

BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

Prepared Statement of the Honorable Christine Sage
Chairman, Southern Ute Indian Tribal Council

On behalf of the
SOUTHERN UTE INDIAN TRIBE
Hearing
“Addressing the Urgent Needs of our Tribal Communities”
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WRITTEN STATEMENT

Good morning Chairman Pallone, Ranking Member Walden, and members of the Committee. I am Christine Sage, Chairman of the Southern Ute Indian Tribe. Thank you for inviting me to testify. It is an honor to speak with you this morning about the effect of the coronavirus on the Southern Ute Indian Tribe and the needs of Indian country.

Speaking positively about the late President Richard Nixon is not often popular. Despite his faults, he understood the need to improve the relationship between tribes and the federal government. Fifty years ago today, President Nixon marked the end of the termination era in federal-tribal relations and initiated a new era, calling for a policy of tribal self-determination. Recognizing that Native Americans ranked last among all citizens in terms of employment, health care, income and

education, he saw the need for lasting changes in the relationship tribes had with the federal government. He understood that that relationship should be one based on trust, inherent in solemn treaty obligations. He further perceived that tribes should be independent of the federal paternalism that characterized the past, allowing tribes to govern themselves while the federal government adhered to its trust and treaty responsibilities.

The Southern Ute Indian Tribe's story exemplifies the success of this self-determination policy. The Tribe is located on a 681,000 acre Reservation in southwestern Colorado. We have about 1,500 tribal members located throughout the United States. The Tribe maintains its own law enforcement, judicial, environmental protection, social services, and health care systems serving a population of about 5,000 Native Americans locally. We operate our own Montessori School that teaches the native Ute language to young tribal members and descendants. We cover the expense of higher education for students who maintain appropriate academic standards. We provide free healthcare to

tribal members – among them a growing number of tribal elders who are the most “at risk” from the coronavirus. We manage an endowment fund that supports the Tribe’s governmental operations – rather than taxing our members. We maintain a AAA credit rating, a feat unmatched even by the US government. We operate commercial businesses via the Sky Ute Casino & Resort and the Southern Ute Growth Fund. Collectively they run a portfolio of companies operating in the energy, real estate, hospitality, gaming, and private equity industries. The Tribe is also unique in that it operates a “shared services” program that happens to be the only employer of programmers in the region.

We uphold government-to-government relationships with regional, municipal, county and state governments, negotiating intergovernmental agreements covering a range of topics including land and resource management, water rights, taxation, social services and the protection of cultural resources.

The Tribe exercised that self-determination when confronted with the coronavirus pandemic early this

year. Acting quickly was necessary to protect all of our tribal members, in particular our elders and those who are most at-risk. In February, we declared a state of emergency. We activated an Incident Management Team that meets daily to help mitigate the effects and monitor the spread of the virus. In March, before the state or local governments did so, we implemented a stay at home order. We have maintained that order, despite the reopening of communities around us. As a result of our diligence, today the Reservation remains a relative haven amid rapidly increasing cases of the virus. While just south of us there are 2,500 confirmed cases, on the Reservation, to the best of our knowledge, no tribal member has contracted the disease.

But the pandemic has underscored weaknesses in the trust relationship between tribes and the federal government. And that is what I want to emphasize today.

First, despite the federal government's treaty obligations to Tribes, one of which is to provide healthcare, the federal government was largely absent when this pandemic began to ravage Indian

country. Despite promises of testing kits, there were almost none. We were provided 20 kits for 1,500 tribal members and 1,400 employees. Our Tribe's allotment from the federal stockpile of PPE consisted of a box of double extra-large and extra-small face masks. Our friends at the Department of Interior and the Indian Health Service ("IHS"), while sympathetic, had little to provide.

This highlighted the inadequate resources of the IHS. IHS has been underfunded for too long. There is no reason that Native Americans, to whom the federal government has a trust responsibility, should receive markedly less funding in health care per capita than even inmates in federal prisons. Funding of IHS needs to be a legislative priority.

Second, historically inadequate health care provided by IHS, coupled with the lack of PPE and testing kits, left tribes like Southern Ute no choice but to close to protect the health of tribal members. The financial impact of this closure on Indian communities has been tremendous. In the case of the Southern Ute Indian Tribe, all tribal businesses on the Reservation remain closed, including the

resort and casino, resulting in substantial financial losses. Simultaneously, the oil and gas industry, which is important to so many tribes including Southern Ute, began to suffer from the collapse of commodity prices.

