CROW CREEK SIOUX TRIBE

P.O. BOX 50
FORT THOMPSON, SOUTH DAKOTA 57339
TEL: (605) 245-2221 – FAX: (605) 245-2470

CROW CREEK SIOUX TRIBE

FORMAL OPPOSITION TO TITLE III OF S. 5653 – BIPARTISAN AMERICAN AFFORDABILITY AND JOBS ACT OF 2026

The Honorable John Thune
United States Senate Majority Leader
511 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Crow Creek Sioux Tribe Opposition to Title III of S. 5653 – Proposed Amendments to Section 106 of the National Historic Preservation Act

October 14, 2026

Dear Majority Leader Thune:

On behalf of the Crow Creek Sioux Tribe, I write to express our strong opposition to **Title III of S. 5653, the Bipartisan American Affordability and Jobs Act of 2026**, which proposes substantial changes to the Section 106 review process under the National Historic Preservation Act (NHPA). We respectfully urge you, in your capacity as Senate Majority Leader and as a United States Senator representing South Dakota, to oppose these provisions and work directly with Tribal Nations to ensure that federal permitting reform respects Tribal sovereignty, protects sacred sites and cultural resources, and upholds the federal government's trust and treaty obligations.

The Crow Creek Sioux Tribe is a sovereign Tribal Nation of Hunkpati Dakota people whose ancestral homelands and cultural connections extend throughout the Missouri River region and the Great Plains. Our Reservation, located along the Missouri River in central South Dakota, is home to generations of Dakota families whose cultural identity, traditional knowledge, ceremonies, and spiritual practices remain deeply connected to the land and water.

Our history includes the forced displacement of our people, the loss of ancestral lands, and the profound impacts of federal policies and development projects on our communities. The construction of major Missouri River dams and reservoirs permanently altered the landscapes of our homelands, flooded culturally significant areas, and disrupted traditional relationships with the river and surrounding lands.

For the Crow Creek Sioux Tribe, these experiences demonstrate why meaningful Tribal consultation and federal historic preservation protections are essential. Our sacred places, burial grounds, ancestral village sites, and cultural landscapes are not simply archaeological resources. They are living connections to our ancestors, our spiritual traditions, and our responsibilities to future generations.

The Crow Creek Sioux Tribe has already experienced the irreversible consequences of federal infrastructure decisions made without adequate regard for Tribal rights, cultural resources, and the long-term impacts on our people. Congress must not repeat these mistakes by weakening the protections that remain.

Importance of South Dakota's Historic Landscapes, Cultural Heritage, and Tourism

South Dakota's historic and cultural landscapes are inseparable from the history of the Dakota, Lakota, and Nakota Nations. From the Missouri River corridor to the broader Great Plains, these landscapes contain ancestral village sites, burial grounds, ceremonial locations, traditional gathering areas, and places of profound historical and spiritual significance.

Many of these sites are located beyond present-day reservation boundaries. Their cultural significance cannot always be identified through conventional archaeological surveys or federal records. Meaningful participation by Tribal Nations and their cultural experts is necessary to ensure that these places are properly identified and protected.

These historic landscapes are also important to South Dakota's cultural heritage, educational opportunities, and tourism economy. The Missouri River, historic sites, cultural destinations, museums, and heritage tourism opportunities attract visitors and support local businesses and rural communities throughout the state.

Protecting these resources helps preserve the history of South Dakota while creating opportunities for responsible tourism, cultural education, and economic development. Tribal Nations must retain authority over how their histories are represented and how culturally sensitive places and information are protected.

Historic preservation and economic development are not competing priorities. The permanent destruction of sacred sites and historic landscapes would represent an irreplaceable cultural loss for Tribal Nations and diminish South Dakota's broader historical heritage.

The Crow Creek Sioux Tribe's Concerns with Title III of S. 5653

While we recognize that Title III includes certain positive provisions, including the proposed codification of Tribal consultation and increased support for historic preservation, these measures do not outweigh provisions that would substantially weaken Tribal participation and protections under Section 106.

Narrowing the Scope of Section 106 Review

Title III proposes changes to the definitions of "undertaking," "effect," and "area of potential effects," along with additional exemptions that could significantly reduce the circumstances requiring Section 106 review.

For the Crow Creek Sioux Tribe, these changes are particularly concerning given the extensive history of federal infrastructure development along the Missouri River and throughout our ancestral homelands.

Reducing the scope of review increases the risk that sacred sites, burial grounds, cultural landscapes, and other historic properties will be damaged or destroyed without adequate Tribal involvement.

Reducing Meaningful Government-to-Government Consultation

The proposed legislation would diminish Tribal participation during critical stages of the Section 106 process, including the identification of historic properties, determination of areas of potential effects, and assessment of adverse effects.

Consultation that occurs only after federal agencies have developed preliminary conclusions is not meaningful government-to-government engagement.

Tribal Nations possess unique cultural knowledge and governmental authority necessary to identify places of religious and cultural significance. Federal agencies and project proponents cannot independently determine the significance of these places without direct Tribal participation.

The Crow Creek Sioux Tribe maintains that meaningful consultation must begin at the earliest stages of federal project planning and continue throughout the decision-making process.

Undermining Tribal Historic Preservation Officers

Title III would impose additional federal oversight and potential penalties on Tribal Historic Preservation Officers (THPOs), including the possibility of losing THPO status and funding for missed deadlines.

