)

The 477 Program allows the consolidation of funding from the Departments of the Interior (DOI), Health, and Human Services (DHHS), and Labor (DOL) into a single employment and training program. The 477 Program provides flexibility to tribal entities to design a program to meet the needs of their respective communities by combining programs within a P.L. 102-477 Plan. In part, S. 1574 addresses two programmatic changes the agencies proposed to the administration of the 477 Program: 1) ending the practice of transferring 477 program funds to participating Tribes and Tribal organizations through PL 93-638 contracts or Self-Governance agreements pursuant to the Indian Self-Determination And Education Assistance Act (ISDEAA); and 2) a new requirement that 477 Tribes and Tribal organizations report their 477 expenditures separately by funding source number for audit purposes.

[1] The Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Public Law 106-568, the Omnibus Indian Advancement Act of 2000.

The House/Senate Appropriations conferees on the FY 2012 Interior Appropriation bill instructed the federal agencies to engage in consultations with the 477 Tribes and Tribal Organizations to reach "consensus" and "permanently resolve" issues related to the transfer and reporting of funds administered by Tribes through program plans adopted by Tribes and approved by the Department of the Interior under the 477 program.

The federal agencies and 477 Tribes formed the P.L. 102-477 Administrative Flexibility Work Group (AFWG) to try to resolve their differences. A representative from APIA participated in the AFWG process. However, despite the best efforts of the parties involved, the agencies and tribes were unable to reach the necessary consensus on the interpretation and application of the 477 Act, and therefore did not reach agreement on new mechanisms for the transfer and reporting of funds that would permanently resolve the outstanding issues. In view of the stalemate, the agencies in January advised the tribes and tribal organizations that they would take unilateral action to implement fund reporting requirements, and in February published notice in the Federal Register to adopt new forms, without addressing major outstanding concerns that have been raised by the tribes and tribal organizations.[2]

We disagree with Ms. Robinson's characterization of the decision to implement new reporting requirements and the nature of the impact on tribes and tribal organizations expected from the change in reporting requirements. First, Ms. Robinson states that the AFWG "agreed to submit new reporting forms and instructions" for formal review and implementation and that this step "resolves many of the differences of opinion over operation of the 477 projects." Statement of Lillian Sparks Robinson at 1. This claim is repeated in a separate report issued by the Assistant Secretary – Indian Affairs on behalf of the agencies.[3] In fact, however, the tribes and tribal organizations participating in the AFWG process did not agree to implementation of the new reporting forms.

A basic element of the proposed reporting system, accounting for the major portion of changes to current forms, involves the requirement that tribes and tribal organizations report expenditures made under an approved 477 Plan by consolidating expenditures into "functional cost categories." This proposal was initiated by the agencies. Some tribal representatives to the AFWG consistently opposed any change from current accounting practices. Other tribal representatives that participated in the AFWG agreed to explore the cost category concept, but on condition that any new reporting system agreed to by the AFWG and implemented by the agencies would include other provisions as part of a broader agreement to permanently resolve the issues the agencies had raised regarding fund transfer and reporting.

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[2] *See* Notice for Revision of Agency Information Collection for Reporting Systems for Public Law 102-477 Demonstration Project, 79 Fed. Reg. 8985 (Feb. 14, 2014). The notice announced the revision and publication of reporting forms for P.L. 102-477.

[3] *See* Report to the House and Senate Committees on Appropriations on Progress of P.L. 102-477 Administrative Flexibility Work Group, from Kevin Washburn, Assistant Secretary-Indian Affairs (April 1, 2014) ("Report on Progress of AFWG") at 2 (parties to the AFWG "agreed on" the proposed financial reporting mechanism).

When the agencies first proposed the concept, Tribal representatives to the AFWG stated that consideration of reporting by functional cost categories would have to be tied to other principles consistent with longstanding administration of tribal 477 Plans: reporting in aggregate and not by funding source; recognition by the agencies of tribal authority to re-budget and reallocate program funds in an approved Plan; implementation of reporting in a manner that does not require tribes to create and maintain additional separate records or create additional administrative costs in the current implementation of an approved tribal program; and testing in a pilot program for 477 Tribes to determine its impact on efficiency and cost-effectiveness of 477 Plans, with corresponding continued funding through ISDEAA and suspension of the 2009 Circular A-133 until final review and implementation is completed.

Tribal representatives also made clear that any agreements in principle reached in the AFWG would have to be reviewed and approved by the broad body of 477 Tribes implementing the 477 Act, such detailed review necessary to ensure that any proposed revision of the reporting system is consistent with the wide variation in the structure and operation of individual tribal 477 Plans.

The agency and tribal representatives that participated in the AFWG did not reach the agreement necessary to permanently resolve all relevant issues that the parties had identified regarding the interpretation of the 477 Act and administration of the 477 Program, including the legal basis for fund transfer and reporting requirements. Thus, there is no consensus between the agencies and 477 Tribes on use of the proposed reporting forms, and the agencies are proceeding unilaterally to implement the new reporting system as proposed in the Federal Register notice..

Regarding the impact of the proposed changes on the tribes' administration of the program, Ms. Robinson states that "[a]s a result of this agreement, tribes will benefit from consistency in the way in which 477 projects are reviewed and will be subject to more flexible reporting requirements." *See* Statement of Lillian Sparks Robinson at 2. *See also* Report on Progress of AFWG at 2 (use of proposed functional cost categories provides "a simplified financial reporting mechanism"). However, the proposed reporting requirements are not more "flexible" or "simplified" than current practice, as the agencies claim. While the proposed forms may not require direct reporting of expenditures "dollar-for-dollar" based on federal program source, the proposed forms do require tribes to break-out and categorize expenditures in more detail than in the current reporting system, which reports lump sum expenditures under an approved 477 Plan. The proposed changes fundamentally alter the single budget and single reporting system used in the 477 Program for twenty years, and the manner in which tribes have accounted for all 477 expenditures through a single agency audit which reviews consolidated 477 expenditures. Moreover, the proposed reporting system has not been tested in application to the wide variation in structure of approved 477 Plans, and thus there is no basis for determining the potential burden placed on tribes in terms of additional recordkeeping requirements and administrative costs associated with recordkeeping and reporting, including the fact that many tribal data systems are not currently structured to provide the specific information in the form sought in the new reporting requirements.

In addition, the impact of the proposed changes in the various forms and instructions cannot be evaluated until OMB approves new accounting instructions to replace OMB Circular A-33. The agencies propose to draft and implement the compliance instructions in a separate process to be initiated after the proposed forms are approved. *See* Report on Progress of AFWG

at 3. Until new instructions are issued the Tribes are unable to evaluate the impact of the proposed changes on the Tribes' administration of the 477 Program.

Thus, for several reasons, the reporting measures proposed for adoption by the February 14, 2014 notice fail to "permanently resolve" the outstanding issues regarding the interpretation and administration of the 477 Program, the purpose for which the AFWG was formed. Without a permanent resolution of the legal and practical issues involved, the tribes are concerned that the agencies may raise the same or similar issues in other aspects of the plan review and approval process.

The 477 tribes and tribal organizations believe that the issues that have plagued the 477 program should be resolved with some finality before there is any change to the current reporting system. The AFWG identified but did not resolve other related issues. As Ms. Robinson notes, the agencies and tribes have a fundamental dispute whether the 477 Act authorizes tribes and tribal organizations to re-budget funds consistent with approved Plans. *See* Statement of Lillian Sparks Robinson at 3. At the January meeting, the agencies committed to continued discussions, but those have not occurred. For example, the agencies and tribes have not addressed the tremendous practical and financial burden on tribes to change their databases in order to respond to new reporting requirements. In addition, the agencies have not addressed how the Secretarial waiver process should work, such as instances where a tribe requests the agencies to honor the tribe's negotiated indirect cost rate (IDC), if the tribe chooses to employ that rate, rather than applying the arbitrary and conflicting administrative caps imposed by the various agencies. The tribes are also aware that there is a significant disconnect between the assurances that are being given by the Washington, D.C. offices and the varied responses tribes and tribal organizations are receiving from field offices, some of which are still requesting information and reports that should no longer be part of the process.

S. 1574 contains provisions that help resolve the fund transfer and reporting disputes between the 477 tribes and the federal agencies, and contains additional measures designed to improve the administration of the 477 Act and ensure that the spirit and letter of the 477 Act will be implemented consistently in the future from administration to administration.

Ms. Robinson's Statement addresses aspects of the current law and questions certain provisions in S. 1574. Regarding fund transfer, the agencies have stated they will continue transfer of funds through ISDEAA, although the agencies have declined to provide 477 tribes with written assurance that ISDEAA transfer will continue without restriction and be available for new approved plans or new programs coming into the 477 program. In her Statement Ms. Robinson mischaracterizes the 477 tribes' position regarding fund transfer through ISDEAA mechanisms, claiming that the tribes assert that 477 Plans are subject to all provisions of the ISDEAA. *See* Statement of Lillian Sparks Robinson at 2. *See also* Report on Progress of AFWG at 3. Not true. The tribes have not claimed that the ISDEAA applies across the board to all programs included in a 477 Plan. In fact, the tribal representatives to the AFWG offered to clarify that the Contract Support Costs provisions of the ISDEAA do not apply to funds in a 477 program unless they qualify by virtue of their originating program status, while leaving the other provisions of ISDEAA intact.

Ms. Robinson cites the court's ruling in *Navajo Nation v. Department of Health and Human Services*, 325 F.3d 1133 (9th Cir. 2003), in support of the view that the ISDEAA does not

apply to DHHS TANF funds included in a 477 Plan. However, that case did not involve the administration of the 477 Program. In that case the court held that an Indian tribe could not administer TANF under a 638 contract. The court did not address the administration of TANF under 477. The court simply concluded that TANF is not a contractible program under the ISDEAA because it is (1) not a program or service "otherwise provided" to Indians under federal law, 25 U.S.C. § 450b(j), and (2) not a program "for the benefit of Indians because of their status as Indians," 25 U.S.C. § 450f(a)(1)(E).

In the 477 tribes' view, the *Navajo Nation* case does not bar the fund transfers currently implemented for the 477 Program because the relevant law is the 477 Act, administered by the BIA, not the numerous and varied agency programs (such as TANF) that can be integrated into a tribal 477 Plan. In fact, the Act provides for administration of the 477 Program through the Department of the Interior, including transfer of HHS and DOL agency program funds to the BIA, which then transfers the funds to the tribes. The 477 Act thus fits the *Navajo Nation* Court's criteria that ISDEAA-eligible programs are those "specifically targeted to Indians."

Finally, in general introductory comments Ms. Robinson states that the 477 Act "authorizes, but does not require" the agencies to allow agency program funds to be included in a 477 Plan. *See* Statement of Lillian Sparks Robinson at 1. This is a fairly new argument raised by the agencies, with the implicit threat that the agencies may decline to include eligible programs in a 477 Plan. For the agencies to claim this broad discretion to withdraw program funds, after the 477 tribes have implemented the program successfully for twenty years, threatens the purpose of the program to facilitate employment opportunities for Indian youth and adults, as well as to encourage tribal self-sufficiency consistent with self-determination principles. At the same time, Ms. Robinson questions some provisions of S. 1574 that are designed to strengthen the tribes' role in Plan review and approval, such as those creating a dispute resolution process.

It is has become clear that the agencies continue to question one of the fundamental purposes of the 477 program—to allow tribes and tribal organizations to reallocate their funds within their approved 477 program in order to address local issues and programmatic needs in the most effective manner possible. From the tribal perspective, giving this authority and responsibility to the tribes to meet their own needs is exactly the object and strength of the 477 program. It is this flexibility that has been the hallmark of tribal success under the 477 Act.

We look forward to working on S. 1574 with the members of this Committee, with other tribes and tribal organizations, and with the Administration to adopt amendments to the 477 Act to improve the 477 program and help tribes administer employment-related programs efficiently and successfully.

PREPARED STATEMENT OF RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY NATIVE ASSOCIATION

S. 1474, the Alaska Safe Families and Villages Act

Chairman Tester and Committee Members: my name is Ralph Andersen, and I am President and Chief Executive Officer of the Bristol Bay Native Association (BBNA), which is a consortium of 31 tribes in the Bristol Bay region of Southwest Alaska. On behalf of BBNA and its member tribes, I submit this written testimony in support of S. 1474, the Alaska Safe Families and Villages Act, and more specifically to support a set of amendments to that bill proposed by the Alaska Federation of Natives, BBNA, and other tribal entities in Alaska. Our understanding is that Senator Begich is prepared to introduce such amendments.

BBNA, the Alaska Federation of Natives, our sister regional non-profits, and Alaska tribes have been requesting federal legislation to affirm and clarify tribal civil jurisdiction in Alaska since at least the mid-1990s. In successive Congresses there have been different versions of proposed bills and different approaches to the scope of tribal jurisdiction, but we have been very consistent for the last 20 years in urging that the single best and most effective thing Congress could do to address the serious social ills in rural Alaska is to simply confirm that our tribal governments and tribal courts have the authority to regulate and address social problems at home. That necessarily means confirming tribal judicial power—the authority to adjudicate domestic relations, juvenile matters, and lower-grade offenses that might

be considered "criminal" in the state system but which can also be handled as civil violations subject to restorative justice style remedies.

We have consistently and repeatedly asked for jurisdictional legislation not because we seek to undo the ANCSA settlement or to create "Indian Country" in Alaska or as some kind of power grab. We seek jurisdictional legislation because our real-life experience in rural villages over the last 30 years tells us that the State of Alaska's unified, top-down system for providing law enforcement and judicial services doesn't extend very far or work very well in rural Alaska. It is often culturally inappropriate. It is unlikely to ever work well because of funding limitations and the sheer geographic challenges to service delivery in rural Alaska. Social problems ranging from underage drinking and substance abuse to domestic violence to sexual assaults continue to occur in our villages at unacceptably high rates.

In the meantime, the tribes are where they always have been, with human resources on the ground and with tribal governments already providing a wide range of services either directly or via regional tribal organizations. Although Alaska Native tribes have been excluded from Bureau of Indian Affairs funding for courts and law enforcement, some Department of Justice funding has been available for these functions. For other categories of service delivery—such as social workers and case managers—tribes and tribal organizations have more resources to bear in rural Alaska than the state agencies do.

Why is Legislation Needed?

