



National Indian Health Board



National Congress of American Indians

February 26, 2016

The Honorable Orrin Hatch
Chairman
Senate Finance Committee
219 Dirksen Senate Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
219 Dirksen Senate Building
Washington, DC 20510

RE: Exemption for Indian Tribes from the Employer Mandate

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the National Indian Health Board (NIHB), the National Congress of American Indians (NCAI), Self-Governance Communication and Education (SGCE), the Direct Service Tribal Advisory Committee (DSTAC), the United South and Eastern Tribes, Inc. (USET), The Sault Ste. Marie Tribe of Chippewa Indians, and the Northwest Portland Area Indian Health Board (NPAIHB), and the 567 federally-recognized Tribes we serve, we write to request that the committee favorably pass the Tribal Employment and Jobs Protection Act (S. 1771), introduced by Senator Steve Daines (R-MT). This legislation would exempt Tribes and Tribal employers from the employer mandate under the Patient Protection and Affordable Care Act (ACA). It would prevent fines that Tribal employers would incur under the employer mandate and ensure that the federal government lives up to its trust responsibility toward federally recognized Tribes. With looming tax deadlines that will devastate many Tribal communities in 2016, we believe that swift Committee passage and subsequent consideration by the full Senate is crucial.

Since the earliest days of the Republic, all branches of the federal government have acknowledged the nation’s obligations to the Tribes and its special trust relationship with them that was created through treaties, executive orders, statutes, and Supreme Court case law. In 2010, Congress recognized that it is a “major national goal . . . to provide the resources, processes, and structure that will enable Indian tribes and tribal members to obtain the quantity and quality of health care services and opportunities that will eradicate the health disparities between Indians and the general population of the United States.”¹ One

¹ 25 U.S.C. § 1601(2)

manner in which the federal government recognizes its trust responsibility is by making American Indians and Alaska Natives (AI/ANs) eligible to receive health care through the Indian Health Service (IHS) system without charge to the individual patient.

Congress exempted AI/ANs from the ACA's individual mandate out of recognition that AI/ANs are entitled to federal health care benefits and therefore should not be forced to pay for non-IHS coverage. However, a significant portion of Tribal employers employ these same Tribal members almost exclusively. Requiring Tribal employers to provide AI/ANs with such coverage anyway, and penalizing them if they do not, functionally invalidates the AI/AN exemption from the individual mandate by shifting the penalty from the individual to the Tribe itself.

Tribal governmental funding is a zero sum game, and any funding used to either comply with the mandate or pay the penalties will necessarily come from coffers used to provide what may be the only constituent services for hundreds of miles. One Tribe located in Montana with 462 employees found that their total tax penalty would be \$864,000 to pay the fine for not offering coverage, but the cost to provide coverage would be about \$2.8 million annually. This large amount of funds will come directly from government services and activities or from Tribal jobs. Often, the Tribal government is the only employer on a reservation, so to take away these job opportunities because of an undue tax, is nothing short of irresponsible to the families that live and work in these communities.

The employer mandate also works at cross-purposes from federal laws which seek to incentivize AI/AN participation in the health insurance marketplace. If offered "affordable" insurance coverage by an employer, the individual can no longer take advantage of these benefits, thus leaving these plans unaffordable for many. The ACA's employer mandate therefore creates an impossible choice for Tribal governments: forcing them to either pay for the cost of insurance for Tribal member employees who are otherwise exempt from having to obtain coverage due to their eligibility for IHS, or pay a tax penalty in order to ensure that Tribal member employees qualify for the benefits and protections to which they are statutorily entitled.

Again, we urge you to swiftly pass the Tribal Employment and Jobs Protection Act which would help ensure that the federal government lives up to its trust responsibility towards Tribes and safeguard Tribal governments from cutting essential services. Should you have questions or need additional information, please do not hesitate to contact our offices directly.

Sincerely,



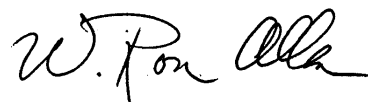
Lester Secatero, Chairman
The National Indian Health Board



Brian Patterson, President
United South and Eastern Tribes, Inc.



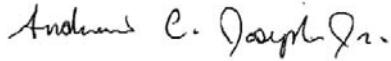
Marilynn (Lynn) Malerba
Chief, Mohegan Tribe
Co-Chair, SGCE



W. Ron Allen, Chairman
Jamestown S'Kallam Tribe
Co-Chair, SGCE



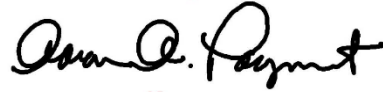
Brian Cladoosby, Chairman
Swinomish Indian Tribal Community
President, NCAI



Andy Joseph, Chairman
Confederated Tribes of Colville
Chair, NPAIHB



Nicholas Barton, Executive Director
of Health Cheyenne and Arapaho Tribes
Chair, DSTAC



Aaron Payment, Chairman
Sault Ste. Marie Tribe of Chippewa Indians