



**THE MASHPEE WAMPANOAG TRIBE
TESTIMONY OF THE HONORABLE JESSIE LITTLE DOE BAIRD, VICE CHAIRWOMAN
U.S. HOUSE OF REPRESENTATIVES HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIGENOUS PEOPLES OF THE UNITED STATES**

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Introduction

Good afternoon, Chairman Gallego, Ranking Member Cook, and distinguished members of the Subcommittee. My name is Jessie Little Doe Baird and I am the Vice Chairwoman of the Mashpee Wampanoag Tribe. I also bring greetings from our Chairman, Cedric Cromwell. Our Tribe is suffering from the assault on our reservation and on our very status as Indians. For this reason we urge swift passage of the bipartisan bill H.R. 312, the “Mashpee Wampanoag Tribe Reservation Reaffirmation Act.” The damage done to our Tribe during the years in which the status of our reservation has been thrown into doubt is beginning to reach catastrophic levels. Accordingly, we urge Congress to treat Mashpee fairly, and to act with all due haste to protect our reservation from further assault.

Joining us in urging swift passage are the City of Taunton, the Town of Mashpee, Massachusetts State Representative Shauna O'Connell (R-Taunton), Massachusetts State Representative David Vieira (R-Mashpee), Massachusetts State Senator Nick Collins (D-Suffolk), Massachusetts House Republican Leader Brad Jones (Middlesex), and Massachusetts Senate Republican Leader Bruce Tarr (Gloucester), the Mayflower Society, the Mashpee Chamber of Commerce, the Taunton Chamber of Commerce, the Southeastern Massachusetts Building Trades Council, and Dimeo Construction Company.

Also joining us in urging passage of the legislation are the National Congress of American Indians, the National Indian Gaming Association, the United South and Eastern Tribes, the Apache Alliance, Rocky Mountain Tribal Leaders Council, Affiliated Tribes of Northwest Indians, the Midwest Alliance of Sovereign Tribes, the Akiak Native Community, the Tohono O'odham Nation,

the Pascua Yaqui Tribe, the San Carlos Apache Tribe, the Tonto Apache Tribe, the Hualapai Tribe, the Mechoopda Indian Tribe, the Big Valley Band of Pomo Indians, the Sycuan Band of the Kumeyaay Nation, the Guidiville Indian Rancheria, the Ione Band of Miwok Indians, the Mashantucket Pequot Tribe, the Mohegan Tribe, the Nez Perce Tribe, the Jena Band of Choctaw Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, Lac Vieux Desert Band of Lake Superior Chippewa, Chippewa Cree Tribe of the Rocky Boy's Reservation, the Shinnecock Indian Nation, the Standing Rock Sioux Tribe, the Ft. Sill Apache Tribe, the Otoe Missouri Tribe of Indians, the Kaw Nation, the Narragansett Indian Tribe, the Yankton Sioux Tribe, the Cheyenne River Sioux Tribe, the Lower Brule Sioux Tribe, the Ute Indian Tribe, the Suquamish Tribe, the Stockbridge-Munsee Band of Mohican Indians, the Oneida Nation, the St. Croix Tribe of Chippewa Indians, the Native American Rights Fund, the Native American Finance Officers Association.

Since time immemorial, the Mashpee Wampanoag and the land upon which we were placed by Creator have been inseparable. We are one and the same. This fact is no less true today than it was some 400 years ago when the Wampanoag granted Indian land title to the Pilgrims -- the land they used to form Plymouth Colony. Yet by the time our federal recognition was restored to us in 2007, we were a landless tribe with no federal reservation. This is in part because *we are the only federally recognized tribe in New England for which Congress has not enacted legislation providing for a federally-protected reservation*. For this reason, the Tribe had to rely on the general authority to acquire land in trust and proclaim reservations that Congress gave to the Secretary of the Interior in the Indian Reorganization Act (IRA). Through enactment of H.R. 312 Congress would finally act for Mashpee too, placing us, finally, on an equal footing with other federally recognized tribes.

I. Overview of “The Mashpee Wampanoag Tribe Reservation Reaffirmation Act” (H.R. 312)

The purpose of the Mashpee Wampanoag Reservation Reaffirmation Act is to reaffirm the status of the Tribe's reservation and ensure that the Tribe will not be treated as some kind of second class tribe that has a lesser status under the IRA than other federally recognized tribes. This is a bipartisan bill with the singular, straightforward purpose of protecting our reservation.