In short, because there is a huge gap in judicial and quasi-judicial services and law enforcement in remote rural villages. In most areas, tribes aren't filling that gap in large part because of perceived lack of authority and the lack of clarity about tribal jurisdiction. There are also funding constraints, with relatively few grants specifically for tribal courts. Yet the state courts only exist in hub communities. The Alaska State Troopers are based in the hubs. Given the expense of investigating cases and of transporting people for trials in hub communities, and the expense of incarcerating offenders, it seems to be a pattern in the state system that only the most serious crimes are prosecuted, that even serious crimes sometimes fall through the cracks, and that nothing much happens at all in regard to what might be called entry level offenses such as minors consuming alcohol, other drug offenses, vandalism and similar problems. This gap in services could be filled, in part, and we believe should be filled by tribal courts, using culturally appropriate and relevant models of justice delivery which may not look much like western-style courts at all.

We sometimes hear from different points of the political spectrum that "tribes can already do that"—*i.e.,* that they already have jurisdiction to handle minor civil-type cases, so federal legislation shouldn't be necessary. In reality, the extent of tribal jurisdiction in Alaska is very grey at best, and the State of Alaska relentlessly litigates against tribal authority at almost every opportunity. The likely limit of tribal jurisdiction to "tribal members" is very problematic in the context of our villages for a variety of reasons. Alaska attracts "end of the roaders"—people who are escaping bad situations in the Lower 48 and think they can remake themselves and/or do as they please in rural Alaska. Some have criminal records. It only takes one outsider with violent or anti-social tendencies to make life difficult in a small village.

There are also a lot of mixed marriages, and it simply doesn't make sense for tribes to be able to assert authority in regard to one spouse but not the other. Even all-Native families may derive from different villages, with the spouses being members of different tribes. Tribal membership itself can be very fluid in Alaska. Tribal members can simply resign their tribal membership with no particular penalty or loss of service. Eligibility for Native programs in Alaska is not based solely on tribal membership but alternatively can be based on ANCSA descendancy, and proven by obtaining a Certificate of Indian Blood from the BIA.

Tribes in Alaska clearly have jurisdiction over child neglect and adoption cases and they have jurisdiction over other types of domestic relations cases involving their members, including domestic violence protective orders. Beyond that it is very unclear what subject matter jurisdiction tribes may have and where and to whom it may apply. Although some tribes have been more assertive than others and some tribal courts may do a variety of things in different parts of the state, the sheer lack of clarity in regard to tribal authority has had a huge chilling effect on tribal courts in Alaska. In the Bristol Bay region there is little court activity at present beyond "child in need of aid" cases, where tribal authority is clear under the Indian Child Welfare Act (ICWA). More often than not in our region, the tribal involvement is limited to intervention in state court proceedings.

In our view, ICWA is perhaps the best illustration of why tribal jurisdictional legislation is needed in Alaska. While ICWA created some procedural protections for Native American families and tribes and created a ranked order of preference for

the placement of Native children, from a jurisdictional perspective ICWA didn't change pre-existing law much at all. Tribes already had jurisdiction over child abuse and neglect cases and over adoptions. State courts already had the authority to transfer children's cases to tribal courts, and sometimes did so. But from the perspective of tribal governments and tribal courts, the big impact of ICWA was that it provided clarity and a firm legal basis for asserting tribal authority. To this day, ICWA—related cases remain the predominant activity of tribal courts in Alaska. It is very doubtful this tribal involvement in children's cases would have occurred without federal legislation. ICWA provided a road map.

The amendments Senator Begich has developed for the Alaska Safe Families and Villages Act will serve very much the same function for the limited subject matter areas they cover: child abuse and neglect, domestic violence, and alcohol and drugs.

The Alaska Safe Families and Villages Act

Although we appreciate that S. 1474 was introduced, except for the repeal of the "Alaska exclusion" in Section 910 of the Violence Against Women Act our support for the bill as introduced is lukewarm. I will stress that we strongly support the repeal of the VAWA Alaska exclusion, and urge that the repeal go forward through any available legislative vehicle. Anecdotally, we have heard that in some regions the VAWA Alaska exclusion has already had a large chilling effect as measured by the number of tribal domestic violence protective orders registered with the state courts. Some tribes have apparently just stopped issuing protective orders. The Alaska exclusion is harming people and should be repealed as quickly as possible.

Otherwise, however, S. 1474 as introduced is limited to encouraging state-tribal agreements, principally for the diversion of state criminal cases to tribal courts in situations where there is complete agreement by everyone, including the defendant. We have some reservations about such legislation, because nothing prohibits the state and tribes from entering such agreements now or even broader cross-jurisdictional agreements. There have been some state-tribal agreements and municipal-tribal agreements on jurisdictional matters over the years. Our fear is that if Congress enacts legislation "authorizing" agreements for pre-trial diversion, it may imply to some future court that the tribes had no underlying authority at all. Although we know this is not the intent, as we read the bill it comes very close to implying that tribes only have derivative authority, coming from either Congress or the state.

What is actually needed, and what will make a huge positive difference in the safety and quality of life in rural Alaska, is legislation that clearly recognizes that tribes can adopt and enforce laws addressing the most serious social problems in the villages.

Amendment Package

We support a package of amendments developed as a substitute for the existing S. 1474 language. The amendments actually keep the existing provisions S. 1474, but adds a jurisdictional section very similar to a bill introduced by Senator Begich in the last Congress. The proposed amendment package would confirm that tribes can exercise civil jurisdiction in the subject matter areas of child abuse and neglect, domestic violence, and drug or alcohol related matters. It establishes a process whereby tribes can develop appropriate ordinances and tribal court procedures, and provides for review and approval of the tribal code by the Department of Justice. It specifies some remedies that can be imposed by tribes, all of which are "civil" in nature.

The bill is limited to tribal civil authority; it does not extend criminal jurisdiction to tribes. It does not in any way undercut or reduce state criminal or civil authority; tribal jurisdiction under the bill is concurrent with state jurisdiction.

We recognize this bill will be no panacea; it might even be considered a mere baby step in the direction of tribal self-empowerment. It will still be up to the state system to deal with serious crimes, including the epidemic level of sexual assaults in Alaska. It remains up to the state and federal governments to adequately fund law enforcement and courts.

But still this legislation will give tribes some of the tools they need to handle behavioral problems at home, particularly among young people, without involving the state systems at all. If intervention occurs early and is effective in heading off worse problems, then everyone benefits—including individual offenders who might otherwise end up with criminal records that follow them for life.

I will mention in passing the recent *Indian Law and Order Commission Report: A Roadmap for Making Native American Safer,* which I understand was the subject of an oversight hearing by this Committee. The report was highly critical of the current state-centric system of providing justice and law enforcement services in rural

Alaska. Although there have been some quibbles about the accuracy of some aspects of the report, from BBNA's perspective the gist of the report—that the state system has failed rural Alaska and that it is time for a major change of approach towards fostering tribal governments—is not just true, but obviously true. The statistics regarding sexual assault, Native incarceration rates, alcohol abuse, and many other social indicators speak for themselves.

The ILOC report did not really say much that was new—every single report or study regarding Alaska Natives in the last 30 years has said much the same thing and concluded that more reliance should be placed on tribes. But for tribally-based solutions to work, the tribes need the necessary tools. One critical tool, which this legislation will provide, is clear authority to act.

S. 1574, the Indian Employment, Training and Related Services Consolidation Act

Chairman Tester and Committee Members: My name is Ralph Andersen, and I am President and Chief Executive Officer of the Bristol Bay Native Association (BBNA), which is a consortium of 31 tribes in the Bristol Bay region of Southwest Alaska. On behalf of BBNA and its member tribes, I submit this written testimony in support of S. 1574, the Indian Employment, Training and Related Services Consolidation Act.

BBNA has operated a consolidated workforce development program, combining services under P.L. 102–477 plans, since the 1990s. Our Workforce Development Director, Rae Belle Whitcomb, is a Co-Chair of the 477 Tribal Work Group, and BBNA has closely tracked national developments regarding P.L. 102–477.

The 477 law authorizes tribes and tribal organizations to consolidate funding streams from thirteen separate programs within the Departments of the Interior (DOI), Health & Human Services (DHHS), and Labor (DOL). The law provides that participating tribes develop a single "477 Plan" which is approved by the Secretary of the Interior and which enables the tribe to use a single budget and reporting system. The funds are transferred from the other agencies to DOI, and the award mechanism used to transfer funds from DOI to the tribes is either a "Title I contract" or a "Title IV Compact" under the Indian Self-Determination Act, P.L. 93–638.

Since the 477 Initiative's inception, tribes and tribal organizations have used the P.L. 93638 funding mechanism and have reported (and been audited) based on their 477 Plans, which by definition is tribally created. In BBNA's experience, 477 has been highly successful. The flexibility of the 477 Initiative have been key to the efficient and cost-effective provision of our employment training, job placement, child care and related programs. The 477 Initiative reduces redundancies in administrative effort and personnel costs. BBNA operates in an extremely high cost area, and within a large geographic area—31 small tribal communities with no connecting roads scattered in an area the size of Ohio. We have a bare bones staff relative to the demands placed on them, and every dollar we can save by freeing staff from redundant grant requirements is a dollar used on client services.

Disagreements with DHHS

Beginning in 2008 actions by DHHS and to a certain extent by DOI threatened an almost complete rollback of the success of the 477 Program. First DHHS concluded unilaterally it would no longer allow its program funds to be administered under P.L. 93–638 contracts and compacts. The DOI acquiesced in this, and announced that DHHS funds within 477 would be awarded by ordinary grants. At a stroke, this would have undercut much of the purpose of P.L. 102–477 by effectively keeping DHHS funds out of consolidated tribal programs. DHHS then had audit guidelines issued that required tribes and tribal organizations operating 477 Programs to separately report and account for each funding stream within the 477 Plan. Essentially, the 477 Initiative would no longer authorize the true consolidation of programs but rather would just bundle disparate grants together with all their separate requirements intact. The tribes believed this undercut the intent of the law.

Although these policy changes were held in abeyance by the agencies pending further dialogue, there was no agreement between the agencies and the tribes. In 2011 the 477 Tribal Work Group, BBNA, and many other individual tribes and tribal organizations asked Congress to intervene. As a result, the FY 2012 Interior appropriations bill instructed the federal agencies, including OMB, to consult with the 477 tribes and tribal organizations to reach consensus and "permanently resolve" these issues. The agencies and the 477 Tribes agreed to try to resolve their differences over these new issues, and this led to the formation of the P.L. 102477 Administrative Flexibility Work Group (AFWG)

The AFWG included representatives from DOI, DHHS, DOL, and OMB, and a good cross-section of interested tribes and tribal organizations including the co-chairs of the 477 Tribal Work Group. The AFWG met for more than two years. It conducted a comprehensive review of the 477 Act, the history of program implementation, the process of submitting and approving 477 Plans, the consolidated reporting system, and other matters. In the meantime the agencies temporarily suspended their proposed changes, allowing the 477 Program to operate as it had from its inception under P.L. 93–638 mechanisms and without supplemental reporting.

Eventually, although the tribes and agencies represented on the AFWG came to consensus on some issues and reached a better mutual understanding regarding the 477 Act and 477 Programs, its was not possible to "permanently resolve" their disagreements over fund transfer and reporting issues. This was because DHHS has interpreted the 477 Act in a manner that is distinctly at odds with the interpretation tribes have had of it since it was enacted.

Need for Amendments to 477 Act

Although progress was made in reaching mutual understandings during the AFWG process, it is clear that it is time for Congress to update and clarify the law. The remaining disagreements appear to be based on different interpretations of terms Congress used in the law, so clarifying amendments by Congress should resolve them. Even in some areas where there has been agreement, such as the continued use of P.L. 93–638 contracts and agreements, there has been no binding agreement or commitment in writing by the agencies. The agencies could simply walk away from the AFWG consensus items in the future.

The testimony of DHHS at this hearing illustrates the problem. Commissioner Lillian Sparks Robinson of the Administration for Native Americans within DHHS, stated at various points in her testimony that participation in the 477 Initiative is discretionary with the agencies (rather than the tribes), that it doesn't actually allow the tribes to consolidate programs and funding, and that the 477 law doesn't bring the included programs within the tribe's P.L. 93–638 contracting authority. The foregoing is a paraphrase, but I believe it is a fair reading of parts of her testimony. BBNA would certainly disagree with all of these points, and we have no wish to engage an in an endless debate with the agencies over whether we have the authority to do things we've been doing successfully for 20 years.

For the above reasons, BBNA believes it is time for Congress to amend the 477 Act. It is time P.L. 102–477 became permanent legislation, and we thank Senator Murkowski and Senator Begich and the other co-sponsors of S. 1574.

We agree with other commenters that one area of improvement would be to clarify what is meant by the word "program" within the 477 context. One suggestion with which we concur is that the term "program" be used to describe the individual federal programs or funding streams that are included within a 477 Plan, that the 477 "Plan" refer to the tribe's consolidated program and operations, and that the term 477 "Initiative" be used to describe the federal level 477 operations.

We believe the bill will resolve the disagreements that remain with the agencies and improve the delivery of services to the tribes' client community. We specifically support the following:

1. Reaffirming the intent of Congress's intent that Tribes and tribal organizations with an approved 477 Plan may receive their funds through P.L. 93–638 contracts and agreements.

2. Reaffirming that tribes may continue to use 477 funds on allowable activities authorized pursuant to each Tribe's approved 477 Plan, and to report and be audited based on the Plan.

3. Reaffirming that Tribes and tribal organizations are not required to maintain separate records tracking services or activities conducted under an approved Plan back to individual federal program sources, nor are they required to audit expenditures by original program source. Congress should reiterate that Single Agency Audit Act audits, which audit funds on a consolidated basis, are sufficient to assure accountability in the expenditure of these funds, as has long been the case.

4. Reaffirming that federal program funds can be combined and integrated in order to achieve the program goals set forth in an approved 477 Plan.

The above provisions would "permanently resolve" the outstanding disputes that have arisen between the 477 Tribes and the federal agencies, and also ensure that issues that have been discussed and at least partially resolved in the AFWG process do not return whenever there is a change of administration.

Additionally, we suggest the 477 Act should be amended to address timely approval of 477 Plans, regulation waivers and dispute resolution, so that there are clear rules and a clear process to follow for resolution of disagreements about the 477 Act. Finally, we suggest that 477 be expanded to other employment, training and related programs in other agencies.

Thank you for holding this hearing and providing the opportunity to testify on S. 1474 and S. 1574.

We deeply appreciate the Committee's work and its long-standing support for the 477 Initiative.

