



NATIONAL CONGRESS OF AMERICAN INDIANS

Testimony before the Democratic Steering and Policy Committee and House Committee on Natural Resources

Impact of the Partial Government Shutdown on Indian Country Presented by Dr. Aaron A. Payment, EdD, EdS, MEd, MPA January 15th, 2019

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On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing on the impacts of the partial federal government shutdown on Indian Country. The shutdown breaks the treaty and trust obligations to tribal governments. Agencies that provide critical government services to our nations are caught up in unrelated politics over funding for a southern border wall and the welfare of our tribal citizens hangs in the balance. Again, my name is Aaron Payment. In addition to serving as Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, I serve as the First Vice President for NCAI and as President of the United Tribes of Michigan. My tribe is the largest tribe east of the Mississippi with 43,000 tribal citizens.

Irrespective of who is at fault, the shutdown threatens to abrogate the treaty and trust obligations to tribes. Federal funding that tribes receive is woefully inadequate to begin with and is based on the 500 million acres of land tribes ceded in the 1800s to make this great country. My tribe is a party to the 1836 treaty of Washington which ceded 14 million acres of land in exchange for our usufructuary rights and “health, education and social welfare” into perpetuity. Tribes pre-paid - in full - federal funding for operations, programs and services. Just as we cannot foreclose on the land, we expect the federal government to fulfill the treaty and trust responsibility. I am here to remind the Administration and Congress that your mortgage is due.

Agencies that provide critical government services to tribes are caught up in politics over funding for a southern border wall. During this shutdown, the well-being of our tribal citizens is in jeopardy. As tribal leaders, we know that it is simply not an option for us to stop serving our citizens. That way is foreign to us. While some tribes are backfilling or subsidizing the federal government’s financial obligation, please realize that nearly 60 percent of tribes do not have access to Indian gaming, lack sufficient resources for meaningful economic development, and face unnecessary bureaucratic and regulatory burdens that create inequities and disadvantages to true self-determination. On behalf of Indian Country, we urge the President and Congress to do their jobs and reopen the government immediately.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of tribal governments and communities. NCAI advocates for tribal governments and communities, serves to remove historic structural impediments to tribal self-determination, works to advance the nation-to-nation relationship between tribes and the federal government, fights to address legal, political, and racial inequities, and promotes healing from past and current injustices.

Indian Country faces immense economic challenges and federal funding of Indian trust and treaty obligations serves as a critical component of tribal economies. Yet the often partisan debates affecting the appropriations process have an outsized impact on the daily lives of American Indian and Alaska Native people who already face underfunding of health care, education, and backlogs in physical infrastructure – all of which fall under the federal trust responsibility.

Again, through the treaties, the federal government assumed a trust responsibility to provide governmental services like health care, public safety, and education as a part of its negotiations with tribal nations. The Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), the primary agencies responsible for providing these services, either directly or through compacts or contracts with tribal governments, are currently hamstrung by the shutdown.

America's longstanding, legally mandated obligations to tribal nations should be honored no matter the political quarrels of the moment. Ironically, the Americans most affected by immigration over the last 500 years continue to be the most heavily impacted by the shuttering of multiple federal agencies that are unrelated to securing the homeland. Our communities rely on federal funding to administer key tribal government services, health care facilities, public safety, housing access, nutrition and food distribution programs, and social services, and the shutdown is causing widespread destabilization of these programs, as well as generating fear and anxiety among our tribal citizens. NCAI's testimony reviews just some of the impacts we have heard so far from tribes to date. We request to be able to revise and append this testimony to share additional impacts as they are conveyed to us from tribal nations.

