

**Representative Thom Harnett (Gardiner - D - House District 83),
member of Judiciary Committee**

Good morning. Representative Bailey, fellow members of the Judiciary Committee. My name is Tom Harnett and I represent House District 83 which includes the town of Farmingdale and the city of Gardener. I am pleased to be here today to testify in support of LD 2094. I'd like to begin by thanking the two chairs of this committee and the members of the Task Force for their hard work and dedication over the last six months of 2019. It is now our responsibility to honor those efforts. I stand here today in this Augusta building knowing that I am on land that was never mine. It is land that was taken from those who were here before us. We all stand on land that was taken. If we do not acknowledge that, we are denying reality. I also know that we cannot rewrite that history. Our past cannot be undone even if we would want it to be so.

However, if we do not confront that history, we are doomed to perpetuate our past mistakes and will never come to grips with the pain and loss it has caused to the people who make up our First Nations. What we can do is chart a different and more just future, a future that names those mistakes that we have made and recognizes that we can and must do better. Today you have heard and will hear from people that know far more about history than I do. You will hear from people whose lived experiences were shaped and defined by the State's mistreatment of the peoples whose ancestors were here long before the Europeans arrived. You will hear about an intentional and systematic subjugation of people who were deemed less than, less worthy, less important, less valued than those who conquered them, sometimes slaughtered them, and took their land by force.

While today's session will focus on the Settlement Act, the story starts well before that, and you will learn that as well. Having said that, the 40 years following that agreement had been fraught with bickering and litigation that has left our Tribal friends without the ability to control their own economic future. That needs to end, and we can do that now. We cannot continue to invite our Sovereign Nations to the table only to say we see you, we hear you, but we still do not recognize you as equals. Unlike some here today, I've always viewed the Land Claims Act as a living document and a treaty. When a living document is not working, and the last 40 years show us that it is not, you return to the table and make it right. The Land Claims Act has not truly benefited the Tribes and, as a result, neither our First Nations nor the State of Maine have reaped the rewards that a healthy relationship could produce.

When our Tribes are recognized as Sovereigns, we will all benefit. It is within our power to make that happen. I ask us to seize that opportunity because there is no other option. If we squander this moment, we do so at our peril. Thank you. And I'd be happy to answer any questions.

Chairman Sen. Carpenter:

Thank you, Representative Harnett. Are there questions for Representative Harnett? If not, thank you. And before we go to other legislators, there's another Tribal official here, Mr.

Downing, from Indian Township. My apologies. We got out of sync here a little bit. After Councilor Downing, we're going to go to Representative Evangelos and then Senator David Miramant. Welcome.

Paul Downing, Passamquoddy Tribal Council, Motahkomikuk, Indian Township:

Paul Downing, Passamquoddy Tribal Council, Motahkomikuk, Indian Township:

Hello. Thank you. Senator Carpenter, Representative Bailey, and members of the Judiciary Committee. My name is Paul Downing. I'm an elected Council member of the Passamaquoddy Joint Tribal Council with the Indian Township Tribal Government. I wanted to take the opportunity today to thank you for allowing our voices to be heard in this matter. I am not a politician by trade. I tend not to do a lot of public speaking. I'm a GI Joe by trade. I did 22 years in the Army, so I have to speak to things that I know from my own observations as well as things that have been conveyed to our people. Chief Sabattis just asked me if I could reiterate this. We're elected Tribal officials, we're not up here with their own personal "This is just how we're feeling." It's actually talking to our community members, where we do actually engage with our community and find out what their thoughts and et cetera are. So it's not individual efforts, it's we are here on behalf of our Nations, and that's me today.

I asked you earlier to excuse the Pleasant Point Tribal Council because they had a loss of a respected Elder. And so, I don't know if I followed the protocol and if I violated anything, I apologize. I'm of an age where I've seen both sides of life before and after the Indian Land Claim Settlement. I remember as a young boy, I went to a local town with my non-Native father to get a haircut because I looked like a little kawis [Passamaquoddy word], a burdock or whatever they're called. It was just a big puff ball. So I went in to get a haircut and the guy said, "Hey, get your little monkey out of my shop."