PREPARED STATEMENT OF HON. BILL JOHN BAKER, PRINCIPAL CHIEF, CHEROKEE NATION

Osiyo. My name is Bill John Baker, and I am honored to serve as Principal Chief for the largest sovereign Indian Nation in the United States, the great Cherokee Nation. Our more than 300,000 citizens live in our jurisdiction in Oklahoma and across the country. Our tribe and related business ventures employ more than 9,000 workers, and we are proud of the opportunities we provide our people and the communities of northeast Oklahoma. In FY 2012, the Cherokee Nation had a $1.33 billion impact on the State of Oklahoma's economy.

The Cherokee Nation fully supports legislation to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 (P.L. 102–477). We have operated a P.L. 102–477 Plan since 2002 and appreciate the flexibility opportunities P.L. 102–477 provides. However, we believe it is time to make the demonstration project a permanent program and to clarify Congressional intent in regards to the flexibility offered under this law.

In FY 2012, the Cherokee Nation's P.L. 102–477 program provided employment and training services to 355 individuals, over 66 percent of them cash assistance recipients from such programs as TANF or BIA-General Assistance. We also provided child care services for 3,040 children in 1,841 families, allowing their parents to work or attend school when they might not have otherwise. Through our P.L. 102–477 program, we assisted 173 businesses and created 82 new jobs in mostly rural areas.

Unfortunately, this proven demonstration project is endangered. Federal agencies that are partners in the P.L. 102–477 project (the Department of the Interior, the Department of Labor, the Department of Health and Human Services, and the Office of Management and Budget) do not recognize the most fundamental aspects of the law—the flexibility to integrate programs into one comprehensive program in a manner necessitated by local circumstances as determined by the tribal government, and the ability to reallocate these funds according to an approved 477 Plan.

Tribes have tried to resolve issues with their federal partners since November 2011 through the Administrative Flexibility Workgroup. Cherokee Nation had two staff members on the Workgroup, Vickie Hanvey, Government Resources Administrator, and Kim Carroll, Career Services Director of Grants and Compliance and P.L. 102–477 Tribal Workgroup Executive Committee Secretary. Although much progress was made, the tribal representatives and federal representatives on the Workgroup were unable to come to agreement on the basic issues discussed below.

The federal partners have unilaterally published for comment a new reporting system for the P.L. 102–477 program despite objections from the tribal members of the Administrative Flexibility Workgroup. The proposed new reporting system provides no benefit to the federal agencies or their respective programs, and instills an increased administrative burden on tribal programs, contrary to the intent of P.L. 102–477. They refuse to acknowledge the ability of tribes to integrate programs and funds under a 477 Plan and have set arbitrary rules for tribes wishing to integrate programs into a 477 Plan, effectively discouraging the expansion of the program.

Legislation to amend P.L. 102–477 can address these issues and protect the integrity of the law. The Cherokee Nation supports S. 1574 because it:

- Clarifies that tribes are not required to maintain separate records tracing funds to individual federal programs, but are allowed to integrate separate programs into one 477 program and reallocate funds as needed to accomplish the goals and objectives identified in their approved 477 Plan;
- Makes P.L. 102–477 a permanent program;
- Clarifies transfer of funds to tribes through contracts and agreements pursuant to the Indian Self Determination and Education Assistance Act (ISDEAA);
- Clarifies that annual reporting should be based on each tribe's approved 477 Plan and the accomplishment of their stated goals and objectives; and

- Expands the 477 program by insisting federal agencies currently identified as partners (*i.e.,* the Department of Education, which has never participated as a partner) participate in good faith and develop a mechanism for the addition of other employment, training and related service program to be included.

The Cherokee Nation believes P.L. 102–477 embodies the ideas of self-governance and self-determination. It has proven successful for over 20 years and demonstrates how tribes can effectively consolidate limited funding to address the unique needs of their tribal members and accomplish their individual tribal goals.

Thank you for the opportunity to present this written testimony in support of S. 1574. I appreciate your consideration of my testimony and your commitment to fostering self-sufficiency for Indian people.

PREPARED STATEMENT OF HON. GREGORY E. PYLE, CHIEF, CHOCTAW NATION

The Choctaw Nation of Oklahoma supports legislation to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 (P.L. 102–477). We believe it is time to make this demonstration project a permanent program and to clarify Congressional intent regarding these programs.

Public Law 102–477, commonly known as the "477 Program," authorizes tribal governments to consolidate up to thirteen different programs from the Department of Interior, Department of Labor, Department of Education, and Department of Health and Human Services into a single plan, approved by the Secretary of the Interior. These consolidated programs all foster employment and economic development in Indian Country. P.L. 102–477 is still technically a "demonstration project," which has existed for over two decades, and there are currently over 250 tribes that consolidate multiple programs into a single 477 Plan. Tribes' success with these programs demonstrates why this should become a permanent program, not just a demonstration project.

The Choctaw Nation of Oklahoma has operated P.L. 102–477 programming since 2007. Our programming combines both WIA and higher education. These programs have provided Choctaws job training and assisted numerous businesses employing our tribal citizens. Some program highlights are below:

- Serve 1,600+ 14–21 year olds yearly through the summer youth work experience

  —Summer youth workers are placed in 1,400+ businesses annually. This provides businesses with free summer help, and helps the business contribute back to the community.
- Assist 200+ adults annually with classroom and on-the-job training.
- 5,000+ students served annually by higher education scholarships and grants.

The 477 Program provides tribal governments with the flexibility to design employment, training and economic development plans that utilize funding from several federal programs to best meet the needs of their local communities, while reducing administrative burden by streamlining program, statistical, and financial reporting requirements. Tribes operating under 477 Plans complete a single narrative, statistical, and financial report based on their approved 477 Plan rather than completing multiple reports for individual programs. This reduced administrative burden allows for more time and money to be spent on direct services rather than duplicative reporting requirements.

Tribes and Tribal organizations depend on the 477 Program to ensure efficient use of federal funding for employment training, job placement, childcare and related programs. It increases cooperation between agencies, reduces administrative burden and maximizes federal dollar where they are most needed.

Unfortunately, this proven demonstration project is endangered. Actions proposed by DHHS and DOI have created extensive and expensive duplications in implementation that conflict with congressional intent in establishing the 477 Program. Federal agencies that partner in the P.L. 102–477 project do not recognize the most fundamental aspects of the law—the flexibility to integrate programs into one comprehensive program in a manner necessitated by local circumstances as determined by the tribal government, and the ability to reallocate these funds according to an approved 477 Plan.

These challenges led to the formation of the so-called P.L. 102–477 Administrative Flexibility Work Group. Tribes have tried to resolve issues with their federal partners since November 2011 through the Administrative Flexibility Workgroup. Much progress has been made, but the tribal representatives and federal representatives on the Workgroup were unable to come to agreement on the basic issues discussed.

We question the need for the proposed changes. The current reporting system is appropriate and satisfies all reporting requirements. The proposed new reporting system provides no benefit to the federal agencies or their respective programs, and instills an increased administrative burden on tribal programs, contrary to the intent of P.L. 102–477. Furthermore, this does not acknowledge the ability of tribes to integrate programs and funds under a 477 Plan. It also sets arbitrary rules for tribes wishing to integrate programs into a 477 Plan, effectively discouraging the expansion of the program.

The Choctaw Nation supports S. 1574 because it allows legislation to amend P.L. 102–477 and will address these issues to protect the law's integrity.

The legislation clarifies that tribes are not required to maintain separate records tracing funds to individual federal program, but are allowed to integrate separate programs into one 477 program and reallocate funds as needed to accomplish the goals and objectives identified in their approved 477 Plans. It also clarifies the transfer of funds to tribes through contracts and agreements pursuant to the Indian Self-Determination and Education Assistance Act. Additionally, it reinforces that annual reporting should be based on each tribe's approved 477 plan and the accomplishment of their stated goals and objectives. This legislation will also expand the 477 program by insisting that federal agencies currently identified as partners participate in good faith and develop a mechanism for the addition of other employment, training and related service programs to be included.

The Choctaw Nation of Oklahoma fully supports legislation to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 (P.L. 102–477). We believe it is time to make the demonstration project a permanent program and to clarify Congressional intent in regards to the flexibility offered under this law.

Thank you for this opportunity to address S. 1574.

PREPARED STATEMENT OF GLORIA O'NEILL, CEO/PRESIDENT, COOK INLET TRIBAL COUNCIL

Chairman Tester and Members of the Committee, thank you for the opportunity to provide testimony on the proposed S. 1574. My name is Gloria O'Neill and I am the Chief Executive Officer and President of Cook Inlet Tribal Council (CITC), an Alaska Native tribal non-profit organization which serves as the primary education and workforce development center for Native people in Anchorage. CITC has been designated tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination Act and Education Assistance Act, P.L. 93–638. CITC builds human capacity by partnering with individuals to establish and achieve both educational and employment goals that result in lasting, positive change for themselves, their families, and their communities.

Demographics and Expanding Service Population

CITC's programs serve Alaska Native and American Indian people in the Cook Inlet Region, which includes Alaska's most urbanized and populated communities, and is home to an Alaska Native/American Indian population of more than 40,000, approximately 40 percent of the Native population of the state of Alaska. In Anchorage alone, the Native population is approximately 22,000, about 20 percent of the total Native population in the state. CITC's programs address many of the social, economic, and educational challenges faced by Alaska Native people. For example, Alaska Native students are twice as likely to drop out as their non-Native peers; 33 percent of Alaska's unemployed are Alaska Native people, and almost 20 percent of Alaska Native people have incomes below the federal poverty line—nearly three times the rate of non-Native people.

In-migration from rural, largely Alaska Native communities to the urban areas in the Cook Inlet Region is accelerating as Alaska Native people find it increasingly difficult to make a living in rural Alaska. 59 percent of CITC's participants have been in Anchorage for five years or less; and employment, training, and education are frequently cited as reasons for moving to Anchorage. In contrast, the current Bureau of Indian Affairs funding formula for CITC is based on the population figure of 14,569—from the 1990 Census—which leaves CITC with a funding shortfall to meet the needs of the 40,000 Alaska Native and American Indian people currently residing in our service region. CITC is able to create and maintain successful programs, despite this shortfall, due to flexibility granted by the 477 program that allows us to leverage our existing funding and maximize efficiencies.

Public Law 102–477 is Essential to Effective Service Provision

The Indian Employment Training and Related Services Demonstration Act, Pub. L. 102–477, as amended, 25 U.S.C. § § 3401–3417 (or the "477 program"), currently administered by the Office of Indian Energy and Economic Development in the Department of the Interior, provides a critical foundation for maximizing the effectiveness of CITC's programs. The law allows the consolidation of funding streams from the U.S. Departments of Interior, Health and Human Services, and Labor into a single education, employment and training program. The 477 program enables flexibility on the part of the receiving organization to plan the programming to best fit the needs of the community and minimize administrative redundancy by merging reporting requirements, while still adhering to the Government Performance Results Act's stringent accountability standards. 267 tribes and tribal organizations operate through 63 plans under the 477 program, making this a program of national significance.

CITC 477 Programs

The 477 Program is essential to the success of our program as it allows CITC to increase effectiveness and innovation, enhance interoperability, and eliminate inefficiency while maximizing program outcomes. CITC's Employment & Training Services Department (ETSD) provides comprehensive services to assist Native job seekers, including job training and placement, TANF, and child care. CITC's employment and training programs are based on the premise that effective solutions to workforce development require integrated approaches to ensuring job readiness, training, and placement. By working closely with state and federal programs, community and tribal non-profits, universities, vocational training centers, employers, and Native corporations, CITC is able to provide a wide array of training and employment assistance, coupled with supportive services, to help overcome many barriers to employment and self-sufficiency for our people.

CITC is the sole provider of Tribal TANF in Anchorage, a key component of our 477 program. Our TANF program is built on an integrated service model that connects participants to the range of programs offered throughout CITC's departments. Through our integrated service model, CITC has reduced caseloads as well as effectively implemented TANF prevention. This is precisely the type of innovation and interoperability that would be impossible without the flexibility provided by the 477 program.

Furthermore, efficiencies gained within the TANF program resulted in a 5-year savings of $8.4 million—savings that have been re-invested in supportive services and programs going directly to TANF participants. 477 allows Tribes and Tribal entities (e.g. CITC) to administer federally funded employment and job training programs as a single program, with a single budget and single set of reporting requirement. CITC relies on the 477 program to provide our people more effective and integrated services while reducing costly administrative redundancy.

Over the Past 5 Years CITC 477-supported Programs Have:

- Provided 8,989 job seekers with career exploration, training and job search assistance; 4,671 (52 percent) of these individuals were placed in jobs. The average hourly wage (AHW) of a job seeker coming to CITC for services increased by $6.66 per hour.
- Transitioned over 2100 TANF recipients from welfare to work, entering with no job experience or income, and leaving with an AHW of $11.53.
- Provided training opportunities and job placement in critical employment sectors, including: Customer Service/Retail Management (AHW $11.01); Driver's Education (AHW $14.16) and CDL Driver's Certification (AHW $16); Weatherization Training (AHW $14.77–$22.15); Healthcare: CNA, LPN, RN, Medical Coding (AHW $13.79).

CITC has demonstrated that the 477 program is very successful in connecting people to long term, meaningful jobs. In short, the 477 program is a "win-win" for the federal funders and CITC, since it eliminates wasteful inefficiency while maximizing program outcomes. In addition to being successful on the ground, the 477 program is fully accountable. It achieved the highest Office of Management and Budget PART (Program Assessment Rating Tool) rating in Indian Affairs. The 477 program is critical to our effectiveness, especially in this environment of shrinking funding sources.

Similarly, the 477 program on a national level has excellent results. These programs provide tribes and tribal organizations the ability to leverage their federal job training and job placement funding for DOI, HHS and DOL—including TANF, Childcare other programs. As a result, the 2012 477 national report shows that trib-

al programs served almost 44,000 people, of whom over 99 percent completed their education or employment objectives. More importantly, of those who obtained employment: (1) Adults gained $7 per hour over their previous hourly wage; (2) Youth gained $6.80 per hour over their previous hourly wage; and (3) people on cash assistance gained $5 per hour over their previous hourly wage. As you can see, the 477 program is critical to our effectiveness, especially in this environment of shrinking funding sources.

Support for 477

In 2011 and again in 2012, the Tribes sought assistance from the House and Senate Appropriations Committees regarding two problematic changes the agencies proposed to the administration of the 477 program that would significantly undermine its success: (1) ending the practice of transferring 477 program funds to participating Tribes and Tribal organizations through P.L. 93–638 contracts or SelfGovernance agreements, as authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA); and (2) a new requirement that 477 Tribes and Tribal organizations report their 477 expenditures separately by funding source number for audit purposes.