The language of the bill tracks language from two other tribal bills that already have been enacted by Congress, the Gun Lake Restoration Act (S. 1603, passed in the 113th Congress) and the Indian Tribes of Virginia Recognition Act (H.R. 984, passed in the 115th Congress). Subsection (a) tracks language from the Gun Lake statute, and it confirms the status of the Tribe's reservation. Subsection (b) also tracks language from the Gun Lake legislation, and it serves put an end to the costly, painful litigation plaguing the Tribe regarding the status of its reservation. Finally, subsection (c) tracks language from the Virginia Tribes recognition statute, and makes clear that the Tribe will be treated equally with other federally recognized tribes under the IRA.

Just six months ago in the 115th Congress, this Subcommittee held a hearing on the predecessor bill (H.R. 5244). There, the bill received positive feedback and bipartisan support. At

that hearing, the Department of the Interior raised no objections to the bill in its written testimony, and in fact committed to working with the Subcommittee on moving the bill forward. The only difference between H.R. 5244 and H.R. 312 is that some additional language requested by the Town of Mashpee and agreed to by the Tribe has been added to the bill to acknowledge the existence of a now longstanding intergovernmental agreement between the Town and the Tribe that is also referenced in the Tribe's Record of Decision

H.R. 312 does not provide any new or special rights to Mashpee. This bill merely asks Congress to exercise its plenary authority over Indian affairs to ensure that the Tribe will be treated the same as other federally recognized tribes by protecting the Tribe's existing reservation. A tribal land base is crucial for the exercise of tribal sovereignty, and for the protection and continuation of tribal culture, and represents the foundation for tribal economic development. Like other federally recognized tribes, we have the right to exercise our tribal sovereignty within our reservation. Preservation of our reservation allows our tribal government provide services and protection to our citizens through tribally operated and funded programs. Having reservation land where we can generate tribal revenue increases our self-sufficiency and decreases our dependence on federal funding and grants.

II. The Uncertain Status of Mashpee's Reservation is Causing Catastrophic Harm to the Tribe and Individual Citizens

As a result of the legally uncertain status of our reservation, Mashpee has been forced to borrow thousands of dollars every day to keep basic government functions running. The uncertain trust status of Mashpee's reservation is causing our tribal government to move ever closer to shutting down. Mashpee has been forced to lay off 41% of its workforce, the overwhelming majority comprised of Tribal citizens, and Tribal Council members are performing their governmental duties without pay. Tribal unemployment is on the rise. The Tribe has been forced to shut down or severely scale back many vital government programs.

For example, the Tribe essentially has had to dissolve its police force with the exception of one patrol officer and we have had to reduce tribal court staff. Presently, we have 43 homes under construction on our reservation lands that will be lost if our reservation goes out trust -- this will be devastating given our severe housing shortage. We have also faced the loss of federal funding that allows us to partner with the Town of Mashpee to our shared water ways and forests. This funding loss has cost the Tribe an estimated \$1.2 million to carry out our natural resources development initiatives and programs in conjunction with the Town of Mashpee. Particularly painful, we have had to shut down our critically needed addiction treatment services programs at a time when Wampanoag people are 400 times more likely to die of an opioid overdose than non-Wampanoag people.

Our nationally recognized Wampanoag language immersion school serves preschool and school aged children with a planned expansion to fourth grade. Because this school is situated on reservation lands, the removal of trust status while not only disrupt the curriculum but also the

children that have been attending since the age of four. Presently, the Tribe suffers from having only a 51% high school graduation rate. Our language immersion school is vital to increasing our citizens' graduation rate and reducing substance abuse and suicide rates. These are only a few examples of the desperately needed tribal government programs that Mashpee has been forced to drastically scale back or completely shut down.

Finally, if the Department acts to take Mashpee's reservation out of the trust, not only will Mashpee lose its jurisdiction over the land and have to further reduce tribal programs, Mashpee will also likely lose the land itself as a result of not being able to pay state taxes on the 321 acres.