And so I was at that time where we weren't real people, we weren't citizens, we didn't deserve equal treatment. So I was asked to leave a barbershop because he wouldn't cut my hair. That's not really the purpose of my testimony, but that's just to give a little bit of focus. And I just want to talk about the simple message of "morally correct," and that's just the way that I see things.

Federal Recognition brought money to the Tribe, to take citizens out of abject poverty, to improve the dwellings that we were living in at the time. I remember the State houses that our people lived in, intermixed with the tarpaper shacks. No running water, no electricity. Homes with outhouses and all dirt roads. The only tarred road that I can really remember is U.S. Route One that went through the middle of the Reservation and the road that went to Grand Lake, all the rest of them were all dirt.

So we were supposed to come out of this abject poverty and remove ourselves from this poverty line and become... We were State burdens at that time. So now we get off the State and we get to do our own thing. The agreements entered by our previous generation of leadership, prior to my generation. I'm sure most of you all in here weren't on the Senate 40 years ago. So we're getting historical lessons and trying to fix what they may have missed. But at that time there were very limited educations on the people that were representing the Tribes, other than the Attorney. And the Attorney may or may not have had our best interests at heart. So we can get into that a little bit later.

But this burden, this moving from the poverty line hasn't happened. Here we are, fast forward 40 years later, poverty still rampant on the Reservations. Unemployment's harboring right at the 50% mark. And the Tribal governments have taken on the role of the State, more or less the Indian Agents, and where they're providing services and benefits to certain peoples. And that's how they were taught. So I don't fault any of them for, "this is what you were taught." They're masters of it. However, it's not right.

So! After all traveling around the Nation, I've engaged with many National Tribal organizations, as well as my own education within the process, and I think that we should be afforded the same opportunity as the other 562. And, if you know anything about law and listening to news a little bit, we have 574 Federally Recognized Tribes. And I say 562, 563 actually, because there are 11 other Tribes that have these restrictive Settlement Acts. 4 of them right here in Maine, the other 7 just kind of go right down the New England coast, all represented by the same law firm. So, that's just something to think about.

So the State of Maine has been allowed to perpetuate the minimizing of Tribes to a subservient role to them. Many want Maine to be the leaders, but Tribal-State relations are in an area where Maine is far, far behind the rest of the country. For these reasons, I respectfully asked just a couple things. I ask that the Legislators should honor the spirit of the treaties your fore fathers entered into with the Tribes of Maine when we stepped up and fought in your war.

[Revolutionary War] I heard it today, somebody said we were conquered, and I don't remember a Maine Indian war conquering thing going on, so we were partners. I would ask you, stop treating the Tribes as a state, as wards of the State. I would ask that you not be afraid of the Tribes with expanded jurisdiction, but that you'd be excited about the potential that the opportunity presents to all of the people of Maine, the citizens of Maine, as well as us. The day and age where we need somebody to hold our hands and guide us through life has long past.

Our goal is to be self-governing like the other 563 Tribes, FRTs, that we interact with in our travels around the country. In most cases, those are operating in collaborative State-Tribal fashion are flourishing. The Tribes are creating jobs and providing for their communities while the State reap the benefits by being able to rely on strong local partners and revenue sharing agreements. It's that symbiotic collaborative relationship that we're looking for.

I often say this as, when we're talking, people look at us with our hand out, they think our palms facing up and we're looking for something, we're looking for you to put something in it. And I say otherwise. I say we got our hand turn sideways and we're looking for that handshake of mutual respect, reaffirming our commitment to each other to make this a better State, to make this a better Tribal-State relation. So we're looking for that handshake. We're not looking for the handout. That's all I got to say.

Chairman Sen. Carpenter:

Thank you, Mr. Downing. Are there questions of Mr. Downing? Representative Babbidge?