The federal agencies and 477 Tribes agreed to try to resolve their differences over these issues, which led to the formation of the P.L. 102-477 Administrative Flexibility Work Group. This group met almost weekly for 18 months and included policy and program representatives from the Departments of the Interior (DOI), which administers the 477 program, Health and Human Services (HHS), Labor (DOL) and the Office of Management and Budget (OMB), as well as representatives from 10 affected Tribes and Tribal organizations. In the meantime, the agencies agreed to temporarily allow funds to continue to be transferred through ISDEAA and have suspended the reporting requirements instituted in the March 2009 OMB Circular.

The House/Senate Appropriations conferees on the FY 2013 Interior Appropriations bill instructed the federal agencies to continue to engage in consultations with the 477 Tribes and Tribal organizations to reach consensus on the transfer and reporting of funds administered by Tribes through program plans adopted by Tribes and approved by the Department of the Interior under the 477 program.

The Work Group has had some successes: (1) effectively collaboration on interim OMB circular language that has kept the status quo while discussions continue; (2) new draft 477 program guidelines for the agencies in reviewing tribal plan proposals; (3) certain components of the draft narrative, statistical and financial reporting; (4) representatives agreed that 477 funds would be transferred through P.L. 93–638 contract(s) or Self-Governance funding agreement(s); and (5) agreement that funds in a 477 Plan were eligible for use for economic development. However, in spite of this progress, it has become clear that the agencies continue to question one of the fundamental purposes of the 477 program—to allow tribes and tribal organizations to re-budget and reallocate their funds within their approved 477 program in order to address local issues and programmatic needs in the most effective manner. From our perspective, this authority for and responsibility of tribes to meet their own needs is exactly the point and strength of the 477 program. It is precisely this flexibility that has allowed us to be so successful.

Given this disagreement of fundamental principle, we urge the expeditious review and mark-up of S. 1574, which lays the groundwork to resolve these issues and achieve long term workforce development goals for which the Tribes and tribal organizations have been working. This is particularly important because the federal agencies are moving forward with reporting guidelines that will dramatically alter the way that Tribes and tribal organizations have been successfully managing their programs for over two decades. The Tribes and tribal organizations have consistently argued for the status quo:

1. reporting in aggregate and not by fund source;
2. tribal authority to re-budget and reallocate funds as specified in an approved Plan;
3. implementation that does not require Tribes to create or maintain new or additional records or to incur new administrative costs;
4. accountability against the requirements of the Plan;
5. continued funding through self-determination contracts and compacts that allows for contract support costs only for funds that qualify for contract support costs; and
6. permanent elimination of any OMB requirement to do supplemental accounting by fund source.

During the course of the negotiations with the federal agencies over the past two years, the use of the word "program" in the 477 context has surfaced as an area of confusion and disagreement. To clear up the terminology, we propose using the term "Initiative" for the federal program operated by the Department of Interior, using the term "Plan" for tribal operations under the 477 law, and using the term "program" for the federal programs constituting the components of each Tribe's or tribal organization's Plan. This clarification would help to resolve disagreement over interpretation of the law that has arisen recently.

Therefore, we urge that the legislation reaffirm Congress' intent that Tribes and tribal organizations operating consolidated programs under the Act through an approved Plan continue to receive funds through contracts and compacts awarded under the Indian Self-Determination Act, and use those 477 funs on allowable activities authorized under each Tribe's approved Plan. We urge that Congress also reaffirm its original intent that Tribes and tribal organizations are not required to keep separate records tracing services, activities or funding back to original program source, and that the Single Agency Audit Act audits continue to be sufficient to ensure accountability in the expenditure of those funds. Thirdly, we urge that the legislation eliminates any ambiguity that federal program funds can be combined and integrated in order to achieve the program goals set forth in an approved 477 Plan. Finally, the 2000 amendment to 477 added the authority to allocate funds in an approved 477 Plan to directly support economic development and job creation, and we urge that S. 1574 reaffirm that very important and successful opportunity. These provisions will permanently resolve the issues that the federal agencies and tribes have attempted to resolve and will ensure that the spirit and intent of the original 477 Act, so successful for over two decades, will continue and be implemented consistently regardless of administrative shifts moving forward.

In addition, the experience of the last two decades has resulted in several goals for enhancing work force development in Indian Country that S. 1574 can also address, including (1) a mechanism to identify eligible employment, training and related social service programs from other federal agencies which Tribes and tribal organizations might include to increase outcomes in their Plans; (2) expand the 477 Initiative to include a wider range of departmental and agency funds, including competitive, formula and designated funds as well as block grants; (3) amendments to ensure timely approval of 477 Plans, regulation waivers and dispute resolution and (4) options for Tribes and tribal organizations to use their negotiated indirect cost rate, rather than applying separate administrative caps to each funding source.

Conclusion

Mr. Chairman, as a 477 Tribal organization, CITC is grateful for this Committee's interest in and support for the 477 program. This program is essential to our ability to meet the needs of our people in innovative and efficient ways that allow us to provide wrap around services designed on a model of integration and maximum efficiency, leveraging funds and human resources to make the greatest impact for our people. We agree that the time is right for specific legislative authorization as provided above, which will make this innovative program permanent, expand the types and sources of funding eligible to be included in a 477 plan, to establish protective review procedures and address new issues that have only arisen in response to agency resistance to tribal self-determination. The legislation will also ensure that the spirit, the letter and the opportunities of the P.L. 102–477 law will provide for the next century's success in meeting the employment and training needs of Alaska Native and American Indian people across the country.

Thank you for your time and consideration.

SUPPLEMENTARY TESTIMONY BY GLORIA O'NEILL

Chairman Tester and Members of the Committee, thank you for the opportunity to provide supplemental testimony on the proposed S. 1574 on behalf of Cook Inlet Tribal Council (CITC), an Alaska Native tribal non-profit organization which serves as the primary education and workforce development center for Native people in Anchorage. CITC has been designated tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination Act and Education Assistance Act, P.L. 93–638.

Testimony from Kevin Washburn and Lillian Sparks Robinson on behalf of the Departments of Interior and Health and Human Services, respectively, demonstrates exactly why amendments to the current statute are necessary to make this innovative program permanent, expand the types and sources of funding eligible to be included in a 477 plan, to establish protective review procedures and ad-

dress new issues that have only arisen in response to agency resistance to tribal self-determination. The legislation is also necessary to ensure that the spirit, the letter and the opportunities of the P.L. 102–477 law will provide for the next century's success in meeting the employment and training needs of Alaska Native and American Indian people across the country.

We appreciate the Department of the Interior's support for 477 and for this legislation, and its candor in identifying areas of concern. We look forward to working with the Committee to address what questions remain to guarantee that the way in which the 477 Initiative has worked in terms of operating on one plan, one budget and one report for the last twenty-plus years to continue to offer the success of employment and training and lifelong sustainability in Indian country. Three statements in Mr. Washburn's testimony require clarification: First, we do not agree that the financial reporting system developed by the Administrative Flexibility Work Group (AFWG) is "simplified," because the current system of reporting and the dictates of the Single Audit Act are more simple than the proposal and more than adequate to cover both accountability and the streamlined, simple process contemplated by the statute. Secondly, while we agree that the 477 plan approval process has improved in the recent past, an articulated legislative structure will ensure that changes in administration in the future do not undermine the accomplishments of the last two years. Finally, the section in the proposed legislation that "would prohibit a Tribe or tribal organization from being required to submit any additional budget, report, audit or supplemental audit or other documentation after its plan is approved" is necessary precisely to clarify that Congress does not intend multiple reports as part of the elegant success that has operated so successfully for over two decades.

We also appreciate the Department of Health and Human Services' willingness to participate in the lengthy conversations and meetings over the duration of the AFWG, and the leadership within the Department that looked for ways in which the HHS programs could support the flexibility and successes of the 477 Initiative across the nation. The AFWG did indeed "identify. . .flexibilities within the law that allow tribes to consolidate. . .477 funds for the purpose of supporting economic development" and strengthened the relationships both between the tribes and the federal agencies, as well as between the agencies participating in the program. However, the Department's testimony contains several statements that require response and clarification. First, the federal agencies made the decision to submit the reporting forms and instructions for the review process and notified the tribal representatives of this course of action at the January 2014 meeting. Secondly, tribal representatives on the AFWG never advocated that the contract support cost provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA) accrued to Tribes as a product of utilizing the contracts and compacts under ISDEAA as the vehicle by which 477 funds were distributed to Tribes and tribal organizations. On the contrary, tribal representatives specifically stated and assured that only the contract support costs to which Tribes and tribal organizations were already entitled under the Department of Interior programs were retained under their agreements. Other attributes of contracting, such as using matching funds to match other federal programs, have been part of the 638 contract process; however, this disagreement in interpretation of the law shows one area that needs to be clarified by legislation. Third, the tribal representatives asserted that the 477 Initiative already authorizes the ability to re-budget and re-program within an already approved Plan, contrary to the agencies' interpretation of the law. Finally, the legislation does not remove the requirement for any report or audit—for over twenty years, Tribes and tribal organizations have provided in-depth reports of the activities and outcomes of the funds they manage under the 477 Initiative, and 477 received the highest OMB PART rating in Indian Country. Accountability to the public for the funds placed in the Tribes' and tribal organizations' trust has a proven track record. The current reporting system has ensured that accountability. Clarifying these disagreements is a primary goal of the legislation before this Committee.

Particular response is necessary for the testimony related to the purpose of the ISDEAA and the reference to *Navajo Nation v. Department of Health and Human Services*. In October 2008 DOI and HHS announced that they would end the practice of transferring 477 Program funds to participating tribes through agreements under ISDEAA. As a basis for the action the agencies cited the court's ruling in *Navajo Nation v. Department of Health and Human Services*, 325 F.3d 1133 (9th Cir. 2003), a case that did not involve the administration of the 477 Program. In that case the court held that an Indian tribe could not administer TANF under a 638 contract. The court did not address the administration of TANF under 477. The court simply concluded that TANF is not a contractible program under the ISDEAA because it is (1) not a program or service "otherwise provided" to Indians under fed-

eral law, 25 U.S.C. § 450b(j), and (2) not a program "for the benefit of Indians because of their status as Indians," 25 U.S.C. § 450f(a)(1)(E).

There is an enormous difference between being compelled under the ISDEAA to contract the TANF program, and choosing to transfer TANF 477 funds through such contracts. For over 20 years HHS has transferred 477 funds in this manner—not because the ISDEAA mandated it but because doing so made sense and was not prohibited by law. The 477 Tribes have consistently argued that 477 plans can be funded through the ISDEAA, and that the *Navajo Nation* case in particular does not bar the fund transfers currently implemented for the Program. The relevant law is the 477 Act, administered by the BIA, not the numerous and varied agency programs (such as TANF) that can be integrated into a tribal 477 Plan. In fact, the Act provides for administration of the program through the Department of the Interior, including transfer of HHS and DOL agency program funds to the BIA, which then transfers the funds to the tribes.

The key to understanding the 477 Act is that the 477 Act is administered by the Department of the Interior under the Secretary of the Interior. The Secretary of the Interior has the authority to approve or disapprove a tribal plan, which must be done within 90 days of submittal. 25 U.S.C. § 3407. The Act provides for the Secretary of the Interior to "cooperate" with and "consult" with other affected agency Secretaries, [1] but it is the Secretary of the Interior who "shall, upon receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related service programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions." 25 U.S.C. § 3403 (emphasis added).

Moreover, the 477 Program is an Interior "program, service, function or activity" that is available to tribes with consolidated funds from Interior and appropriations from other agencies. The federal programs that may be integrated into a tribal 477 Plan "include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purpose of assisting Indian youth and adults to succeed in the work force, encouraging self-sufficiency, familiarizing Indian youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities." 25 U.S.C. § 3404 (emphasis added).

The 477 Act thus fits the *Navajo Nation* Court's criteria that ISDEAA-eligible programs are those "specifically targeted to Indians." The 477 Program is one provided for tribes by virtue of their status as Indians because only tribes can take advantage of it. Its targeted purpose is to facilitate employment opportunities for Indian youth and adults, as well as to encourage tribal self-sufficiency consistent with self-determination principles.

The fact that HHS has again raised this issue further identifies the need for amendments to the current law. First of all, as described above, the *Navajo Nation* case does not apply to funds transferred from the Department of Interior under the 477 Initiative. Secondly, all three HHS programs currently participating in the 477 Initiative are "tribal" programs: "Tribal TANF," "Tribal Child Care," and "Native Employment Works." Finally, Congress has the authority to authorize the fund transfer mechanism under the ISDEAA if necessary, and as proposed in S. 1574.

Conclusion

As a 477 Tribal organization and a constant member of the Administrative Flexibility Work Group, CITC is grateful for the work that the federal agencies put into improving relations and operations of the 477 Initiative. We appreciate the opportunity to address particular points raised in their testimony before this Committee, and to further articulate the necessity for clarifying why S. 1574 is so important to the continued success of the 477 Initiative to improve the lives of American Indian and Alaska Native people throughout the country. This program is essential to our ability to meet the needs of our people in innovative and efficient ways that allow us to provide wrap around services designed on a model of integration and maximum efficiency, leveraging funds and human resources to make the greatest impact for our people. Immediate markup and passage of S. 1574 will assure the realization of the 477 Initiative's potential now and into the future.

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[1] *See* 25 U.S.C. § § 3403 (integration of services authorized) and 3406 (plan review).

PREPARED STATEMENT OF RHONDA PITKA, CHAIRWOMAN, COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS (CATG)

The Council of Athabascan Tribal Governments (CATG), a tribal consortium of ten Athabascan Indian Villages in the Yukon Flats, Alaska, is pleased to submit this statement in support of S. 1570, legislation to authorize advance appropriations for the Indian Health Service (IHS). We thank Senators Murkowski and Begich for introducing this legislation.

Our region encompasses a large amount of federal public lands including all of the Yukon Flats National Wildlife Refuge and portions of the Arctic National Wildlife Refuge. The Gwich'in Athabascan Indian population of Alaska, occupies about 55,000 square miles in the Northern Interior of Alaska on the Yukon River drainage—this is 11,000 square miles larger than the state of Pennsylvania. The villages are scattered over the vast valley called the Yukon Flats—half of them above the Arctic Circle.

The Council of Athabascan Tribal Governments provides essential services to our member villages, including health care, natural resource protection and enhancement, and economic development opportunities. We focus on utilization of our own people's knowledge and talents to make better lives for ourselves through assumption of activities previously done only by outsiders and have Self-Governance agreements with the Indian Health Service, the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service.

