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President Fawn Sharp
National Congress of American Indians
1516 P St. NW
Washington, DC 20005

Re: Tribal Unity and Alaska

Dear President Sharp,

The National Congress of American Indians (NCAI) has long served a critical role for American Indians and Alaska Natives. For over seven decades, the organization has carried out the mandate of its constitution to secure the rights for and improve the well-being of Native Americans. NCAI has consistently worked with both the legislative and executive branches of government to enlighten the public and policy makers toward a better understanding of Indian people, to preserve rights under Indian treaties and agreements, and to promote the common welfare of American Indians and Alaska Natives.

Your organization, and the forum it provides for tribal leaders to forge consensus, has been pivotal to advancing a unified Native policy agenda. It is for this reason I feel compelled to bring to your attention expressions of divisiveness, which have undermined the organization's effectiveness in delivering on NCAI's mission and critical role in representing the interests of all Native Americans.

NCAI's Rich History of Working with Alaska

NCAI's history is intertwined with some of Alaska's pioneering Native leadership. That partnership has promoted sovereignty and self-determination for Alaska Natives. Since before Statehood, Alaska Natives worked together and built coalitions among diverse views to ensure the well-being of their people. The Alaska Native Brotherhood (ANB) and Alaska Native Sisterhood (ANS) formed even before the founding of NCAI to fight for citizenship, fishing and land rights, and equality. Elizabeth Peratrovich, an icon in the fight against discrimination in the territory of Alaska, understood the value of working with other Native coalitions and was the ANS representative to NCAI.

History has shown that NCAI played an important role in working with ANB and ANS to preserve Alaska Native rights to claim land as Congress considered Alaska statehood bills in the 1940s and 1950s. Versions of the statehood bills included a provision jeopardizing the future rights

of Alaska Natives to lay claims to traditional homelands. Fortunately, NCAI was stalwart in standing with ANB and ANS to ensure the statehood bill that passed in 1958 did not imperil future claims.¹ Later, ANB and ANS, with the support of NCAI, defeated the efforts of politicians who sought to repeal the 1936 Alaska Reorganization Act and considered Indian land confiscation bills.² These and many other episodes are a great testament to unified Native advocacy.

Years after those early struggles, in 1971, Congress finally resolved Native land claims through the Alaska Native Claims Settlement Act (ANCSA). ANCSA is but one layer in the multi-faceted fabric of Alaska Native governance and representation. In addition to Alaska Native corporations (ANCs), that fabric includes federally recognized tribes and inter- and intra-tribal consortia that deliver self-determination and self-governance programs at scale. This structure differs significantly from that of the lower 48 tribes. Post enactment of ANCSA, NCAI continued to attempt to ensure Alaska's tribal priorities were included in advocacy efforts, including subsistence issues, violence against women, ICWA, suicide and behavioral health, PL 280, and many others.

Recent Faltering in Seeking Unity

Given Alaska's many layers, I understand there may be the potential for misunderstandings. However, I have always appreciated NCAI's efforts to promote understanding of these differences and to seek common purpose in addressing all the needs of Indian Country and Alaska. Thus, it is troubling that NCAI's recent approach and actions have sown division within the Native community.

With a country already so divided along political lines, I am deeply alarmed that these actions threaten the long-standing non-partisan nature of Native issues, where members of Congress and Presidents on both sides of the aisle have worked to uphold the federal trust responsibility and protect Indian treaty and sovereign rights. For your consideration, I offer the following as examples of recent actions by NCAI that have stoked, instead of allayed, division within the Native community.

1. Giving into Division and Fear.

I fought hard to ensure that all Native people would be served by the historic Coronavirus Relief Fund (CRF) tribal set-aside. Shortly after the CARES Act passed, some uncertainty arose about Treasury's allocation methodology. In that period of uncertainty and deep anxiety, one overly simplistic analysis claimed ANCs both sought and would receive up to half of the \$8 billion set-aside.³ Rather than trying to dispel confusion, actions of NCAI's leadership gave credence to this unlikely, divisive, and skewed perception.

Originally, NCAI's concern was that the CRF "could get weighted all wrong" in favor of ANCs.⁴ I understand that during tribal leader calls NCAI's CEO repeated the claim that ANCs

¹ Haycox, Steve. "The Power Struggle at the heart of Bob Bartlett's Alaska Statehood Bill." Anchorage Daily News, (Anchorage), December 10, 2019.

² Cowger, Thomas. *NCAI: The Founding Years*. Lincoln: University of Nebraska Press, 2001.

³ At the time, Treasury had requested data on population, land, and employment.