Impact of Furloughs and Missing Paychecks: In Indian Country, due to the large role public administration jobs play in tribal communities and economiesⁱⁱ – coupled with low average household wealthⁱⁱⁱ – the shutdown disproportionately hurts Native families. Thousands of BIA and IHS employees, many of whom are tribal citizens, are furloughed or working without pay. Two of my tribal citizens who serve as IHS Directors serving other tribes are working without pay. Federal BIA and IHS employees should be receiving a paycheck, but are now struggling to pay household bills and mortgages. Furloughs and missed paychecks are not just hurting each affected employee, but their families as well. A single salary may support an extended Native family, sending harmful ripples throughout the tribal nation and surrounding communities. The uncertainty of a shutdown also compounds the challenges tribal nations face attracting and retaining professionals to work in health care and other skilled professions that are critical to fulfilling the federal government's treaty and trust promises to tribal nations.

Views on the ground show that while the IHS continues to provide care through excepted personnel, the hardship on those missing paychecks hurts not only now, but also into the future. A nurse practitioner in Albuquerque, New Mexico, who works at an IHS medical facility observed, “we have psychologists, psychiatrists, a plethora of people who provide care. They can only maintain working without pay for a certain period. People will start dropping out. They're going to have to find another job because they can't pay rent. I have enough for two months. That's it.”^{iv}

During the last government shutdown and with the impact of sequestration, my Tribe lost a physician and five other medical staff. This is especially damaging in rural reservation communities who have difficulty recruiting and retaining medical personnel.

Dante Biss-Grayson Halleck, a veteran and federal employee, works as a safety officer serving tribal nations. In an interview with CNN, he worried that other federal employees will turn to work in the private sector to support their families. "There are very few people who can live without a paycheck for months," he said.^v

Some tribes have already let workers go. On January 9th, the Kickapoo Tribe of Kansas announced that it had already laid off 22 employees due to the shutdown. "Unfortunately, due to lack of access to federal funding at this time, we are providing very limited services to our tribal members and community," Kickapoo Tribal Chairman Lester Randall said in a release.^{vi} "Even when the government shutdown ends, we will not have immediate access to our federal funding. Drawdowns from the Bureau of Indian Affairs and other federal agencies will still need to be processed, which could take weeks."

While overlapping federal budgets and fiscal years make it difficult to enumerate the fiscal impact of the shut down for tribes, my Tribe's annual federal funding prorated per day amounts to \$100,000. Timing and federal drawdowns are important to cash flow, but once the full impact of not being able to draw down our self-governance funding (today by the way) we will have to borrow from tribal reserves to be able to continue to operate. I implore this committee to advocate that any federal bill that pledges to reimburse States for lost revenues and backfilling operations should include language that extends this to tribes with specific draft language which reads, "States and tribal nations."

Impacts on Tribal Economic Activity: For some tribes, the shutdown hurts other important sources of tribal economic activity. The Colville Tribes will lose about \$400,000 every week that the shutdown continues due to reduced timber harvesting and forestry activities, a major economic driver. The total economic impact to the Colville Tribes and surrounding region is approximated at \$1.2 million per week of the shutdown.^{vii}

In addition to the impact on federal and tribal workers, the shutdown will impact tribal economies due to the important role Native contractors play in providing services and job opportunities. Federal contractors play an essential role in helping agencies meet their mission and deliver services to the American people, with 40 percent of federal government missions staffed by private contractors. For tribal nations engaged in federal contracting, tribally owned enterprises, Alaska Native Corporations, and Native Hawaiian organizations have reported an estimated financial loss of \$200,000 to \$250,000 per day during the shutdown. These entities support the economic development and prosperity of Native communities and provide jobs and services in all 50 states. Their inability to meet these goals due to the shutdown is a substantial loss to Native and non-Native communities where these entities provide employment opportunities and resources.

In federal contracting, some tribally owned companies are already reporting furloughs of 300 jobs. Unlike federal employees, these federal contractors are not guaranteed back pay and the Native firms that employ them might not ever recover costs from the federal government. This uncertainty strains the workforce not only in Indian Country, but our surrounding rural communities across the nation.

