Muscogee (CREEK) Nation

Executive Office

November 6, 2026

Senator John Thune
Republican Leader
U.S. Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
Democratic Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Senator Mike Lee
Chairman
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Martin Heinrich
Ranking Member
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Shelley Moore Capito
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Sheldon Whitehouse
Ranking Member
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Leaders Thune and Schumer, and Senators Lee, Capito, Heinrich, and Whitehouse,

On behalf of the Muscogee (Creek) Nation, a sovereign, self-governing Tribal Nation with more than 100,000 citizens, we write to express our serious concerns and opposition to the Bipartisan American Affordability and Jobs Act of 2026 (S. 5653) as written.

The Muscogee (Creek) Nation supports responsible permitting reform and the development of the energy infrastructure our country needs. We believe these objectives can be achieved without undermining Tribal sovereignty, while fully honoring the federal government's treaty and trust obligations and preserving protections for our sacred places.

Our concerns with Title III are fundamental and cannot be resolved through minor amendments. We believe Title III requires complete reconsideration, informed by meaningful government-to-government consultation with Tribal Nations. Accordingly, we urge Congress to remove Title III from the current legislation and comprehensively reconsider its provisions at a future date.

Our homelands did not stop being sacred when we were forced to leave them. We were forcibly removed from our homelands in present-day Alabama and Georgia on the Trail of Tears. Our ceremonial grounds, burial places, and the graves of our ancestors remain there, and our responsibility to them has never ended. Today, the federal government's obligation to consult with us is the main protection those places have. Most of them lie far outside our reservation in Oklahoma, on land we do not own or control. S. 5653 would take that protection away.

Hickory Ground shows what is at stake. Hickory Ground, Oce Vpofv, in Wetumpka, Alabama, was our Nation's last capital before removal. For centuries it was the site of our ceremonies and the resting place of our ancestors, and it is listed on the National Register of Historic Places, recognizing its significance to our Nation and to America's shared history. Despite a promise to preserve it, a casino was built there, and the remains of our ancestors were dug up. Another example is the desecration of burials and archaeological sites at the Waterways residential development in Bryan County, Georgia. Failed consultation resulted in the loss of numerous ancestors and cultural materials that were meant to stay in their burial places for eternity but were violently ripped up and thrown out like refuse. This happened in violation of the protections required by the developer's federal permit, and the developer agreed to pay a $1.1 million penalty. S. 5653 would make it easier for the next known sacred site in our ancestral lands to be desecrated and to be lost, and harder to stop. Under this bill, federal approvals on lands held in trust for another Tribe could no longer be challenged under the National Environmental Policy Act (NEPA) by anyone except that Tribe, even when the land holds our ancestors.

Section 106 works. The Muscogee (Creek) Nation Tribal Historic Preservation Office receives thousands of reviews every year under Section 106 of the National Historic Preservation Act (1966). Our Nation reviews eleven (11) states in our area of interest. In Mississippi, we collaborated with the Forest Service to protect three sites that were "unevaluated" under the National Register of Historic Places (NRHP). Our stance is to protect all sites with an unevaluated or unknown status under the NRHP. The Forest Service had already recommended avoiding the sites, and we agreed. The project was able to proceed without hindrance. Section 106 works in the protection of the viewshed of sacred sites such as Kolomoki Mounds (NRHP listed) in Georgia. A proposed cellular tower project was sent to our office that would impact the view of the site. Our ancestors built the mounds with their surrounding landscape in mind, and the view from them is part of what makes the site sacred. It was with this respect that we advocated for the protection of their landscapes from a potential adverse effect. While collaborating with the agency, they agreed to move the tower outside the viewshed of the mounds leading to no adverse effect.

These examples demonstrate that meaningful consultation and infrastructure development are not mutually exclusive. Section 106 provides a process for identifying concerns early, resolving

potential conflicts, and allowing projects to move forward without sacrificing irreplaceable cultural resources.

Among our most serious concerns, the bill would strip protections for sacred lands and sites:

- **No required consultation on harm to our sacred lands:** Section 106 consultation would become optional and be cut off by strict deadlines. An agency could map the affected area, decide what is "historic," and assess the damage without ever asking Tribal Nations, who hold knowledge that no federal agency, archaeologist, or database can replace. The lead agency could formulate written conclusions before receiving tribal feedback. Tribes would be heard only after the agency's conclusions were written. If the agency finds no harm, we would get no review at all. If it finds harm, we get 30 days to respond, and if we do not, the agency proceeds without us. Tribal Nations have no desire or intention to hold up any process—but when it comes to protecting the graves of our relatives, 30 days is not enough to review a report and provide responsive, relevant information. These proposed changes would effectively preclude tribal review and sacred site protection.
- **Agencies, not Tribes, would decide what is sacred:** The bill narrowly defines places of traditional religious and cultural importance. Agencies would only consider impacts to cultural sites already on record, and may let "other considerations" outweigh harm to them. No federal database can tell an agency where our ancestors are buried. Only we can.
- **Fewer projects would be reviewed, if at all:** Narrower definitions of "undertaking" and "adverse effect" mean many projects that threaten sacred places would never trigger review. Projects whose only federal role is a grant or loan would drop out of review entirely, regardless of their impact on historic properties, and indirect and visual harms would no longer be considered.
- **Places already protected could lose that protection:** The bill has no savings clause, so agencies could use its narrower definition to re-evaluate places already listed on the National Register.
- **Agreements made without us:** If a Tribal Historic Preservation Officer (THPO) does not respond in time, an agency could sign an agreement with the Advisory Council on Historic Preservation (ACHP) instead, even if located on Tribal lands.
- **Our sacred-site knowledge would be put at risk:** New grants would push Tribal Historic Preservation Offices to build databases of sacred places, which creates a significant confidentiality concern and could be exposed through public records requests. This could provide a roadmap for looters and developers to use for personal gain and cause the exploitation and destruction of burial grounds and sacred lands.
- **Federal control of Tribal Historic Preservation Offices:** Missed deadlines could cost our preservation office its status and grant funding, with the Department of the Interior taking over its duties.

The bill would also close the door on accountability:

- **Courts could not stop the damage:** If a court finds the law was broken, a project could keep building while the agency fixes its mistake. For a burial ground, the damage could be done before the agency ever finishes fixing its error. Cultural resources are nonrenewable; damage done cannot be undone.
- **Tribal expertise would be silenced:** Tribes could no longer join environmental reviews under NEPA on the basis of special expertise, and agencies would no longer be required to consult us when identifying historic properties under the NHPA, even though federal regulations recognize that Tribes possess special expertise in assessing properties of religious and cultural significance to them (36 C.F.R. § 800.4(c)). Traditional cultural knowledge is passed down through generations of language, ceremony, and oral history, and S. 5653 would push it aside.
- **History would be erased, not preserved:** Tribal history like ours could be erased from existence and the final resting places of our ancestors forever displaced, causing a disruption of the cosmos of the Muscogee people.

Our relationship with the United States rests on treaties, beginning with the Treaty of New York, signed on August 7, 1790, by President George Washington and the leaders of our Nation. It was the first treaty between a Native nation and the United States after the adoption of the Constitution—and was an act President Washington undertook to demonstrate the United States' legitimacy on the world stage. In that treaty, the United States "solemnly guarantee[d] to the Creek Nation" its lands, and established a government-to-government relationship that endures today, alongside the federal trust responsibility and our inherent sovereignty as a self-governing Nation. Consultation with Tribal Nations is not a courtesy or a procedural check box to complete. It is a government-to-government obligation rooted in treaties that the Constitution makes the supreme law of the land, and it must be early, meaningful and binding, including on our ancestral homelands outside our reservation. When Tribal Nations are at the table from the start, projects can avoid and minimize impact to our sacred places—thus avoiding unnecessary delays. Many legal conflicts can be prevented with meaningful consultation.

In 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples. In 2016, the Muscogee (Creek) Nation National Council formally adopted the Declaration and directed its translation into the Mvskoke language. The Declaration affirms Indigenous peoples' right to protect and access their religious and cultural sites and the remains of their ancestors. It also calls on states to consult in good faith and obtain free, prior, and informed consent before approving projects that affect Indigenous lands and resources. S. 5653 moves in the opposite direction. The United States should honor the commitments it made, to our Nation and to the world.

The Muscogee (Creek) Nation stands with the National Congress of American Indians, the National Association of Tribal Historic Preservation Officers, the Native American Rights Fund, and Cultural Heritage Partners in opposing S. 5653 as written. Indian Country and its allies are united in the belief that permitting reform must not come at the expense of Tribal sovereignty, government-to-government consultation, or the sacred places that sustain our cultures and shared American history. The Muscogee (Creek) Nation believes that meaningful Tribal consultation must guide any future reconsideration of Title III

The concerns outlined in this letter are not minor procedural objections. They involve fundamental protections that allow Tribal Nations to fulfill their obligations to their ancestors and future generations. Once a sacred place has been destroyed or the remains of our ancestors disturbed, no subsequent administrative review or legal remedy can undo that harm.

For these reasons, the Muscogee (Creek) Nation cannot support S. 5653 as written. We urge Congress to remove Title III in its entirety from the current legislation and comprehensively reconsider its provisions at a future date, with substantially greater Tribal input and meaningful government-to-government consultation guiding the development of legislation with such profound implications for Tribal Nations. If Title III remains in the legislation, we urge you to vote no.

Mvto,

David W. Hill

David W. Hill, Principal Chief
Muscogee (Creek) Nation

cc:
Senator James Lankford, Oklahoma
Senator Alan Armstrong, Oklahoma
Senator Lisa Murkowski, Chair, Senate Committee on Indian Affairs
Senator Brian Schatz, Vice Chair, Senate Committee on Indian Affairs