Rep. Babbidge:

Yes. A quick one. Mr Downing, you seem to have a handle on the whole Federal thing. What we're addressing today is the State-Tribal relationship.

Councilor Paul Downing:

Yes, sir.

Rep. Babbidge:

But the next step would be the Tribal-Federal relationship in order to have that change. Isn't that right?

Councilor Paul Downing:

Yes.

Rep. Babbidge:

I mean you've talked about these 11 Tribes that have Settlements. Am I wrong to interpret that part of history as the Federal government, in exchange for a payment, washing it's hands of the Tribes in favor of the State taking over that responsibility?

Councilor Paul Downing:

Yeah. And this is just my perception and I'm not a historian or any of those other things, my education's in something totally different. I think that was an easy out for them. Here, "we'll get up a check, write the check and bounce. Now it's your problem, State of Maine, State of Mass." Mass has the same. Rhode Island has the same. So it was just an easy out for them. They didn't want to deal with the repercussions of the Treaty that they entered into, Massachusetts entered into with the Tribes of Maine. And now, "oh, you guys got called on it in a Supreme Court case." They knew that they were in the wrong, but it was easier for them to pass the buck off onto the State. I'm sorry. That answer it?

Chairman Sen. Carpenter:

Thank you, Mr. Downing. Senator David Miramant.

Senator David Miramant (D- District 12 -Camden):

Thank you. Senator Carpenter and members of the committee, esteemed Chiefs and Elders of the Maine Tribes. My name is Dave Miramant. I proudly represent the people of Appleton, Camden, Criehaven, Cushing, Friendship, Hope, Isle au Haut, Matinicus, Muscle Ridge Islands, North Haven, Owl's Head, Rockland, Rockport, South Thomaston, St. George, Thomaston, Union, Vinalhaven, and Warren, in the Maine Senate. I come before you today to support LD 2094, An Act to Implement—you know the title. During my time in the Legislature, I learned that the Maine Indian Claims Settlement Act took away inherent rights of Maine Tribes. The negotiations over that law should never have included sovereignty, which is recognized under Federal law. I applaud the Task Force for its work to right this wrong because Maine law should support our Tribes, not interfere with their sovereignty. This bill will bring Maine law into line with Federal law which recognizes the sovereignty of the Tribes across the country. Our Tribes here in Maine should be protected in the same way. LD 2094 would help to do that, benefiting our Tribes and all Maine people.

I won't be able to come back this afternoon as a representative of my committee. One of my other members will be, but I want to say as chair of Marine Resources Committee, I know that if this bill becomes law that won't solve or resolve all issues of sovereignty in Maine waters. My committee looks forward to serving as a constructive partner to the State and the Tribes to resolve any conflicts. We are on stand by for that. Thank you. I'll answer questions if you have any.

Chairman Sen. Carpenter:

Thank you, Senator Miramant. Are there any questions of Senator Miramant? Thank you, sir.

Representative Rachel Talbot Ross. Ah, there you are. I missed you. After that we're going to move to members of the public, and the first person on that list will be the Attorney General Aaron Frey.

Rep. Rachel Talbot Ross (Portland -D- District 40):

Senator Carpenter, representative Bailey, and the distinguished colleagues of the Joint Standing Committee on Judiciary. My name is Rachel Talbot Ross and I represent House District 40, which is part of Portland. I am pleased to come before you today in support of LD 2094, An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claim Settlement Implementing Act. And I'd like to take this opportunity to thank the Task Force and all of those who contributed in making this bill possible. As we have heard or learned through this process, the State of Maine actively regulated the affairs of Indians within its

borders for almost 160 years, creating hundreds of laws relating to Indians. As a result, when the Maine Tribes asserted Land Claims in the 1970s, they first had to overcome the claim by the State that they were not really bonafide Indian Tribes at all.