The Yukon Flats Health Center provides primary health care, dental, diagnostic, behavioral health, radiology, telemedicine consultation, diabetic and medical travel assistance services. We have clinics in Arctic Village, Beaver, Birch Creek, Fort Yukon, and Venetie and a Community Health Aide Program. Our dental team travels one week out of the month to each of the CATG villages.

S. 1570, Advance Appropriations for the Indian Health Service. The Senate Committee on Indian Affairs is well aware of the frustrations and inefficiencies caused by funding the Indian Health Service and other federal agencies via a series of start and stop Continuing Resolutions and final funding decisions being made months into the fiscal year. We are grateful to the Alaska delegation—Senators Begich and Murkowski and Representative Young—for taking the leadership in addressing the IHS portion of the problem by introducing legislation that would authorize advance appropriations for the IHS.

The current (FY 2014) fiscal year funding was enacted 3 ½ months after the beginning of the fiscal year; in FY 2013 enactment was 6 months into the fiscal year. And following enactment, there is a couple month process of clearance through the agency and the Office of Management and Budget and then allotment to the Area Offices and finally to the tribes. Both the tribal and IHS programs suffer under this situation. It is no way to run a railroad. Tribal government and tribal health care employees want to do the best job possible in planning, decisionmaking and administering programs but are limited by not knowing how much funding will be available or when it will be available. It also requires constant re-working of our budget, time we would much rather devote to providing health care services. Especially affected are recruiting and hiring decisions.

Congress has provided the authority for the Veterans Administration medical accounts funding (over $50 billion) to be appropriated on an advance basis. In the first year of an advance appropriations schedule Congress appropriates two years of funding, and thereafter funds are appropriated one year at a time, but one year in advance. So even if there are Continuing Resolutions, the IHS budget—if it were advance appropriated—would not be affected by them. The Appropriations Subcommittees on Interior, Environment and Related Agencies would not have their spending caps affected by advance appropriations as it counts against the Subcommittee's caps only in the year for which it is authorized to be obligated. Admittedly there would be a transition phase with regard to consultation, but that is doable and well worth the effort. We are already consulting with the IHS on the FY 2016 budget in any event.

The fact that Congress in 2010 enacted legislation (P.L. 111–81) to authorize advance appropriations for the Veterans Administration medical programs and that the Appropriations committees provided such funding is a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS. Both systems provide direct medical care and both are the result of federal policies. Veterans organizations were alarmed at the impact of delayed and sporadic funding for veterans health services and led the charge for Congress to provide advance appropriations, and now tribes and tribal organizations are doing the same with regard to the IHS budget. We thank the Senate Committee on Indian Affairs for holding this hearing on legislation to authorize advance appropriations for the Indian

Health Service and ask you to do everything possible to make the actual provision of advance appropriations a reality.

Thank you.

PREPARED STATEMENT OF ROBERT TWOBEARS, REPRESENTATIVE, HO-CHUNK NATION

Introduction

Chairman Tester, Vice Chairman Barrasso and members of the Committee, I am pleased to submit this written statement on behalf of the Ho-Chunk Nation of Wisconsin ("Nation") and its "477" Federal Program Division in support of the *Indian Employment, Training and Related Services Consolidation Act* (S. 1574).

My name is Robert TwoBears, and I serve in the Nation's Legislature. The Nation, also known as "People of the Big Voice," has a tribal enrollment of 7,200 members and our tribal headquarters is located in Black River Falls, Wisconsin. The Nation's lands are scattered across twelve counties in Wisconsin, Minnesota and Illinois.

Thank you for the opportunity to submit written testimony for the Committee's consideration as it considers S. 1574. I also want to thank Senator Murkowski for taking the lead in developing and introducing the necessary changes to Pub.L. 102–477 (the Act of the "477" program) contained in S. 1574.

Summary of the Nation's "477" Federal Program Division

The "477" program was launched in 1992 and authorized Indian tribes and tribal consortia to reach across the entire spectrum of federal employment training and related programs and administer them as a single, consolidated program. Using the "477" program, tribes are able to combine funding from thirteen programs from various departments, including Interior, Labor, and Health and Human Services into a single employment and training program for their members.

The "477" program does not carry with it administrative or overhead funding, but it does enable them to reduce administrative, accounting, and reporting burdens and costs, and tailor employment and training programs to the needs of their local populations. Training without the prospect of a job does not help many people.

To help tribes and consortia bridge the gap between employment training and job placement, Congress, in 2000, made the Act permanent and amended it to authorize the use of "477" funding for job creation activities such as development of business plans by individual entrepreneurs.

Since 2001, the Nation's "477" program has provided employment services to enhance the Nation's tribal members' job skills by assisting them in becoming self-sufficient and providing workplace safety programs. On average, our program serves 294 clients each year. For instance, the program provides employability assessments combined with goal and objective planning and referral services.

It also carries out training and classes to enable participants with little or no work experience to become "Job Ready," thereby improving their chances of securing good-paying jobs. In addition, the program serves at-risk youth and helps them obtain their GED/HSED through a vocational experience program. The program works cooperatively with the Nation's Tribal Employment Rights Ordinance (TERO) Division to maximize job opportunities to tribal members by utilizing TERO case managers to conduct program intake and assessments.

Recently-offered classes provided by the program include Cost Accounting, Economics, Powered Industrial Truck, Welding Certification, Roofing, Computer Graphic Design, Resume Writing, Certified Nurse Aide, CDL Training, Paralegal Prep, Grants Writing, Security, Cement Finishers Pre-Apprenticeship, and Real Estate Law, to name a few.

Ho-Chunk Nation's Success and Need for Congressional Action

In recent years, a turn-over in program directors has slowed the program's progress. However, with a new program director now in place, services to tribal members are stabilizing and making real progress.

Last year, 99 out of 141 participants received training from the program and secured gainful employment. While our "477" program is improving, the Nation's unemployment rate remains high at 31.6 percent. In addition, the lack of a driver's license for tribal clients is one of the single largest barriers to employment for our clients, and one of the most difficult to overcome.

While the 1992 Act and amendments made in 2000 are valuable tools for tribal participants, the "477" program can be improved upon. We see S.1574 as providing much-needed statutory clarifications and program expansions to assist tribes across the country with their never-ending need for training and job placement.

The Indian Employment, Training and Related Services Consolidation Act (S. 1574)

Given the success of the Nation's "477" program, we strongly support provisions of the *Indian Employment, Training and Related Services Consolidation Act* (S. 1574).

If enacted, this legislation would broaden the kind of programs and funding that can be combined into a single plan to include job training, welfare-to-work, job opportunities, skill development, Indian youth into the workplace, and the creation of opportunities.

S. 1574 would also establish an interagency dispute resolution process, set deadlines for plan approval, grant tribes and Indian organizations hearing and appeal rights if the plan is not approved, reaffirm the current single agency audit process, and augment authority in the Act to use funds to support direct economic development and job creation.

We respectfully urge swift consideration of S. 1574 by the Committee so that it can be considered by the full Senate.

PREPARED STATEMENT OF TIMOTHY SCHUERCH, PRESIDENT/CEO, MANIILAQ ASSOCIATION

The Maniilaq Association is an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska, providing health services through an Indian Self-Determination Act Self- Governance agreement with the Indian Health Service (IHS). We have been active for some time in advocating for legislation that would bring stability and certainty to the Indian Health Service budget by changing its funding to an advance appropriations basis, and thus we support S. 1570, legislation that would make this possible. This is what Congress has done with regard to the Veterans Administration medical accounts, and we ask for comparable treatment with regard to the IHS. We prepared in 2012 a white paper on the issue of IHS advance appropriations and attach it.

We are so proud and thankful to our Alaska delegation—Senators Murkowski and Begich and Representative Young for introducing legislation, S. 1570 and H.R. 3229, to authorize advance appropriations for the IHS. And we thank Senate Committee Chairman Tester (D–MT) and Committee members Schatz (D–HI) and Udall (D–NM) along with Senator Heinrich (D–NM) and former Senator Baucus (D–MT) for cosponsoring S. 1570.

There is momentum in Indian Country in recognizing and supporting advance appropriations for the IHS and point to resolutions in support of it by the National Indian Health Board, National Congress of American Indians, United South and Eastern Tribes and a steadily increasing number of individual tribes enacting supportive resolutions.

The Need for Indian Health Service Advance Appropriation

The Federal health services to maintain and improve the health of American Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people. Since FY 1998 there has been only one year (FY 2006) when the Interior, Environment and Related Agencies appropriations bill has been enacted by the beginning of the fiscal year. The lateness in enacting a final budget during that time ranges from 5 days (FY 2002) to 197 days (FY 2011). In the last four fiscal years, the IHS appropriations have been signed into law far beyond the beginning of the fiscal year by—197 days late for FY 2011; 84 days late for FY 2012; 178 days late for FY 2013 and 109 days late for FY 2014.

Even after enactment of an appropriations bill, there is an apportionment process involving the Office of Management and Budget and then a process within the IHS for allocation of funds to the IHS Area Offices and then to the tribes and tribal organizations.

Late funding causes the IHS and tribal health care providers great challenges in planning and managing care for American Indians and Alaska Natives. It significantly hampers tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. Receipt of funds late also severely impacts Maniilaq's ability to invest the funds and generate interest which can be used to offset the chronic underfunding of the region's health programs. Providing sufficient, timely, and predictable funding is needed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.

In the case of the Maniilaq Association, we draft our budget for the coming fiscal year in the Spring—a budget which must be reviewed, amended, and approved during the ensuing months. However, if we find out that come October, as has been the case for far too many years, that Congress has not enacted an IHS appropriations bill, we are in limbo and must spend considerable staff time re-doing our budget, perhaps multiple times. We—and all tribes and tribal organizations—are hampered by the uncertainty as to whether Congress will provide funding for built-in costs, including inflation and pay increases, what amount of funding we might have with regard to signing outside vendor/and or medical services contracts, ordering supplies, and making crucial hiring decisions.

Advance Appropriations Explanation

As you know, an advance appropriation is funding that becomes available one year or more after the year of the appropriations act in which it is contained. For instance, if FY 2016 advance appropriations for the IHS were included in the FY 2015 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2015 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2016 allocation. It would also be counted against the ceiling in the FY 2016 Budget Resolution, not the FY 2015 Budget Resolution.

To begin an advanced appropriations cycle there must be an initial transition appropriation which contains (1) an appropriation for the year in which the bill was enacted (for instance, FY 2015) and (2) an advance appropriation for the following year (FY 2016). Thereafter, Congress can revert to appropriations containing only one year advance funding. If IHS funding was on an advance appropriations cycle, tribal health care providers, as well as the IHS, would know the funding a year earlier than is currently the case and would not be subject to Continuing Resolutions. We note that advance appropriations are subject to across-the-board reductions.

The Veterans Administration Experience

In FY 2010 the Veterans Administration (VA) medical care programs achieved advance appropriations. This came after many years of veterans' organizations advocating for this change, including enactment of the Veterans Health Care Budget Reform and Transparency Act of 2009 (PL 111–81) which authorized advance appropriations and specified which appropriations accounts are to be eligible for advance appropriations. The Act required the Secretary to include in documents submitted to Congress in support of the President's budget detailed estimates of the funds necessary for the medical care accounts of the Department for the fiscal year following the fiscal year for which the budget is submitted.

The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system. We also note that there is legislation (H.R. 813) pending in this Congress that would expand advance appropriations to the VA beyond its medical accounts.

We thus request this Committee's active support for any legislation that may be needed to authorize IHS advance appropriations, to protect such funding from a point of order in the Budget Resolution, and to appropriate the necessary funds.

Attachment

Indian Health Service Advance Appropriations

I. Need for Indian Health Service Advance Appropriations

The Federal health services to maintain and improve the health of American Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people. Since FY 1998 appropriated funds for medical services and facilities through the Indian Health Service (IHS) have not been provided before the commencement of the new fiscal year, causing the IHS and tribal health care providers great challenges in planning and managing care for American Indians and Alaska Natives. Late funding has significantly hampered tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. Providing sufficient, timely, and predictable funding is needed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.

II. History of Late Funding

Since FY 1998 there has been only one year (FY 2006) when the Interior, Environment and Related Agencies budget, which contains the funding for IHS, has been enacted by the beginning of the fiscal year. The lateness in enacting a final budget during that time ranges from 5 days (FY 2002) to 197 days (FY 2011). Even after enactment of an appropriations bill, there is an apportionment process involving the Office of Management and Budget and then a process within the IHS for allocation of funds to the IHS Area Offices. Unfortunately FY 2013 IHS funding will likewise be funded under a Continuing Resolution.

III. Advance Appropriations Explained

An advance appropriation is funding that becomes available one year or more *after* the year of the appropriations act in which it is contained. For instance, if FY 2014 advance appropriations for the IHS were included in the FY 2013 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2013 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2014 allocation. It would also be counted

against the ceiling in the FY 2014 Budget Resolution, not the FY 2013 Budget Resolution.[1]

To begin an advanced appropriations cycle there must be an initial transition appropriation which contains (1) an appropriation for the year in which the bill was enacted (for instance, FY 2013) and (2) an advance appropriation for the following year (FY 2014). Thereafter, Congress can revert to appropriations containing only one year advance funding. If IHS funding was on an advance appropriations cycle, tribal health care providers, as well as the IHS, would know the funding a year earlier than is currently the case and would not be subject to Continuing Resolutions. Advance appropriations are, however, subject to across-the-board reductions.

IV. The Veterans Administration Experience

In FY 2010 the Veterans Administration (VA) medical care programs achieved advance appropriations. This came after many years of veterans' organizations advocating for this change, including enactment of the Veterans Health Care Budget Reform and Transparency Act of 2009 (PL 111-81) which authorized advance appropriations and specified which appropriations accounts are to be eligible for advance appropriations.[2] The Act required the Secretary to include in documents submitted to Congress in support of the President's budget detailed estimates of the funds necessary for the medical care accounts of the Department for the fiscal year following the fiscal year for which the budget is submitted.

The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system.

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[1] A Budget Resolution includes, among other things, spending limits for discretionary spending for the upcoming fiscal year and at least five ensuing fiscal years. It does not have the effect of law but its aggregate spending allocations, including limitations on the amount of advance appropriations, are enforceable through points of order and other procedural mechanisms.

[2] The three VA accounts which receive advance appropriations are Medical Services, Medical Support and Compliance, and Medical Facilities. Their total appropriation is approximately $50 billion.