Impact of Tribal Self-Governance: For the more than 370 tribal nations who elected to take over the administration of federal programs through Self-Governance initiatives, the shutdown has stalled the federal government from fulfilling its agreed upon obligations to provide resources for

tribal nations to administer federal services to their citizens. In addition, it is holding up critical negotiations of services to be taken over by tribal nations, including programs that affect the health and well-being of tribal citizens. Some tribal nations have contingency plans to address the lack of federal support to administer their programs, but they only provide a short-term solution to a potentially long-term problem. Many of the options available to tribal nations to address the lack of federal support have an associated cost – either a direct monetary cost (such as interest payments on funds borrowed from a financial institution) or an opportunity cost (when funds are prematurely removed from investments or reallocated away from planned economic endeavors).

Health Care: IHS programs serving Indian Country have no FY 2019 appropriations. Despite the fact that the federal government has a trust obligation to provide health care to American Indian and Alaska Native people, the IHS remains unfunded while other agencies that provide critical health services, like the VA, have advanced appropriations or are otherwise funded. Tribal governments are cutting other services and scraping together scarce dollars, or securing interest-bearing loans, to keep health clinics operational, but this is not sustainable.

Our citizens are worried about whether they will be able to receive health care. I have seen numerous posts on Facebook of tribal members wondering if they will be able to get dialysis, cancer treatment, or other desperately needed care. I am fearful that if any furloughs happen as a result of not receiving our next IHS drawdowns and after we exhaust our reserve funds that we will lose additional medical team members. Again, during the last shut down and sequestration, we lost six medical staff. The window for full operations using tribal reserve funds for my own Tribe is about three weeks. At that point, we will be forced to triage our health delivery. I am concerned about how we will fulfill life sustaining prescription medicine orders for treatment of diabetes, heart disease and Vivitrol, a neurotransmitter blocker as a part of medically assisted treatment for opiate addiction. Like most tribes, we fulfill life-sustaining treatment for cancer though purchased and referred services (formerly Contract Health).

This shutdown only emphasizes the need for IHS funding to be allocated on a mandatory funding basis, so that Native people are not subject to federal governmental dysfunction and impasses. If IHS funding were in law outside of the annual discretionary appropriations process, tribal nations would not have to worry each day if their programs are funded. As an interim step, IHS should be funded through advanced appropriations, which would ensure that basic health services are funded if Congress and the President cannot come to an agreement on appropriations legislation. The IHS should be afforded at least the same budgetary certainty and protections extended to the Veterans Administration, which is also a federally funded provider of direct health care.

Meanwhile, impacts from the shutdown on healthcare delivery are growing. The Seattle Indian Health Board reports plans to cut services if the shutdown continues more than a couple of weeks. Some of the programs that would be affected are an in-patient treatment center for chemical dependency and a traditional medicine program to help people in recovery.

The Upper Columbia United Tribes report that even though the clinics are open, their referral system to send patients to outside specialists is limited to Priority 1 during a shutdown, which means only life-threatening conditions.^{viii}

Other tribes offer an example of how the US government should operate. Larger tribes generate significant revenue on their own, such as the Cherokee Nation. With its own major hospital and

eight health centers, the Cherokee Nation is able to use their general fund for a longer amount of time than other tribes. The federal government should be able to balance their budget and fund federal agencies.

While many other tribes cannot subsidize the federal government for very long, Secretary of State Chuck Hoskin shared that, “for now, we’re able to protect the Cherokee people.” He added, “but even as strong as Cherokee Nation is, we’re not invulnerable to the effects of a long-term shutdown.”^{ix}

Education: While Bureau of Indian Education (BIE) schools are funded for the year, federal staff that support child nutrition programs have been furloughed, which impacts school nutrition and cafeteria programs. The emergency funds provided to state education agencies for school nutrition services will run out by March. Tribal schools are also operating without access to staff for emergency facilities repair and maintenance.