III. Enactment of H.R. 312 Will Provide Critical Economic Development Opportunities to Southeastern Massachusetts and Rhode Island

The City of Taunton and Town of Mashpee both strongly support H.R. 312. Both have submitted letters and testimony in support of H.R. 312 and its predecessor bill H.R. 5244. We have entered into intergovernmental agreements with both governments. Our communities and our futures are intertwined. In our intergovernmental agreements we have come together both protect certain areas from development, and to foster mutually-beneficial economic growth in other areas. For example, if the status of our reservation is confirmed through enactment of H.R. 312, we will be able to use our reservation to bring over 7,000 jobs to the area (including to the State of Rhode Island). The Tribe has committed to \$30 million in upgrades to the Taunton water system and roadways, \$10 million per year to local first responders and Taunton city services, and \$65 million per year to the State for broader community development initiatives that will benefit the entire State. Once implemented, these commitments will represent the single largest urban renewal effort in Southeastern Massachusetts in a generation. If our reservation is disestablished, we will not be able to honor these commitments.

IV. Arguments Made by the State of Rhode Island

The State of Rhode Island, in a letter from Governor Gina Raimondo, argues that the Mashpee Reservation Reaffirmation Act "undercuts" the plain language of the Indian Reorganization Act, although the Governor fails to explain how this is true or identify the part of the statute to which she refers. She also insists that the Act "undercuts" the Supreme Court's decision in *Carciari v. Salazar*. Respectfully, United States Constitution unequivocally endows the United States Congress with plenary authority over all matters relating to Indian Affairs. If Congress deems it appropriate to save the Mashpee Indian Tribe's reservation and to stop this senseless, soul-crushing litigation over whether Congress did or did not mean to include Mashpee among the tribes that should benefit from the Indian Reorganization Act of 1934, it acts well within its constitutional authority. The idea that in enacting the IRA Congress relinquished its own authority to acquire land for Indians or to determine which Indian tribes it wishes to make eligible for the IRA is legally incorrect.

Not only is acquiring land in trust for Mashpee *not* contrary to the plain language of the IRA, but it is entirely consistent with the framers' intention that the IRA would benefit some tribes, like

Mashpee, that had been forced into landlessness by centuries of anti-Indian federal policies which stripped tribes of their lands. *See, e.g.*, S. Rep. No. 1080, 73d Cong., 2d Sess., at 1 (1934) (declaring that one of the “purposes of this bill” was to “provide for the acquisition, through purchase, of land for Indians, now landless, who are anxious and fitted to make a living on such land”); H. R. Rep. No. 1804, 73d Cong., 2d Sess., at 6 (1934) (noting that the IRA would help to “make many of the now pauperized, landless Indians self supporting”).

What the Governor does not say in her letter is that the State of Rhode Island has acknowledged in a market study commissioned by the Rhode Island Department of Revenue that “a substantial portion of Rhode Island gambling revenues are contributed by Massachusetts residents.” Christiansen Capital Advisors LLC, *Rhode Island Gaming and State Revenue Forecast*, Oct. 31, 2017, at 19. These commercial casinos pay 60% of their revenue to the State and are the third largest source of Rhode Island’s revenue. *See* American Gaming Association, *State of States 2018: AGA Survey of the Commercial Casino Industry*, at 103; Katherine Gregg, *Twin River owners, R.I. pols join chorus against Taunton tribal casino bill*, THE PROVIDENCE JOURNAL, Sep. 5, 2018. The State’s interest in whether Mashpee’s reservation is reaffirmed is not about jurisdiction or checker-boarding -- the State’s interest is in protecting the revenue stream it is receiving from Massachusetts residents. We value our neighbors in Rhode Island and we would like to have a good working relationship with them, just as we do with our local governments. But we would be remiss in not pointing out the immediate damage that *Carvieri v. Salazar* did to the Narragansett Tribe in the first instance, and the broader damage that case inadvertently has inflicted on the rest of Indian Country in these last ten years. Now the State of Rhode Island seeks to reach across the state line into Massachusetts to crush the hopes and dreams of *my Tribe*. Respectfully, we request that Rhode Island consider the gravity of its actions and reconsider its position.

V. Conclusion

No other tribe in the United States currently faces the very real threat of having its reservation disestablished over a legal technicality. H.R. 312 is an emergency measure by which Congress can act to resolve this otherwise meaningless legal technicality to provide legal certainty not just to the Tribe, but also to our surrounding communities. We ask Congress to protect our inherent right to govern ourselves as the sovereign that was here long before Europeans arrived; the sovereign that granted lands to the first settlers; the sovereign that is still here taking care of our Mashpee Nation today.

With respect and gratitude, I thank you for your time today. I am happy to answer any questions you may have.