

**WRITTEN TESTIMONY OF THE MOHEGAN TRIBE  
SUBMITTED TO THE  
CONNECTICUT GENERAL ASSEMBLY COMMITTEE ON PUBLIC HEALTH  
AND COMMITTEE ON LABOR AND PUBLIC EMPLOYEES**

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Public Health Committee Co-Chairs Daugherty Abrams and Steinberg, Labor and Public Employees Co-Chairs Kushner and Porter, and Honorable Members of both Committees, thank you for the opportunity to provide this written testimony of the Mohegan Tribe of Indians of Connecticut. My name is V. Heather Sibbison, and I have the privilege of submitting this written testimony of the Mohegan Tribe.

I have practiced federal Indian law and been involved in federal Indian policy for about thirty years, some of which was during my service working on Native American issues in the Clinton Administration at the U.S. Department of the Interior and at the U.S. Department of Justice. I am a partner at the law firm Dentons US LLP, and I serve as the Chair of our Native American Law and Policy practice. I have had the honor to work with the Mohegan Tribe for more than a decade, and was honored to have the opportunity to speak before your Committees earlier this week.

Like the State, the Mohegan Tribe believes the health and safety issues being considered by your Committees are serious, important ones, and it appreciates the opportunity to share its views with you. The Tribe's views are informed by its history, and so the Tribe wishes to share a summary of that history with you here to put its testimony into context.

The U.S. Senate Committee on Indian Affairs has confirmed that the Mohegan Tribe is descended from “one of the most powerful and historically significant American Indian tribes residing in New England at the time of the first European settlement.”<sup>1</sup> While the Mohegan people had positive relationships with Connecticut's earliest colonists, former Senator Chris Dodd has explained that, “[r]egrettably, in a scenario that has become all too familiar in the annals of the history of United States-Native American relations, the Mohegans ultimately paid a severe price for their willingness to cooperate . . . They were eventually forced onto a reservation, only to find the boundaries of that land shrink steadily over time.”<sup>2</sup>

In 1705, the Colony of Connecticut was rebuked by a Royal Commission for infringing upon the Tribe's 20,000-acre reservation of land west of the Thames between New London and

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<sup>1</sup> S. Rep. No. 103-339, at 2 (1994).

<sup>2</sup> 140 Cong. Rec. 18259 (daily ed. July 27, 1994) (Statement of Senator Dodd).

Norwich.<sup>3</sup> Nevertheless, white settlers continued to encroach on Mohegan lands, and by 1846 the State of Connecticut had whittled down the Tribe's land to only 2,300 acres, about 1/10<sup>th</sup> of its original reservation.<sup>4</sup> In 1861, the Tribe's status was terminated; the State subsequently turned the Tribe's capital into a state park and distributed most of what was left of the Tribe's land to private owners.<sup>5</sup> By the twentieth century, all that remained in tribal ownership was the Tribe's church.<sup>6</sup> The legality of these land grabs was dubious at best, uncontrovertibly illegal at worst. As the Senate Indian Affairs Committee noted, "[t]he State of Connecticut never received federal approval to any of those conveyances which diminished Mohegan Indian ownership of tribal land in accordance with the requirements of the Federal Indian Non-Intercourse Act[.]"<sup>7</sup> For more than one hundred and fifty years, Connecticut made various commitments to respect the Tribe's right to self-government and the Tribe's sovereignty over its own lands, but these commitments in turn were broken, and the Tribe was left with nearly nothing -- and most disastrously, with no land base over which to exercise its fundamental right of self-government.

In 1977, the Tribe sued Connecticut regarding the thousands of acres that had been illegally taken from the Tribe.<sup>8</sup> To the State's credit, it worked with the Tribe to fashion a settlement that would help restore the Tribe's ability to exercise its sovereign right of self-government. In other words, as the Senate Indian Affairs Committee highlighted, the Tribe gave up "very substantial and valuable claims, not for a cash payment, but for the right to establish a Federal Indian reservation and to engage in economic development activities (including Classes III gaming) thereon[.]"<sup>9</sup> Only with *land* could the Tribe -- can any tribe -- fully enjoy the rights and privileges of self-government inherent in the exercise of governmental sovereignty. While the settlement land which composes the Tribe's reservation today is but a tiny fraction of its original territory, the fundamental importance of the Tribe's right of self-government on that land cannot be overstated, and respect for that right must be understood as part of Connecticut's and the United States' efforts to address egregious historical wrongs perpetrated against the Tribe.

The Mohegan Tribe has a long history of working cooperatively with the State of Connecticut, and with its neighbors in the surrounding community. It deeply values those relationships, and works hard to keep them collegial and productive. The Tribe's concern for the health and safety of its members, of its neighbors, and of the guests who visit the Tribe's businesses is genuine and has been borne out by the Tribe's own internal rules and regulations. At Mohegan

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<sup>3</sup> See S. Rep. No. 103-339, at 2.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *id.*

<sup>9</sup> *Id.* at 4.