V. Required Steps

Achieving advance appropriations for the IHS requires the following three steps:

A. *Enactment of Legislative Authorizing Language*

The first step in providing for IHS advance appropriations would be to enact legislation adding the following language **in bold** to § 825 of the Indian Health Care Improvement Act, 25 U.S.C. § 1680o, authorizing appropriations. Paragraph (a) is the current language in § 825. Paragraphs (b) and (c) would be added to authorize advance appropriations.[3] A draft bill is attached.

(a) There are authorized to be appropriated such sums as are necessary to carry out this Act for fiscal year 2010 and each fiscal year thereafter, to remain available until expended.

(b) For each fiscal year, beginning with fiscal year ____, discretionary new budget authority provided in appropriations accounts for Indian Health Services and Indian Health Facilities shall include advance discretionary new budget authority that first becomes available for the first fiscal year after the budget year.

(c) The Secretary shall include in documents submitted to Congress in support of the President's budget submitted pursuant to section 1105 of title 31, United States Code, detailed estimates of the funds necessary for the Indian Health Services and Indian Health Facilities accounts for the fiscal year following the fiscal year for which the budget is submitted.

The legislation would also amend the Congressional Budget Act governing the President's budget submission to require the President to submit estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the IHS. This would be accomplished by adding the following paragraph at the end of 31 U.S.C. § 1105(a):

(__) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the following accounts:

(A) Indian Health Services, and

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[3] The legislative language is taken from the VA advance appropriations statute except for obvious changes needed to reflect the IHCIA and the IHS appropriations accounts.

(B) Indian Health Facilities.

B. Inclusion of IHS Advance Appropriations in a Budget Resolution

House and Senate budget resolutions, which are under the jurisdiction of the Budget Committees, are not signed into law but rather express the views of the House and Senate on overall spending, revenue, deficits and debt. They express priorities for funding although the Appropriations Committees, while bound by the overall spending level, are not bound by the Budget Resolutions specific priorities. Of significance is that in most years since 2003, the Budget Resolution limits how much—and for what purpose—advance appropriations may be made. Because the Budget Resolution often sets a cap on advance appropriations it is important to include the Indian Health Services and the Indian Health Facilities appropriations accounts in the list of advance appropriations which are authorized by the Budget Resolution. Otherwise, advance appropriations would be subject to a point of order objection.

As an illustration, the Budget Resolution for FYs 2011-2012, S. Con. Res. 60, stated the Senate could *not* consider any legislation that would provide an advance appropriation, but then went on to provide exceptions as follows:

(b) EXCEPTIONS- Advance appropriations may be provided-
(1) for fiscal years 2012 and 2013 for programs, projects, activities, or accounts identified in the joint explanatory statement of managers accompanying this resolution under the heading "Accounts Identified for Advance Appropriations" in an aggregate amount not to exceed $28,852,000 in new budget authority each year;
(2) for the Corporation for Public Broadcasting; and
(3) for the Department of Veterans Affairs for Medical Services, Medical Support and Compliance, and Medical Facilities accounts of the Veterans Health Administration.

We would want language added to include the IHS advance appropriations in this list of exceptions.

C. Enactment of the Advance Appropriations in the Interior, Environment and Related Agencies Appropriations Bill, Initially for a Transition Year and Thereafter as an Advance Appropriation Each Year

Lastly, achieving IHS advanced appropriations would require new legislative language for the Interior, Environment and Related Appropriations Act providing for advance appropriations for the Indian Health Services and the Indian Health Facilities

accounts. For the transition year, the following language **in bold** could be added to the introductory language of the Indian Health Services appropriation:

*For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674) . . . $ _____, of which $ _____ **shall become available on October 1, ____ [the beginning of the first fiscal year after the budget year] and remain available until September 30, ____ [the last day of the first fiscal year after the budget year]***

Similar language **in bold** could be added to the introductory language of the Indian Health Facilities appropriation whose funds are available until expended.

*For construction, repair, maintenance, improvement, and equipment for health and related auxiliary facilities, include quarters for personnel; preparation of plans, specifications, and drawings; and purchases of trailers; and for provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a . . .) $ _____, to remain available until expended, of which $ _____ **shall become available on October 1, ____ [the beginning of the first fiscal year after the budget year] and remain available until expended: . . .***

For fiscal years after the transition year, only the advance appropriation would be provided in both appropriation accounts.

VI. Conclusion

Late funding for medical services and facilities through the IHS has significantly hampered tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance and construction efforts. The steps outlined above, including the introduction and enactment of legislation amending the IHCIA to authorize the needed advanced appropriations must be followed to ensure the Government meets its obligation to provide health care for American Indian and Alaska Native people.

PREPARED STATEMENT OF CATHY ABRAMSON, CHAIRPERSON, NATIONAL INDIAN HEALTH BOARD (NIHB)

Chairman Tester, Vice Chairman Barrasso, and Members of the Committee, thank you for holding this important hearing on the proposed legislation. All of these proposed bills address issues of paramount importance to Indian Country and we sincerely appreciate the attention that this committee has given to the discussion of these key concerns. On behalf of the National Indian Health Board (NIHB)[1]

[1] The National Health Board (NIHB) is a 501(c) 3 not for profit, charitable organization providing health care advocacy services, facilitating Tribal budget consultation and providing timely information and other services to all Tribal Governments. Whether Tribes operate their own health care delivery systems through contracting and compacting or receive health care directly from the Indian Health Services (IHS), NIHB is their advocate. Because the NIHB serves all federally-recognized tribes, it is important that the work of the NIHB reflect the unity and diversity of Tribal values and opinions in an accurate, fair, and culturally-sensitive manner. The NIHB is governed by a Board of Directors consisting of representatives elected by the Tribes in each of the twelve IHS Areas. Each Area Health Board elects a representative and an alternate to sit on the NIHB Board of Directors.

and the 566 federally recognized Tribes we serve, I submit this testimony for the record, specifically addressing S. 1570—Indian Health Service Advance Appropriations Act.

First, I would like to emphasize the importance of the Federal Trust responsibility, when it comes to the health of American Indian/Alaska Native (AI/AN) people. The United States assumed this responsibility in a series of treaties with Tribes, exchanging compensation and benefits for Tribal land and peace. The Snyder Act of 1921 (25 U.S.C. 13) legislatively affirmed this trust responsibility. To facilitate upholding its responsibility, the federal government created the Indian Health Service (IHS) and tasked the agency with providing health services to AI/ANs. Since its creation in 1955, IHS has worked toward fulfilling the federal promise to provide health care to Native people. In passing the Affordable Care Act, Congress also reauthorized and made permanent the Indian Health Care Improvement Act (IHCIA). In renewing the IHCIA, Congress reaffirmed the duty of the federal government to American Indians and Alaska Natives, declaring that "it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians—to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy."

Despite this responsibility, AI/ANs still experience greater health disparities than other races. For instance, the AI/AN life expectancy is 4.2 years less than the rate for the U.S. all races population. According to IHS data from 2006–2008, AI/AN people die at higher rates than other Americans from chronic liver disease and cirrhosis (368 percent higher), diabetes (177 percent higher), unintentional injuries (138 percent higher), homicide (82 percent higher) and suicide (65 percent higher). Additionally, AI/ANs suffer from higher mortality rates from cervical cancer (1.2 times higher); pneumonia/influenza (1.4 times higher); and maternal deaths (1.4 times higher).

Sadly, these statistics have become all too familiar in our communities. IHS is currently funded at only 59 percent of total need. In 2013, the IHS per capita expenditures for patient health services were just $2,849, compared to $7,717 per person for health care spending nationally. Medicare spending per patient was over $12,000 and Medicaid spending was over $6,000/per person. Clearly, the federal government is not doing a good job of fulfilling its legal and moral obligations to Indian Country. Additionally, Medicare and Medicaid are mandatory spending accounts, meaning that the health delivery to these groups is known well in advance of the actual care needed.

This is why the NIHB strongly supports S. 1570—The Indian Health Service Advance Appropriations Act and the House companion bill H.R. 3229. While S. 1570 will not solve the severe lack of funding that the agency experiences, advance appropriations would allow IHS/Tribal and urban (I/T/U) health programs to effectively and efficiently manage budgets, coordinate care, and improve health quality outcomes for AI/ANs. This change in the appropriations schedule creates an opportunity for the federal government to come closer to meeting the trust obligation owed to Tribal governments and bring parity to federal health care system by brining IHS in line with other federal health programs.

Funding Delays and Impact on Care

Since FY 1998, there has been only one year (FY 2006) when the Interior, Environment, and Related Agencies budget, which contains the funding for IHS, has been enacted by the beginning of the fiscal year. The lateness in enacting a final budget during that time ranges from 5 days (FY 2002) to 197 days (FY 2011). In FY 2014, there was a 108 day delay on the enactment but it was 140 days before the FY 2014 operating plan which allocates specific accounts was known. These delays make it very difficult for Tribal health providers and IHS to adequately address the health needs of AI/ANs. Even once appropriations is enacted, there is an administrative process of apportionment involving the Office of Management and Budget that causes delay in actually getting funding down to the local level. Advance appropriations will allow IHS and Tribal health professionals time to plan and tackle many other administrative hurdles, thereby improving access to care. Additionally, it will result in costs savings through lower administrative costs as significant staff time, at all levels, is required each time Congress decides to pass a continuing resolution.

Nothing underscores this need more clearly than the federal government shutdown at the start of FY 2014. Not only did this period prevent Tribal and IHS facilities from providing care, it came at a time when programs were already operating with minimal budgets due to the draconian, and irresponsible FY 2013 across- the-board sequestration cuts. The two week government shutdown forced Tribally-run health programs to close their doors and deny care to thousands of AI/ANs. The Crow Nation furloughed 300 Tribal employees during this time. Others were only

able to treat "life or limb" cases due to the lack of an operating budget. As a result, AI/AN population experienced additional suffering. Other Americans do not have to live with this reality. The First people of the United States should not be last in line when it comes to receiving their health care.

Even without events as extreme as a federal government shutdown, funding delays contribute to other health risks for AI/ANs. Sadly, it is often a saying in our communities, "Don't get sick after June 1" because this is often when dollars to treat patients through the Purchased/Referred Care program run out. However, if Tribal and IHS programs had advance appropriations, they could better plan their patients' care over a longer period of time. Currently, when funding becomes scarce, I/T/U medical professionals often prescribe treatments that address only symptoms, and not the disease. This 'Band-Aid' type of care contributes to a wide variety of other medical risks that are more costly and can be detrimental to the person over the long term. Advance appropriations would mean better ability to plan programmatic activity over several years, thereby leading to better health outcomes for AI/AN people and decreased long-term healthcare costs.

Funding delays also often impact recruitment and retention of IHS medical professionals. Many IHS and Tribal health facilities are located in remote, rural areas where staff recruitment is especially difficult. This is true throughout the rural United States, not just in Indian Country. However, it becomes impossibly difficult to recruit staff if it is not known whether a position will be funded in two months. Giving medical professionals attractive job opportunities that spans longer than a year benefits Tribal communities by providing stability for AI/ANs and the quality that comes with medical professionals familiar with their patients. Additionally, these professionals can provide a higher level of cultural competency which is learned over a sustained amount of time.

Veterans Administration Advance Appropriations

In FY 2010, the Veterans Health Administration (VHA) achieved advance appropriations. IHS, like the VHA provides direct medical care to fulfill legal promises made by the federal government. In the 111th Congress, which ultimately enacted the advance appropriations for the VHA, the House bill (H.R. 1016) had 125 bi-partisan cosponsors. The Senate bill (S. 423) had 56 co-sponsors. Importantly, the Congressional Budget Office ruled at the time that the act "would not affect direct spending or revenues."

IHS, like the VHA, provides direct care to patients as a result of contractual obligations made by the federal government. To NIHB and Tribes, enacting S. 1570 is a civil rights issue and a matter of equality. Like Veterans, Tribal communities have made sacrifices for this country, both historically and contemporarily. However, under the current funding mechanism, AI/ANs do not have the same stability in the care they are provided.

Unity in Indian Country

Tribes and organizations are supporting advance appropriations for IHS. Attached to this testimony are resolutions and letters from the United South and Eastern Tribes; the California Rural Indian Health Board; Alaska Native Health Board; Midwest Alliance of Sovereign Tribes; the Northwest Portland Area Indian Health Board; the Oklahoma City Area Inter-Tribal Health Board; the Inter Tribal Council of the Five Civilized Tribes; and the Three Affiliated Tribes. NIHB will continue to share these supportive documents with the committee as they are received.

It should also be noted that Tribes are ready and willing to engage with the government in advance consultation for the IHS budget should S. 1570 be enacted. The IHS Tribal Budget Formulation Workgroup already proposes its budget two years in advance, so this transition would not be difficult for Tribes. IHS officials have also stated publicly that they are engaged in conversations with the VHA on how this budgeting mechanism will work.

Conclusion

Medicare and Medicaid provide health care to millions of Americans, but these individuals do not have to worry on September 30 of each year if they will be treated on October 1 because they are considered "mandatory spending." The VHA provides care through discretionary spending, but still knows its budget a year in advance. Despite being founded on contractual treaty obligations and federal law, the requirement to fund the IHS is still discretionary. Our people must still wait on the whims of Congress before they can know if their health care is funded. Advance appropriations will be one important step forward toward improving the health of AI/ANs.

NIHB would like to again thank Senator Murkowski for introducing this important legislation and Chairman Tester for holding this hearing on S. 1570. We urge

the Committee to quickly markup and favorably report this critical bill as quickly as possible.

Thank you.

PREPARED STATEMENT OF HON. DELORES PIGSLEY, TRIBAL CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS

My name is Delores Pigsley and I am the Tribal Chairman of the Confederated Tribes of Siletz Indians. The purpose of this testimony is to respectfully support S. 1574, *the Indian Employment, Training and Related Services Consolidation Act of 2013,* introduced by Senator Murkowski on October 16, 2013. The bill will make permanent the demonstration project begun in 1992 with Pub. L No. 102–477 and will clarify the congressional intent that Tribes and tribal organizations carrying out consolidated programs under the Act may continue to receive funds through the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L 93–638, as amended, and may continue to use and account for those funds pursuant to each Tribe's approved consolidated (477) plan.

In making P.L. 102–477 a permanent part of Indian Country legislation, S. 1574 introduces several changes that will enhance the opportunities for Tribes and tribal organizations to take advantage of diverse resources in order to produce locally appropriate programs that facilitate real employment in Indian County. One significant change will add eligible employment related programs from the Departments of Agriculture, Commerce, Education, Energy, Transportation and other agencies that Tribes will be able to draw on in designing their own employment-related programs consolidated in an approved 477 plan.