These provisions fail to recognize the chronic underfunding and limited resources available to many Tribal historic preservation programs.

Rather than penalizing Tribal Nations for federal funding deficiencies, Congress should strengthen THPO capacity through increased appropriations, technical assistance, and respect for Tribal governmental authority.

The proposed assumption of THPO responsibilities by the Department of the Interior would further undermine Tribal self-determination and the authority of Tribal Nations to protect their own cultural resources.

Restricting Judicial Review and Tribal Remedies

The Crow Creek Sioux Tribe is deeply concerned by provisions that would restrict judicial review and limit the remedies available when federal agencies fail to comply with Section 106.

The proposed 150-day statute of limitations, 30-day objection period, restrictions on standing, and presumption of remand without vacatur would substantially weaken the ability of Tribal Nations to prevent irreversible harm to sacred sites and historic properties.

For Tribal Nations that have already experienced significant cultural and land losses resulting from federal actions, meaningful judicial review remains an essential safeguard.

Once a sacred site, burial ground, or historic landscape has been destroyed, no subsequent legal remedy can fully restore what has been lost.

Threats to Religious Freedom, Treaty Rights, and Cultural Preservation

The protection of sacred sites and ceremonial places is directly connected to the principles recognized under the American Indian Religious Freedom Act of 1978 (AIRFA), the federal trust responsibility, and the United States' treaty obligations to Tribal Nations.

For the Crow Creek Sioux Tribe, access to and protection of culturally significant lands and waters are essential to maintaining Dakota religious practices, ceremonies, and traditional ways of life.

Federal permitting reforms must not diminish these protections or create additional barriers to the exercise of our religious and cultural rights.

Supporting Responsible Infrastructure Development in Tribal Communities

The Crow Creek Sioux Tribe recognizes the importance of infrastructure investment, economic development, energy reliability, transportation improvements, and efficient federal permitting.

Our Tribe faces significant infrastructure challenges, including inadequate public safety facilities, limited detention infrastructure, aging governmental buildings, and the need for additional federal investment in essential community services.

We understand firsthand how federal delays and insufficient funding can impede critical projects that serve Tribal citizens.

However, the need to accelerate infrastructure development does not justify weakening Tribal sovereignty, consultation rights, or historic preservation protections.

Early, meaningful, and adequately funded Tribal consultation can improve project planning, identify potential conflicts, reduce litigation, and create greater certainty for federal agencies and project proponents.

The Crow Creek Sioux Tribe supports permitting reforms that improve federal efficiency while preserving the substantive protections necessary to prevent irreversible cultural harm.

Request for Congressional Action

As Senate Majority Leader, you hold a critical leadership role in determining how federal permitting reform advances through Congress. The Crow Creek Sioux Tribe respectfully requests that you:

- **Oppose Title III of S. 5653 as currently drafted** and support removing the proposed Section 106 amendments from the legislation.
- Ensure that Congress conducts formal government-to-government Tribal consultation before advancing legislation that would alter Tribal consultation rights or historic preservation protections.
- Preserve meaningful Tribal participation throughout all stages of the Section 106 review process, including early identification of historic properties and assessment of potential effects.
- Protect Tribal Historic Preservation Officers from punitive federal oversight and increase funding and technical assistance for Tribal historic preservation programs.
- Maintain meaningful judicial review and effective legal remedies when federal agencies fail to fulfill their statutory obligations.

- Recognize the historical impacts of federal infrastructure development on Tribal Nations along the Missouri River and ensure that future federal projects do not repeat those harms.
- Protect South Dakota's historic landscapes, cultural resources, and responsible heritage tourism opportunities.
- Ensure that any permitting reform fully respects Tribal sovereignty, treaty rights, religious freedom, and the federal trust responsibility.

Majority Leader Thune, South Dakota's history is deeply connected to the Tribal Nations whose ancestral homelands extend throughout the state. The protection of these places is essential not only to our cultural and spiritual survival but also to preserving the full history and heritage of South Dakota.

The Crow Creek Sioux Tribe has experienced generations of federal decisions that resulted in the loss of land, disruption of our communities, and damage to places of profound cultural significance. These experiences reinforce the importance of maintaining strong federal safeguards and meaningful Tribal participation in decisions affecting our homelands.

The Crow Creek Sioux Tribe strongly opposes Title III of S. 5653, the Bipartisan American Affordability and Jobs Act of 2026, as currently written. We urge you to exercise your leadership to remove these provisions from the legislation and work directly with Tribal Nations to develop permitting reforms that advance infrastructure investment without sacrificing Tribal sovereignty, treaty rights, sacred sites, or cultural heritage.

We welcome the opportunity to meet with you and your staff to discuss these concerns and identify constructive approaches that support both infrastructure development and the protection of Tribal Nations' rights and resources.

Thank you for your consideration and your continued attention to matters affecting the Crow Creek Sioux Tribe and Tribal Nations throughout South Dakota.

Respectfully,

Peter Lengkeek
Chairman
Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Legislative References

- **S. 5653 – Bipartisan American Affordability and Jobs Act of 2026:** https://www.congress.gov/bill/119th-congress/senate-bill/5653

- **Official Introduced Bill Text:** https://www.govinfo.gov/content/pkg/BILLS-119s5653is/html/BILLS-119s5653is.htm
- **National Historic Preservation Act, Section 106 (54 U.S.C. § 306108):** https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title54-section306108
- **American Indian Religious Freedom Act of 1978 (Public Law 95-341):** https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg469.pdf