Furloughs at the Interior Department have also halted progress on the negotiated rulemaking process for standards, assessments, and accountability systems under Every Student Succeeds Act (ESSA), which affects the BIE’s ability to meet the deadline for ESSA implementation. The Education Department threatened to withhold funds if the BIE is not ready to implement standards, assessments, and accountability systems under ESSA by fall 2019.

Public Safety: While the BIA contingency plan identifies Excepted Personnel as including Law Enforcement, some tribes are still reporting impacts to public safety. The BIA runs the police force for the Mescalero Apache Tribe.^x The tribe reports that BIA is furloughing much of the staff, limiting the ability to respond to calls. In the middle of winter with deep snow on a mountainous reservation, furloughs of BIA staff are taking a toll on coordination and response to public safety issues.

The shutdown also impacts programs that rely on grants administered by the Department of Justice, including those authorized by the Violence Against Women Act (VAWA) and the Victims of Crime Act (VOCA). Programs that support crime victims, including domestic violence shelters and rape crisis centers, have been told that their grant payment requests will only be processed through January 18. Many programs are worrying about keeping their doors open after that time.

The shutdown is also slowing down tribes’ efforts to improve their criminal justice systems for the long term. Tribal prosecutors from across the country were scheduled to attend a weeklong training on prosecuting domestic violence crimes in Indian Country hosted by the Department of Justice’s National Indian Country Training Initiative. The training was cancelled and has not yet been rescheduled.

Housing and Infrastructure: During the government shutdown, individual American Indians, Alaska Natives, and Native Hawaiians are unable to utilize housing programs at the USDA or complete their home loans through the HUD 184 Loan Guarantee program. Some tribal housing programs may shut down entirely until new funding is available, while others may be able to stretch out their dollars by providing minimal services to their members. With the BIA included in the shutdown, leases cannot be approved for rehabilitation work on homes or title reports for home loans. The shutdown is delaying the dream of homeownership for Native people who are in the home buying process right now.

The shutdown also extends to basic governmental services such as road maintenance, a program funded through the BIA. Large land based tribes are especially affected by this kind of disruption. Navajo Nation President Russell Begaye reports that the shutdown is impacting transportation on Navajo's 24,400-square-mile reservation.^{xi} The Navajo Nation has 7,000 miles of roads, including tribal, BIA, county, state, and federal roads. Road maintenance is now just at half its normal capacity.

Family and Child Welfare: In the area of social services, tribal workers play a critical role in advocating for the best interests of children and providing resources to support reunification of children with their families when possible. When tribal child welfare workers do not have the ability to actively participate in proceedings, children and families are deprived of support and resources.

While tribal governments provide many critical services to vulnerable tribal children and families, they also need the full engagement and support of their federal partners. Federal funds include payments to foster parents to help support the cost of caring for foster children as well as income assistance to families that are unemployed and need help meeting their basic needs in areas like housing, food, and energy costs. Tribal social service staff are working tirelessly during this partial government shutdown to ensure that the most vulnerable within our communities receive the help and support they need, but as in past government shutdowns, it is often the most vulnerable citizens within our communities that suffer the most.

Tribes are reporting that various social services funded by BIA are interrupted. BIA General Assistance payments, which provide financial assistance payments to eligible American Indians for essential needs of food, clothing, shelter, and utilities, have been halted.

The shutdown makes coordination difficult between tribal child welfare workers and other service providers to meet families' basic needs, including food, housing, healthcare and mental healthcare. Tribal nations have a unique relationship with the federal government, including the BIA, with whom they partner to provide services to vulnerable children and families.

Nutrition: At the U.S. Department of Agriculture (USDA), the Food Distribution Program on Indian Reservations (FDPIR) could run out of funding by the end of January, which would end food assistance for 90,000-100,000 tribal citizens, who are mostly elders and children. FDPIR is a lifeline to 276 federally recognized tribal nations and more than 100 tribal organizations to feed Native communities in the most remote locations in the United States. A lapse in funding for food programs like FDPIR could have long-lasting impacts, including lack of fruit, vegetables, and animal protein food stuffs for 4-6 months in tribal communities, with effects lasting nearly a year following a shutdown.