S. 1574 will streamline the process for plan approval, and includes important language in regards to consolidation and reallocation of funds that Tribes have requested for years. This bill will enhance the ability of Tribes to obtain waivers from regulatory impediments and will allow Tribes to recover indirect costs for all programs that are included in a 477 plan. At the same time, it eliminates administrative redundancy by merging program and financial reporting requirements, all while still adhering to the Government Performance Results Act's stringent accountability standards. The Confederated Tribes of Siletz Indians strongly supports these changes. Tribes, alone, decide which programs or combination of programs to combine into a 477 Plan. This structure affords maximum local flexibility and full accountability, which accounts for the fact that the 477 Initiative has to date, received the highest OMB PART rating of any program in Indian Country.

The Confederated Tribes of Siletz Indians has operated a successful 477 Program since 1997. Our approved 477 plan incorporates funding from the Department of Health and Human Services (TANF), Bureau of Indian Affairs (General Assistance) and the Department of Labor (WIA Adult and Youth). The ability to consolidate funding into one plan and budget has allowed the Siletz Tribe to reduce administrative costs, streamline services and provide a quality "one stop shop" for education and employment related services for not only Siletz Tribal members, but members of many other Tribes as well. We served at total of 559 participants in 2013 and showed significant success rates. The program reported that 70 participants entered unsubsidized employment and the overall earnings gain was $11.54/hr in wages. Participants throughout our eleven county service area are benefiting greatly from our 477-Self Sufficiency Program.

Enactment of S. 1574 will confirm the successful and innovative employment initiatives embodied in P.L. 102–477, and enhance the ability of the Siletz Tribe to carry out the consolidated programs as intended under the Act. The 477 program has worked well for over 20 years by allowing the design of tribe-specific employment, education and economic development programs that meet the needs of the people we serve.

The Confederated Tribes of Siletz Indians requests your support for S. 1574 to assist us in lowering the unemployment rate in Indian Country and we appreciate your continued support of tribal self-determination and self-governance.

PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES, INC.

The United South and Eastern Tribes, Inc. (USET) is pleased to provide the Senate Committee on Indian Affairs with the following testimony in support of S. 1570, legislation that would authorize advance appropriations for the Indian Health Service (IHS). Advance appropriations is funding that becomes available one year or more after the year of the appropriations act in which it is contained, allowing for increased certainty and continuity in the provision of services.

USET is a non-profit, inter-tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine.[1] Both individually, as well as collectively through USET, our member Tribes work to improve health care services for American Indians. Our member Tribes operate in the Nashville Area of the IHS, which contains 36 IHS and Tribal health care facilities. Tribal members may receive health care services at IHS facilities, as well as in Tribally operated facilities operated under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93–638.

Background

As recognized in statute and upheld through the courts, the United States government has a trust responsibility to provide for the health and welfare of federally recognized American Indian Tribes. The IHS is the primary agency tasked with ensuring that the federal government fulfills its promise to provide health care to American Indians and Alaska Natives (AI/AN). Unfortunately, as this Committee well knows, the IHS remains funded at only 56 percent what is required to fulfill its mission. Although the IHS budget has grown 29 percent since Fiscal Year (FY) 2008, this funding is barely able to meet non-medical inflation rates and is completely unable to meet the rates of medical inflation.

In addition to chronic underfunding, the Agency and the Tribes operating facilities under ISDEAA face the problem of discretionary funding that is almost always delayed. In fact, since FY 1998, there has only been one year (FY 2006) in which appropriated funds for the IHS were released prior to the beginning of the new fiscal year. Delays range from 5 days in FY 2002 to 197 days in FY 2011. Appropriations for this year, FY 2014, were over three months late and precipitated by a full government shutdown. As the Committee is aware, delays are most often caused by a Congressional failure to enact prompt appropriations legislation.

Consequences of Delayed Appropriations

Late funding has severely hindered IHS and Tribal health care providers' ability to administer the care to which AI/AN are legally entitled. Budgeting, recruitment, retention, the provision of services, facility maintenance, and construction efforts all depend on annual appropriated funds. IHS and Tribal facilities must continue to operate while Congress engages in philosophical debates about federal spending. However, they are forced to do so at a severely reduced capacity. In a world where it is not unusual to exhaust funding before the end of the Fiscal Year, surgeries are delayed, services are reduced, and employment is in jeopardy.

USET Tribes report tangible impacts from longer delays, including the suspension of transportation services and youth programs, and having to lay off staff. Facilities with limited or no funds remaining in purchased/referred care programs must defer care for many Tribal citizens who are truly in need of services; those in need of joint replacement, for example. In these cases, patients are given prescription pain medication and told to wait. By the time funding is finally appropriated, our people have become sicker and in some cases, dependent on prescription drugs.

Parity With the Veteran's Administration

Congress has recognized the difficulties inherent in the provision of direct health care that relies on the appropriations process and traditional funding cycle. When it became clear that our nation's veterans were not able to receive the quality health care earned in the protection of this country due to funding delays, advance appropriations were enacted for the Veterans Administration (VA) medical care accounts. Advance appropriations serve to mitigate the effect of delayed and, at times, inadequate funding for the VA. As the only other federal provider of direct health care and a consistently underfunded agency, IHS should be afforded this same consideration and certainty.

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[1] USET member Tribes include: Eastern Band of Cherokee Indians of North Carolina, Chitimacha Tribe of Louisiana, Mississippi Band of Choctaw Indians, Cayuga Nation of New York, Coushatta Tribe of Louisiana, Miccosukee Tribe of Florida, Saint Regis Mohawk Tribe of New York, Passamaquoddy Tribe at Pleasant Point of Maine, Passamaquoddy Tribe at Indian Township of Maine, Penobscot Indian Nation of Maine, Seminole Tribe of Florida, Seneca Nation of New York, Houlton Band of Maliseet Indians of Maine, Poarch Band of Creek Indians of Alabama, Tunica-Biloxi Tribe of Louisiana, Narragansett Indian Tribe of Rhode Island, Mashantucket Pequot Indian Tribe of Connecticut, Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Alabama-Coushatta Tribe of Texas, Oneida Nation of New York, Aroostook Band of Micmac Indians of Maine, Catawba Indian Nation of South Carolina, Jena Band of Choctaw Indians of Louisiana, Mohegan Tribe of Connecticut, Mashpee Wampanoag Tribe of Massachusetts and the Shinnecock Indian Nation of New York.

Conclusion

Funding for Indian health care should not fall victim to Congress' inability to successfully pass appropriations, as the lives of AI/AN across the country quite literally hang in the balance. USET strongly supports S. 1570, which presents a no-cost[2] solution to the effects of delayed funding on the Indian Health System. With certainty in funding, IHS and Tribal facilities are able to plan and budget appropriately, allowing for a greater focus on patients and the continuity of care that they deserve.

We thank the Committee for holding a hearing on S. 1570 and the many Members of the Committee who support the bill. As always, please count USET as a willing partner in your efforts to see that advance appropriations for the Indian Health Service are enacted. Together, we can help raise the health status of and provide healthier futures for our nation's first people.

SUPPLEMENTAL TESTIMONY BY MARGARET ZIENTEK

Chairman Tester and Members of the Committee: Thank you for the opportunity to provide supplemental testimony on the proposed S. 1574 on behalf of the P.L. 102–477 Tribal Work Group and the Citizen Potawatomi Nation.

Testimony from Kevin Washburn and Lillian Sparks Robinson on behalf of the Departments of Interior and Health and Human Services, respectively, demonstrates exactly why amendments to the current statute are necessary to make this innovative program permanent, expand the types and sources of funding eligible to be included in a 477 plan, to establish protective review procedures and address new issues that have only arisen in response to agency resistance to tribal self-determination. The legislation is also necessary to ensure that the spirit, the letter and the opportunities of the P.L. 102–477 law will provide for the next century's success in meeting the employment and training needs of Alaska Native and American Indian people across the country.

We appreciate the Department of Interior's support for 477 and for this legislation, and its candor in identifying areas of concern. We look forward to working with the Committee to address what questions remain to guarantee that the way in which the 477 Initiative has worked in terms of operating on one plan, one budget and one report for the last twenty-plus years continues to offer the success to employment and training and lifelong sustainability in Indian country.

Kevin Washburn Assistant Secretary Testimony

Agree with Mr. Washburn's testimony and support:

- It is time to make this program permanent which as operated for over two decades as a demonstration program. When agencies collaborate to surmount bureaucratic obstacles, consolidate programs, and deliver desperately-needed services on a one-stop basis, we can more promptly and efficiency address joblessness and social distress in Native communities.
- One of the reasons that the 477 program is so successful is that it requires federal agencies to cooperate to better deliver services to tribes.

Statements in Mr. Washburn's testimony require clarification or response:

1. We do not agree that the financial reporting system developed by the Administrative Flexibility Work Group (AFWG) is "simplified". In fact, the current system of reporting and the dictates of the Single Audit Act are more simple than the proposal and more than adequate to cover both accountability and the streamlined, simple process contemplated by the statute. This is substantiated by the OMB PART scores received in a review of the 477 Reporting.
2. We agree that the approval process has improved in the recent past, but legislative structure will ensure that future changes in administration do not undermine the accomplishments of the last two years AFWG collaboration.
3. The section of the proposed legislation that "would prohibit a Tribe or tribal organization from being required to submit *any additional* budget, report, audit or supplemental audit or other documentation after its plan is approved" is necessary precisely to clarify that Congress does not intent multiple reports from a program that has operated so successfully for over two decades. (emphasis added).

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[2] CBO Cost Score, H.R. 1016, Veterans Health Care Budget Reform and Transparency Act of 2009, June 16, 2009.

4. Mr. Washburn expresses concerns with a 90-day time limit for federal response to a tribal request for a waiver of statutory, regulatory, or administrative requirements that prevent the tribe or tribal organization from efficiently implementing its plan. However, he also outlines an 80 day plan approval process that agencies are now using. This would certainly lend support that the 90-day time limit is feasible.
5. Mr. Washburn also stated: That certain provisions of S. 1574 that seem to subvert that spirit of cooperation by giving the Secretary of the Interior the exclusive authority to approve or disapprove a proposed plan without the input of the other affected federal partners. This also pertains to the provisions that would approve a plan if the Secretary took no action on it within the 90 days of receiving it. It is unfortunate but history makes this clause necessary. Some tribes have experienced significantly longer delays in responses and/or never received responses. This provision only reaffirms that DOI has the leadership role.

Lillian Sparks Robinson Commissioner Testimony

Agree with Ms. Sparks Robinson testimony and support:

We appreciate the Department of Health & Human Services' willingness to participate in the lengthy conversations and meetings over the duration of the AFWG, and the leadership within the Department that looked for ways in which the HHS programs could support the flexibility and successes of the 477 Initiative across the nation. The AFWG did indeed "identify. . .flexibilities within the law that allow tribes to consolidate. . .477 funds for the purpose of supporting economic development" and strengthened the relationships both between the tribes and the federal agencies, as well as between the agencies participating in the program.

Statements in Ms. Sparks Robinson testimony require clarification or response:

1. The federal agencies made the decision to submit the reporting forms and instructions to the review process under the Paperwork Reduction Act. The changes in the reporting forms and instructions are not due to the Paperwork Reduction Act. These changes reflect an increase in reporting not a reduction.
2. Tribal representatives on the AFWG never advocated that the contract support cost provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA) accrued to Tribes as a product of utilizing the contracts and compacts under ISDEAA as the vehicle by which 477 funds were distributed to Tribes and tribal organizations. On the contrary, tribal representatives specifically stated and assured that only the contract support costs to which Tribes and tribal organizations were already entitled under the Department of Interior programs were retained under their agreements. Other attributes of contracting, such as using matching funds to match other federal programs, do continue as part of the 638 contract process, but due to this disagreement in interpretation of the law, need to be clarified by legislation.
3. The tribal representatives disagreed with the agencies' interpretation that the 477 Initiative did not already grant the ability to re-budget and re-program within an already approved Plan.
4. The legislation does not remove the requirement for any report or audit—for over twenty years, Tribes and tribal organizations have provided in-depth reports of the activities and outcomes of the funds they manage under the 477 Initiative, and 477 received the highest OMB PART rating in Indian Country. Accountability to the public for the funds placed in the Tribes' and tribal organizations' trust has a proven track record. The current reporting system has ensured that accountability. Clarifying these disagreements is a primary goal of the legislation before this Committee.
5. For a number of years, there has been disagreement between the tribes and some Federal agencies about auditing and reporting requirements governing P.L. 477 projects. The only agency which has raised any question was HHS. In fact over many years, 477 Tribes were unsuccessful in getting HHS to provide detail as to what was their concern? During the AFWG, it was finally highlighted that HHS had "concerns with the financial reporting." This was despite no intervening problems. And with the highest OMB PART rating of any DOI program.
6. The provisions in legislation to expand the 477 program , HHS believes is well beyond the initial purpose of integrating employment and training programs and related social service programs. This provision is critical for the continued success of the 477 initiative. Programs operated under a 477 Plan

are actually reviewed on a more frequent basis than programs operated outside of 477 and have demonstrated a more efficient and tribally driven approach to address the needs of our communities.

Last, in regard to the testimony related to the purpose of the ISDEAA and the reference to *Navajo Nation v. Department of Health and Human Services:* In October 2008 DOI and HHS announced that they would end the practice of transferring 477 Program funds to participating tribes through agreements under ISDEAA. As a basis for the action the agencies cited the court's ruling in *Navajo Nation v. Department of Health and Human Services,* 325 F.3d 1133 (9th Cir. 2003), a case that did not involve the administration of the 477 Program. In that case the court held that an Indian tribe could not administer TANF under a 638 contract. The court did not address the administration of TANF under 477. The court simply concluded that TANF is not a contractible program under the ISDEAA because it is (1) not a program or service "otherwise provided" to Indians under federal law, 25 U.S.C. § 450b(j), and (2) not a program "for the benefit of Indians because of their status as Indians," 25 U.S.C. § 450f(a)(1)(E).

There is a enormous difference between being compelled under the ISDEAA to contract the TANF program, and choosing to transfer TANF 477 funds through such contracts. For over 20 years HHS has transferred 477 funds in this manner—not because the ISDEAA mandated it but because doing so made sense and was not prohibited by law. The 477 Tribes have consistently argued that 477 plans can be funded through the ISDEAA, and that the *Navajo Nation* case in particular does not bar the fund transfers currently implemented for the Program. The relevant law is the 477 Act, administered by the BIA, not the numerous and varied agency programs (such as TANF) that can be integrated into a tribal 477 Plan. In fact, the Act provides for administration of the program through the Department of the Interior, including transfer of HHS and DOL agency program funds to the BIA, which then transfers the funds to the tribes.