Third, due largely to inadequate funding and support for the Bureau of Indian Affairs, the infrastructure (water ways, roads, broadband, and airways) that supports a diversified tribal economy has faltered and, in some cases, failed. An example is the water delivery systems that should be providing much needed water to families, ranches, and farms. Miles of vital agricultural infrastructure are dilapidated due to decades of neglect. This prohibits the expansion of our rural economy. It constrains our ability to effectively manage our resources and limits the potential for new businesses and employment.

We have done our best to continue to support the regional economy. As the largest employer in southwest Colorado, we continue to spend millions of dollars to employ workers who are unable to work safely due to the coronavirus. We have neither

furloughed nor laid off a single employee. We do so because of the devastating effect that terminating so many employees, most of whom are non-tribal members, would have on the regional economy. But we need similar support from the federal government for the tribal economy.

Recent legislation has sought to benefit tribes during this crisis, but it has failed to consider the unique circumstances of tribal governments. Therefore, in many cases that legislation has been ineffective in addressing the needs of Indian country. The following are examples:

1. In enacting the Paycheck Protection Program (“PPP”) to assist businesses harmed due to the pandemic, Indian country was an afterthought. Because of limited taxing ability, Tribes, out of necessity, run governmental operations and operate business entities to raise revenue. This means that multiple tribal businesses may be operating under a single Employer Identification Number (“EIN”). The SBA processing protocol denies applications for businesses when a loan has already been approved through the EIN of another business, even if that

other business is a completely separate entity. This places tribal businesses at an unfair disadvantage, as they are forced to choose only one of their eligible businesses. There is absolutely no reason to allow each location of a restaurant chain to apply for a loan but not each individual tribal business. Congress just extended the period to apply under the PPP to August 8. We quickly need legislation allowing tribal businesses operating under a single EIN to each be eligible for a loan.

2. Title V of the CARES Act allocated \$8 billion for Tribes. While mandated by Congress to be disbursed within 30 days to address the emergency needs of Indian country due to the coronavirus, the full disbursement of those funds was delayed by up to two months and confidential data provided to Treasury by Tribes was leaked to the public.

The funds are intended to cover necessary expenditures incurred due to the coronavirus that were not accounted for in the existing budget. The guidance on the use of those funds comes from Treasury and, once again, it is apparent that it does not understand how tribal governments operate. That

guidance is often inconsistent, unclear, or inapplicable to tribes. By way of example, that guidance suggests that Tribes like Southern Ute may not use those funds to continue to pay employees who are unable to work due to the coronavirus, but that states may use those funds to pay those same employees unemployment compensation if the Tribes terminate their employment. Additionally, the guidance is so restrictive it makes it difficult to put the funds to good use without risk of an audit. Moving forward, prior to issuing guidance, Treasury needs to seriously consult with and listen to the needs and concerns of tribal governments.

3. The oil and gas industry has been ignored during this economic crisis. It is vital to the economies in much of Indian country. We must use this opportunity to revitalize tribal energy programs and enhance renewable energy, new technology, and carbon neutral power generation on Indian lands. The Energy Policy Act of 2005 authorized the Department of Energy to establish the Tribal Energy Loan Guarantee Program. That Program is seriously underfunded. Subsidy funds must be used to support

the development or expansion of power generation and transmission projects that employ commercially proven, carbon neutral and/or renewable energy technologies. We urge Congress to provide for at least \$2.5 million for credit subsidy costs for each community scale project and at least \$250 million for credit subsidy costs for each utility-scale infrastructure project, to include power transmission expansion. The current program provides up to 90% guarantees for loans for qualifying innovative tribal energy projects. The Tribe requests that the percentage guarantee be increased to 100% for innovative technology projects on tribal land. Capacity building, seed capital, and feasibility study grants would also improve the speed and consistency of developing these projects.

Finally, the pandemic has underscored the weaknesses in communication and high speed internet technology in Indian country. With tribal governments and tribal schools closed, our employees, teachers and health care workers were forced to quickly become accustomed to working remotely. But many Tribes, like Southern Ute, are in

remote areas where the broadband infrastructure is weak or non-existent. Our students are unable to participate in distance learning and our elders are unable to connect with a health care provider virtually. For tribal economies to thrive we need Congress to invest in tribal broadband infrastructure.

Fifty years ago the federal government was able to look at the mistakes of the past, learn from them, and assist tribes in a process of achieving self-determination. Today we, likewise, can look at the events of the past few months, identify the weaknesses in our federal-tribal trust relationship that have been revealed by this crisis, learn from them, and correct them.

Thank you for your time today.