If the shutdown continues for months, as the President has indicated is possible, funding for other food assistance programs, such as Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program For Women, Infants, and Children (WIC), will be affected. SNAP and WIC is only guaranteed through February.^{xii} These safety net programs assist a large share of Native families, and children could lose access to affordable food and formula.

Meanwhile, tribes are stepping up on their own to ensure federal and tribal workers impacted by the shutdown will be able to eat. On the Blackfeet reservation, the Blackfeet Food Pantry Program is offering a food distribution for furloughed federal workers and those working without pay due to the shutdown. The Pawnee Nation of Oklahoma has established a GoFundMe account to raise funds to buy groceries for the families of federal employees working without pay.^{xiii} The Pawnee Indian Health Center is also setting up a food pantry to collect food and other essentials such as laundry, bathroom and hygiene products, and diapers. However, tribal nations and their citizens should not be forced to turn to for-profit crowdfunding platforms and charities because the federal government has failed to meet its treaty and trust obligations.

Conclusion

Tribal nations are resilient and provide services to around 2 million people; however, we cannot continue to provide for our communities without our federal partners upholding their obligations. The long-term effects of this shutdown will ripple throughout our communities for months or even years following the reopening of the government. We urge the President and Congress to end this government stalemate, fulfill their trust and treaty promises to tribal nations, and invest in the future of all Americans. We also urge interim steps, such as passing legislation to provide advance appropriations for programs fulfilling the treaty and trust responsibility and exploring moving such programs to mandatory funding as opposed to discretionary appropriations, which can be interrupted by irrelevant policy disputes.

ⁱ US Commission on Civil Rights. “Broken Promises: Continuing Federal Funding Shortfall for Native

ⁱⁱ Todd, Richard. “Industry Concentration of Jobs Highlights Economic Diversification Opportunity in Indian Country.” Center for Indian Country Development Blog, May 31, 2018.

ⁱⁱⁱ Chang, Mariko, “Lifting as We Climb: Women of Color.” *Wealth and America’s Future*. Oakland, CA: Insight Center for Community Economic Development, 2010, 14.

^{iv} Bendery, Jennifer. “Government Shutdown Threatens Native Americans’ Access To Health Care.” *Huffpost*, January 11, 2019.

^v Holcombe, Madeline. “Trump’s TV speech and the Democratic response has this federal worker ready to look for a new job.” *CNN*, January 9, 2019

^{vi} Charles, Michelle. “Government shutdown hurting tribes as workers go unpaid.” *Stillwater News Press*, January 12, 2019

^{vii} Chairman Rodney Cawston, Colville Tribes, to House and Senate Committee Chairmen, January 3, 2019

^{viii} Camden, Jim. “Already Affected by Shutdown, Tribes Fear it Will Get Worse.” *The Spokesman-Review*, January 5, 2019

^{ix} Bendery, Jennifer. “Government Shutdown Threatens Native Americans’ Access To Health Care.” *Huffpost*, January 11, 2019.

^x Fonseca, Felicia. “Shutdown Puts Strain on Hundreds of Native American Tribes.” *Associated Press*, January 12, 2019

^{xi} Krol, Debra. “Government Shutdown: Tribes Suffer Job Losses, Bad Roads, No Healthcare Access.” *Indian Country Today*, January 8, 2019

^{xii} United States Department of Agriculture, Food and Nutrition Service. “USDA Announces Plan to Protect SNAP Participants’ Access to SNAP in February.” January 8, 2019

^{xiii} Charles, Michelle. “Government shutdown hurting tribes as workers go unpaid.” *Stillwater News Press*, January 12, 2019