I will not go into any detail about the Settlement Act as we have a lot of materials that we've been given and we've heard from experts and those with lived experience far more critical to our understanding about it than I can possibly add, except I will say that the Settlement was not a grant of new authority to the Tribes. It was, in fact, a restriction of the jurisdiction they already possessed. With this Settlement, Maine moved in a dramatically different direction from the rest of the country at a time when Federal policy had begun to strongly encourage and support Tribal self-determination, a policy that continues to the present day. But, with the Settlement, Maine moved in the opposite direction. Former State control over Indians was largely reinstated. What the 1980 Settlement was intended to do was to create new ongoing relationships and to respond to changing circumstances. But, in fact, the Maine Settlements have not succeeded in creating this flexible and effective relationship between the Tribes and the State at all.

Whatever view one has on this particular issue, it's fair to say that none of the parties could have predicted that the 1980 Settlement would remain essentially unmodified for all of these years. That so many issues would be submitted to the courts instead of being worked out between the parties, or that the courts would interpret jurisdictional language in the particular ways in which they have. Maine has not developed an Indian policy based on government to government relations. The Settlement and court decisions effectively became the State's only governing Indian Policy. The State has failed to recognize the potential benefits of a more harmonious and effective Tribal-State relations based on mutual respect for government sovereignty. The State has approached Tribal-State relations as a zero sum game. When Tribal and State governments do not have cooperative and effective relationships, the people who suffer the most are Indians and non-Indians living in poverty on the reservations and in neighboring communities.

They mutually experience the negative impact of ineffective government services and a lack of economic development. Some feel that the 1980 Maine Indian Claims Settlement Implementing Act should not be changed. Some say a deal is a deal. As legislators, we know, however, that society progresses. With that progress comes change. The United States Constitution, the foundational document of our country has been amended 27 times. If we can change the U.S. Constitution, certainly, surely, we can change the Settlement Act. Every day in this building we change laws. That is what we are doing here.

There are also some people who will say we are moving too quickly. We are not moving too quickly. [general laughter] The issues are known. They have been known because the issues have been litigated for 40 years between the State and the Tribes. In these 40 years, there have been three Task Force which have recommended changing the Settlement Act. of those made recommendations that were never passed. The third convened over the past year. That Task Force has led to the document referred to today, LD 2094. No, we are not moving too quickly. I

would say this has been 40, if not 400, years in the making. We should not be asking why we should not make changes. We should be asking why these changes are beneficial and to whom. These changes will not only benefit the Tribes, these changes will benefit rural Maine and the entire State as well. The Tribes are currently an economic engine.

For instance, The Houlton Band of Maliseet are one of the largest employers in their area. When they build they hire local businesses, their employees shop in their local stores and buy homes in that area. But we have stifled the Tribe's economic potential not only for themselves, but indeed for ourselves. As you have heard, these changes are also a matter of fairness. The Tribes in Maine are hindered like no other Tribe across the country. Where other Tribes in the country essentially abide by Federal Indian Law, Maine Tribes must contend not only with Federal regulations but also Maine State regulations. This hampers opportunity for the Tribes in Maine to attract economic investments, as we've heard this morning.

What investor would subject themselves to additional regulations when they can go to any other Tribe across the country and have more certainty. More importantly, we are suffocating the Tribe's ability for self-determination. They are not asking for special rights. They are not asking for special rights. They are not asking for special rights. They are asking for rights like any other Tribe in the country. They are asking we restore the rights they had before 1980 when they were under Federal Indian Law. They are asking for fairness, respect, and an opportunity to succeed. The Task Force recommendations present an opportunity for the State, after being frozen in place for 40 years, to work with the Tribes to adjust its Indian policy to fit current circumstances. On the bicentennial of Maine we have an opportunity to right a wrong, we have an opportunity to allow the Tribes to flourish, and in doing so, so will all of Maine. Thank you very much.

Chairman Sen. Carpenter:

Thank you, Representative. Are there questions of Representative Talbot Ross? Thank you.

Rep. Rachel Talbot Ross:

Thank you.