⁴ Westney, Andrew. "NCAI CEO Says Tribes 'Blindsided' In COVID-19 Funding Row." Law360, April 17, 2020.

could receive up to half of the CRF. In actuality, the amount that Treasury might disburse to ANCs is less than 7 percent of the total set-aside, which, when combined with the amounts for Alaska Native villages, will be less than Alaska Natives normally receive in federal funding distributions to all tribes.⁵

If NCAI had acted with restraint and awaited verified information, it would have been more fitting to its role as a consensus builder. I was disappointed that NCAI made no effort to communicate with the Alaska delegation to understand our perspective or to promote understanding before issuing their April 11, 2020 letter urging Treasury to exclude ANCs. I was saddened that the organization instead acted on anxious speculation, before the actual allocation methodology was released, perpetuating the myth that this was somehow a power play by ANCs and heightening animosity toward Alaska Native institutions that many non-Alaskan tribal leaders know little about.

2. Political Assertions Divided Alaska Natives.

Based partially on conjecture that ANCs were seeking up to half of the tribal set-aside, NCAI leadership signed onto a letter asserting that the Assistant Secretary for Indian Affairs “unethically sought to divert emergency Tribal government resources” to ANCs and “to enrich Alaska regional and village corporations.”⁶ Additionally, NCAI further disseminated information claiming that ANCs are comparable to Fred Meyer or Microsoft.⁷ These claims serve to delegitimize a portion of the Alaska Native service delivery structure, imperiling the help Alaska Native communities need during this unprecedented time.

Holding shares in an ANC does not conflict someone out of serving Indian Country. NCAI itself proves this case. Numerous Alaska Native leaders over the years have served on the board and in the organization as tribal leaders who also sometimes happened to be shareholders in their village or regional corporation. As an organization committed to seeking unity and common ground among Native people, NCAI should avoid any implication that Alaska Natives have to separate themselves from their birthright as ANCSA shareholders to serve or be considered Native. These implications serve to pit Alaska Natives against themselves, each other, and the broader Indian community.

ANCs were created as a matter of Federal Indian policy, rooted in Congress’s vision for Native self-determination and are profoundly different than a publicly traded company. Outside of the Metlakatla Indian Reservation, many Alaska Natives who may be both tribal members and ANC shareholders are connected to the stewardship of their Native homelands through their ANCs as landowners. No matter your view of this arrangement compared to the reservation structure, it is what Congress created for Alaska Natives.

Additionally, under the Indian Self-Determination and Education Assistance Act, some ANCs have authorized 638 contracts and compacts for decades to deliver governmental services

⁵ The Alaska area receives roughly 14% of Indian Housing Block Grant Funds.

⁶ NCAI, letter to Secretary Bernhardt, May 20, 2020

⁷ NCAI. “NCAI Fund Fact Sheet on Differences Between Alaska Native Villages & Corporations.” Accessed June 17, 2020. http://www.ncai.org/NCAI_Fund_PSA_and_Fact_Sheet_-_FINAL.PDF?fbclid=IwAR1dE4gJPvI5FseRgfiwnTg6b0ZkUkowdAgcsCMru28Z26ihqmDYHifB1-w

to Alaska Native people, serving tens of thousands of eligible Natives in the State. Alaska Native leaders have built some of the most effective 638 and self-governance, service delivery institutions in the nation. As I said after Judge Mehta's decision in June confirming ANCs as eligible for the CRF, this is not a major change in federal Indian law – it is about ensuring an adequate response to the public health crisis in Alaska. By seeking to exclude ANCs from the CRF, tens of thousands of Alaska Native people would be deprived of any assistance from the tribal set-aside due to those unique situations where there is no tribe to administer the assistance to them.

Conclusion

During these times of heightened partisanship and misunderstandings, careful and thoughtful diplomacy is of utmost importance. I want to acknowledge your recent effort, President Sharp, to have a dialogue with Alaska Native leaders on these issues. However, for the reasons listed above and others, which is that NCAI has contributed to the politics that divides, rather than unites, I will not be participating in the NCAI Tribal Unity Days this year. As I started the letter out, I believe strongly in the purpose of NCAI and want to acknowledge the ways it has worked with Alaska Native leadership over the years, successfully protecting so many Native rights. You continue to have an immense responsibility and Alaska Natives have many urgent issues needing addressed.

I am very aware of the important distinction between ANCs and the sovereign tribal governments' role in tribal enrollment, tribal courts, and other aspects of the power, authority, and right of a people to govern themselves. I am also cognizant of the need for improvements to ANCSA and to clarify Alaska tribal territorial jurisdiction. Last year for example, I introduced the Alaska Tribal Public Safety Empowerment Act to address gaps in the jurisdiction of Alaska tribes due to the lack of Indian country in Alaska. I continue to be in strong support of empowering tribal governments but am frustrated that what should have been a shared success in the fight for Native people to be able to respond to the pandemic has spawned such division.

It is critical we move beyond misunderstandings to a place of mutual respect. We need a restoration of the previously effective working relationship NCAI maintained for decades. The pandemic has highlighted all the more the need for improving and addressing longstanding health and economic disparities affecting all Native people. As we come back together, I look forward to working with you in the future on a cooperative basis to address the grave issues facing American Indians and Alaska Natives.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Murkowski".

Lisa Murkowski
United States Senator

CC: NCAI Executive Committee