Sun, the Tribe has long prohibited smoking in common areas and restaurants, and it provides non-smoking areas on its gaming floor such that approximately 90% of the entire facility space is non-smoking.<sup>10</sup> Mohegan Sun ensures that employees with health issues who wish to work in non-smoking sections of the gaming floor are able to do so. Since the COVID-19 pandemic erupted, the Tribe has restricted *all smoking* to limited, designated outdoor areas. Additionally, the Tribe's air handling system regularly monitors air quality and automatically adjusts ventilation to maximize the effectiveness of the system.

The Tribe's record of working in concert with the State to address potential exposure to second-hand smoke is well documented. After government-to-government discussions in 2008 and 2009, the Tribe adopted more stringent and protective standards. The Tribe's new operational requirements were memorialized in an agreement with then-Governor Rell<sup>11</sup> and incorporated into the Standards of Operation and Management that are part of the tribal-state gaming compact that embodies the mutual agreement of the State and the Tribe.<sup>12</sup> While the Tribe implemented these measures in consultation with the State, ultimately decisions about the standards by which businesses will operate on the Tribe's reservation are, and should be, the Tribe's decisions alone to make. When these standards are incorporated into an agreement with the State, it is because the Tribe has *chosen* to enter into the agreement.

Former Attorney General Richard Blumenthal supported the adoption of a smoking ban by the Connecticut State Legislature, and he testified to that effect. But in that testimony he also acknowledged that, "As a matter of law ... public places on reservations belonging to federally recognized tribes have a different status under federal law and principles of tribal sovereignty."<sup>13</sup> The Attorney General's comment is consistent with a long line of case law.<sup>14</sup> As described in the

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<sup>10</sup> See Conn. General Assembly Comm. on Public Health, Hearing on Proposed Bill 5608, an Act Concerning Issuance of Liquor Permits to Casinos that Permit Smoking in the Casino, Testimony of Mohegan Tribe Chief of Staff for External Affairs Chuck Bunnell 1 (Feb. 27, 2009).

<sup>11</sup> See Letter presenting "Standards for Secondhand Smoke Reduction, Removal and Monitoring at Mohegan Sun" from Chairman Bruce Bozsum to Governor Jodi Rell (Jan. 8, 2009) (also executed by Governor Rell).

<sup>12</sup> See Letter from John B. Meskill, Director, Mohegan Tribal Gaming Commission to Paul A. Young, Executive Director of the State of Connecticut Division of Special Revenue (Feb. 13, 2009) (including a copy of the revised Standards of Operation and Management).

<sup>13</sup> Conn. General Assembly Comm. on Public Health, Hearing on Senate Bill 419, An Act Prohibiting Smoking in Regulated Areas of Casinos, Testimony of Atty. Gen. Richard Blumenthal (Feb. 29, 2008).

<sup>14</sup> See *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 170–171 (1973) (finding that "[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply."); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331–332 (1983) (finding that only in "exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members."); *California v. Cabazon Band of Mission Indians*,

seminal treatise on federal Indian law, Cohen’s Handbook of Federal Indian law, “within Indian country, ‘generally speaking, primary jurisdiction . . . rests with the Federal Government and the Indian tribe inhabiting it, and not with the States’”.<sup>15</sup> For these reasons, and presumably also out of an acknowledgment and respect for tribal sovereignty, states have not sought unilaterally to implement smoking bans on tribal lands, but instead have worked toward mutual agreements that balance the sovereign interests of both the tribe and the state.<sup>16</sup>

The Mohegan Tribe respects the Connecticut State Legislature’s authority and right to enact the civil codes it deems necessary for application within the State’s jurisdiction. The Tribe is eager to continue the productive dialogue it always has had with the State about these kinds of issues, and for that reason it appreciates very much the opportunity you have given to present these remarks and to continue the discussion. That said, the Tribe and the Governor entered into a mutually-acceptable agreement in 2009 on this issue, and the State should not now try to unilaterally alter the terms of that agreement through legislative action.

In the twenty-first century, attempts to infringe on the Tribe’s sovereignty must come to an end. The Mohegan Tribe asks that the State give the Tribe the full measure of respect that sovereign governments owe one another, as the Tribe has given that respect to the State.

Respectfully submitted, April 30, 2021.

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480 U.S. 202, 222 (1987) (holding that the application of state bingo laws on tribal lands “would impermissibly infringe on tribal government”).

<sup>15</sup> Cohen’s Handbook of Federal Indian Law § 6.01 (Nell Jessup Newton ed., 2017)) (citing *Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 527 n.1 (1998)).

<sup>16</sup> See e.g., 2008 Op. Atty. Gen., Atty. Gen. Richard Blumenthal (Mar. 13, 2008) (finding that “[g]iven the Tribes’ status as sovereign entities under federal law a preferable course -- as a matter of comity and respect -- would be that the Tribes and the State come to an agreement to implement the ban”); see also Cohen’s Handbook of Federal Indian Law § 6.05 (Nell Jessup Newton ed., 2017)) (noting that “[i]n the face of potentially overlapping or conflicting jurisdictional claims, tribal-state cooperative agreements offer both sets of governments the opportunity to coordinate the exercise of authority, share resources, reduce administrative costs, deliver services in more efficient and culturally appropriate ways, address future contingencies, and save costs of litigation.”).