The key to understanding the 477 Act is that the 477 Act is administered by the Department of the Interior under the Secretary of the Interior. The Secretary of the Interior has the authority to approve or disapprove a tribal plan, which must be done within 90 days of submittal. 25 U.S.C. § 3407. The Act provides for the Secretary of the Interior to "cooperate" with and "consult" with other affected agency Secretaries,[1] but it is the Secretary of the Interior who "shall, upon receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related service programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions." 25 U.S.C. § 3403 (emphasis added).

Moreover, the 477 Program is an Interior "program, service, function or activity" that is available to tribes with consolidated funds from Interior and appropriations from other agencies. The federal programs that may be integrated into a tribal 477 Plan "include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purpose of assisting Indian youth and adults to succeed in the work force, encouraging self-sufficiency, familiarizing Indian youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities." 25 U.S.C. § 3404 (emphasis added).

The 477 Act thus fits the *Navajo Nation* Court's criteria that ISDEAA-eligible programs are those "specifically targeted to Indians." The 477 Program is one provided for tribes by virtue of their status as Indians because only tribes can take advantage of it. Its targeted purpose is to facilitate employment opportunities for Indian youth and adults, as well as to encourage tribal self-sufficiency consistent with self-determination principles.

The fact that HHS has again raised this issue further identifies the need for amendments to the current law. First of all, as described above, the Navajo Nation case does not apply to funds transferred from the Department of Interior under the 477 Initiative. Secondly, all three HHS programs currently participating in the 477 Initiative are "tribal" programs: "Tribal TANF," "Tribal Child Care," and "Native Employment Works." Finally, Congress has the authority to authorize the fund transfer mechanism under the ISDEAA if necessary, and as proposed in S. 1574.

[1] *See* 25 U.S.C. § § 3403 (integration of services authorized) and 3406 (plan review).

Conclusion

As a 477 Tribal organization and a constant member of the Administrative Flexibility Work Group, on behalf of the Citizen Potawatomi Nation and as Co-Chair of the P.L. 102–477 Tribal Work Group, I am grateful the work that the federal agencies put into improving relations and operations of the 477 Initiative. We appreciate the opportunity to address particular points raised in their testimony before this Committee, and to further articulate the necessity for clarifying why S. 1574 is so important to the continued success of the 477 Initiative to improve the lives of American Indian and Alaska Native people throughout the country. This program is essential to our ability to meet the needs of our people in innovative and efficient ways that allow us to provide wrap around services designed on a model of integration and maximum efficiency, leveraging funds and human resources to make the greatest impact for our people.

LETTER IN SUPPORT OF S. 1570, SUBMITTED BY HON. SCOTT N. BIGHORSE, PRINCIPAL CHIEF, OSAGE NATION

Dear Chairman Tester and Vice Chairman Barrasso:

On behalf of the Osage Nation we offer this letter of support for S. 1570, the Indian Health Service Advance Appropriations Act of 2013 which provides advance appropriations for the Indian Health Service (IHS), and urge you to co-sponsor this legislation. Osage Nation believes that providing appropriations one year in advance will enable the IHS to better serve American Indian/Alaska Native (AI/AN) communities and would help ensure that the Government meets its trust obligation to native people. Specifically, IHS and Tribally run programs would benefit from improved budgeting, retention, recruitment provision of services, facility maintenance and construction efforts.

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and Tribal providers great challenges in planning and managing care for AI/ANs. Although the IHS budget has increased by a historic 29 percent since 2008, this equates to an average of 7.25 percent per year, barely enough to cover medical and non-medical inflation and the cost of contract health care for our growing population. Additionally, when automatic budget rescissions and sequestration are taken into account, IHS has lost $240 million since FY 2011. Both serious budgetary increases and changes to resources supporting this health care system are necessary if we are going to effectively address the growing gap in health disparities, which has resulted in early death, and preventable, expensive chronic care costs for AI/ANs of all ages.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011), making quality budget planning almost impossible. Health care services in particular require consistent funding to be effective. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs demonstrates the importance of advance appropriations for direct health service agencies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of VA to properly plan and manage its resources, Tribes and Tribal organizations have those concerns about the IHS health system."

If IHS funding was on an advance appropriations cycle, Tribal health care providers, as well as the IHS, would know the funding a year earlier and their health care services would not be stymied by continuing resolutions. This would lead to greater outcomes for patients in IHS, Tribal and Urban (I/T/U) programs. For example, hospital administrators would have the ability to continue treating patients without wondering if they had to de-fund facilities or programs. Additionally, IHS administrators would not waste valuable resources in an agency funded at only 56 percent of need by re-allocating the budget each time Congress passed a continuing resolution. Tribal health providers would know in advance how many physicians and nurses they could hire without wondering if funding for positions would be available from month to month.

Osage Nation relies heavily on funding from Indian Health Services for the operations of our health program and departments. These funds are vital to our constituents who have no other means of meeting their health needs on a daily basis. These constituents, as well as the Osage Nation Health programs, budget and plan on the funds we receive from Indian Health Services. Any delay in these funds has an immediate impact on the health and welfare of our constituents. Many of our diabetic patients cannot wait weeks or months for their diabetic supplies or to be

seen and monitored. Delay in funding, has a direct impact on the lives of these patients and many others that depend solely on the Osage Nation Health programs as their only source of medical treatment and outreach.

We appreciate the opportunity to offer this letter of support for S. 1570.

LETTER IN SUPPORT OF S. 1570, SUBMITTED BY DIANA AUTAUBO, CHAIR, OKLAHOMA CITY AREA INTER-TRIBAL HEALTH BOARD

Dear Chairman Tester:

On behalf of the Oklahoma City Area Inter Tribal Health Board we offer this letter of support for S. 1570, the Indian Health Service Advance Appropriations Act of 2013 which provides advance appropriations for the Indian Health Service (IHS), and urge you to co-sponsor this legislation. The Oklahoma City Area Inter Tribal Health Board believes that providing appropriations one year in advance will enable the IHS to better serve American Indian/Alaska Native (AI/AN) communities and would help ensure that the Government meets its trust obligation to native people. Specifically, IHS and Tribally run programs would benefit from improved budgeting, retention, recruitment provision of services, facility maintenance and construction efforts.

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and Tribal providers great challenges in planning and managing care for AI/ANs. Although the IHS budget has increased by an historic 39% since 2008, this equates to an average of 7.25% per year, barely enough to cover medical and non-medical inflation and the cost of contract health care for our growing population. Additionally, when automatic budget rescissions and sequestration are taken into account, IHS has lost $240 million since FY 2011. Both serious budgetary increases and changes to resources supporting this health care system are necessary if we are going to effectively address the growing gap in health disparities, which has resulted in early death, and preventable, expensive chronic care costs for AI/ANs of all ages.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011), making quality budget planning almost impossible. Health care services in particular require consistent funding to be effective. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs demonstrates the importance of advance appropriations for direct health service agencies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of VA to properly plan and manage its resources, Tribes and Tribal organizations have those concerns about the IHS health system.

If IHS funding was on an advance appropriations cycle, Tribal health care providers, as well as the IHS, would know the funding a year earlier and their health care services would not be stymied by continuing resolutions. This would lead to greater outcomes for patients in IHS, Tribal and Urban (*ITU*) programs. For example, hospital administrators would have the ability to continue treating patients without wondering if they had to de-fund facilities or programs. Additionally, IHS administrators would not waste valuable resources in an agency funded at only 56 percent of need by re-allocating the budget each time Congress passed a continuing resolution. Tribal health providers would know in advance how many physicians and nurses they could hire without wondering if funding for positions would be available from month to month.

Please remember in the war of words concerning healthcare appropriations, it is our American Indian people dying at an outstanding rate! Continuing appropriations delays can be considered a contributor. This legislation is a step in the right direction to reinforce continuity of healthcare to a needy population habitually underfunded.

We appreciate the opportunity to offer this letter of support for S. 1570.

LETTER IN SUPPORT OF S. 1570, SUBMITTED BY HON. ROBERT SHEPHERD, TRIBAL CHAIRMAN, SISSETON-WAHPETON OYATE

Dear Chairman Tester:

The Sisseton-Wahpeton Oyate requests your support for S. 1570, the Indian Health Service Advance Appropriations Act of 2013, which provides advance appropriations for the Indian Health Service (IHS). We urge you to co-sponsor this legislation. The Sisseton-Wahpeton Oyate believes that providing appropriations one year in advance will enable the IHS to better serve Great Plains tribal communities as well as help to ensure that the federal government meets its treaty obligation to Native peoples. The specific benefits to would be efficient budgeting and fiscal management, improved retention and recruitment of employees, provision of services, and facility maintenance and less disjointness to construction projects.

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and tribal providers great challenges in planning and managing care for Great Plains tribal members. Although the IHS budget has increased by a historic 29 percent since 2008, this equates to an average of 7.25 percent per year – barely enough to cover medical and non-medical inflation, much less the cost of contract health care for our growing population! Additionally, when automatic budget rescissions and sequestration are taken into account, Great Plains Area IHS has lost $19,102,145 since FY 2012 – an overall decrease in funding of 0.16 percent. Significant budgetary increases, as well as changes to resources supporting this health care system, are necessary if we are going to effectively address the growing health disparities gap between American Indians and other citizens of this Nation. The current system rations preventive care, particularly during apportionment periods and spending freezes -- which results in more expensive acute and chronic care costs in the long-term. Tragically for our people, the sporadic and underfunding of of our IHS health care system contributes directly to early and preventable death for Great Plains tribal members of all ages.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011), making quality budget planning almost impossible. Health care services in particular require consistent funding to be effective. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance

appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs demonstrates the importance of advance appropriations for direct health service agencies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system.

If IHS funding was on an advance appropriations cycle, tribal health care providers, as well as the IHS, would know the funding a year earlier, and their health care services would not be stymied by continuing resolutions. This would lead to greater outcomes for patients in IHS, Tribal and Urban (I/T/U) programs throughout the Great Plains. For example, hospital administrators would have the ability to continue treating patients without wondering if they have to defund facilities or programs. Additionally, administrators would not have to waste valuable resources in an agency funded at only 56 percent of need by re-calculataing and re-budgeting each and every time Congress passes a continuing resolution. Literally thousands of manhours are absorbed by the task of managing budgets through shut-downs, continuing resolutions, and apportionments! The Tribes' health care programs would know in advance how many physicians, nurses and other providers they could hire without wondering if funding for positions would be available from month to month.

Late appropriations leaves the IHS a very small window in which to procure needed supplies and services. When they do not receive their allowances until May and the deadline for obligating funds is in August, it leaves less than three months out of the year to get it completed. Obviously, this is not efficient or effective.

In the three-year span of the Sisseton-Wahpeton Oyate's Indian Self-Determination contract with the IHS, there have been 28 modifications processed. Ninety percent (90%) of these modifications have been to allocate apportioned funds associated with continuing resolutions. Each modification has had a resulting bank deposit. Each modificataion also requires changes to the Tribe's nine fund accounts, doling out 8.22%, 9.04%, 29.32%, etc. with each Continuing Resolution. Scarce manpower in the Tribal programs, Tribal Finance, and Tribal Government much process each and every one of these modifications. It is a very inefficient way to operate!

We appreciate the opportunity to offer this letter of support for S. 1570.

LETTER IN SUPPORT OF S. 1570, SUBMITTED BY HON. TEX G. HALL, CHAIRMAN, MANDAN, HIDATSA, AND ARIKARA NATION

On behalf of the MHA Nation we offer this letter of support for the provision of advance appropriations for the Indian Health Service (IHS) as address in S. 1570 that will be heard before the Senate Indian Affairs Committee on April 2, 2014. MHA believes that providing appropriations one year in advance will enable the IHS to better serve American Indian/Alaska Native (AI/AN) communities and would help ensure that the Government meets its trust obligation to native people. Specifically, IHS and Tribally run programs would benefit from improved budgeting, retention, recruitment provision of services, facility maintenance and construction efforts.

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and Tribal providers great challenges in planning and managing care for AI/ANs. Although the IHS budget has increased by an historic 29 percent since 2008, this equates to an average of 7.25 percent per year, barely enough to cover medical and non-medical inflation and the cost of contract health care for our growing population. Additionally, when automatic budget rescissions and sequestration are taken into account, IHS has lost $240 million since FY 2011. Both serious budgetary increases and changes to resources supporting this health care system are necessary if we are going to effectively address the growing gap in health disparities, which has resulted in early death, and preventable, expensive chronic care costs for AI/ANs of all ages.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011), making quality budget planning almost impossible. Health care services in particular require consistent funding to be effective. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs demonstrates the importance of advance appropriations for direct health

service agencies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of VA to properly plan and manage its resources, Tribes and Tribal organizations have those concerns about the IHS health system.

If IHS funding was on an advance appropriations cycle, Tribal health care providers, as well as the IHS, would know the funding a year earlier and their health care services would not be stymied by continuing resolutions. This would lead to greater outcomes for patients in IHS, Tribal and Urban (I/T/U) programs. For example, hospital administrators would have the ability to continue treating patients without wondering if they had to de-fund facilities or programs. Additionally, IHS administrators would not waste valuable resources in an agency funded at only 56 percent of need by re-allocating the budget each time Congress passed a continuing resolution. Tribal health providers would know in advance how many physicians and nurses they could hire without wondering if funding for positions would be available from month to month.

We appreciate the opportunity to offer this letter of support for the advance appropriations for the IHS.

LETTER IN SUPPORT OF S. 1570, SUBMITTED BY ROBERT POLASKY, CEO, SUN'AQ TRIBE OF KODIAK

Dear Chairman Tester:

RE: Sun'aq Tribe in support of S. 1574, the Indian Employment, Training and Related Services Consolidation Act of 2013.

The Sun'aq Tribe of Kodiak, a federally recognized tribe is in support of S. 1574, a bill introduced by Senator Murkowski to make permanent and to amend the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Pub. L. No. 102-477, 25 U.S.C.§3401.

Our Tribe can attest to the efficiency of the 477 Act through demonstrated delivery of services to clients. In addition the 477 initiative;

1. Reduces administrative costs and burdens allowing for more efficient use of funds.
2. Allows much needed flexibility to serve our people in a culturally appropriate manner.
3. Affords maximum community support through local job training placements.
4. Supports economic development initiatives which enhances community infrastructure and creates local jobs for our people.

Sun'aq Tribe of Kodiak supports S. 1574 and urges the Committee on Indian Affairs to advocate for Alaska Natives and American Indians by making the 477 initiative permanent.

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