PONCA TRIBE OF NEBRASKA

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November 7, 2026

Senator Deb Fischer
448 Russell Senate Office Building
Washington, DC 20510

RE: Tribal Consultation Provisions of the Bipartisan American Affordability and Jobs Act (BAAJA)

Dear Senator Fischer,

On behalf of the Ponca Tribe of Nebraska (Ponca Tribe), we thank you for your years of engagement with our community, supporting our Nation's sovereignty, people, and economic vitality. We write to express our concerns regarding Title III of the Bipartisan American Affordability and Jobs Act, which proposes changes to the Section 106 review process under the National Historic Preservation Act (NHPA). We are also concerned regarding the proposed coordination between the National Environmental Policy Act (NEPA) and Section 106, as they both serve distinct purposes and establish different responsibilities for federal agencies.

As you know, the Ponca Tribe of Nebraska is a federally recognized Tribe, restored through an act of Congress in 1990 following its termination in 1966. The rich history of our Tribe begins with our three original settlements along the Niobrara and Missouri River, including our ancestral homelands in Nebraska before removal in 1877. A vital, perhaps more well-known moment in our history is the 1879 "Trial of Standing Bear," in which Chief Standing Bear secured legal recognition for Native Americans as "persons" under federal law. Following this decision, over 26,000 acres in Knox County were returned to Ponca, allowing many Tribal members to reestablish their communities in Nebraska. Following decades of advocacy, rising out of termination and reestablishment, our Tribe today serves more than 6,000 enrolled members across a 15-county service delivery area in Nebraska, Iowa, and South Dakota. We operate a decentralized, service-based government that delivers healthcare, food distribution, transportation, and cultural programming across multiple sites, including Omaha, Lincoln, Niobrara, and Sioux City.

While we recognize the importance of an effective permitting process and timely infrastructure development, and broadly support the overall effort to effect change, Title III, as currently written, risks conflict with federal trust and treaty obligations to engage sovereign Tribal Nations in meaningful government-to-government consultation, as well as certain protections of our Tribal cultural heritage and Indigenous knowledge. We ask for your support in sharing our concerns and the provisions will have on Nebraskans and Indian country and ask that Tribal Nations are consulted on permitting reform that will bring Tribes to the forefront of federal decision-making, so that we may together guard the future of our sacred sites and cultural resources.

We are concerned that Title III's narrow definitions and expanded exemptions for important definitions, such as "undertaking, "effect," and "area of potential effects," greatly reduce when the Section 106 review process is triggered, thereby limiting opportunities for Tribal Nations to participate in federal decision making related to cultural resources. These changes prevent Tribal Nations from receiving timely information that an infrastructure project is being considered or occurring, increasing the risk that construction proceeds without adequate consideration of sacred places and meaningful Tribal consultation.

The Ponca Tribe supports the proposed legislation's inclusion of specific processes, definitions, and timelines for Tribal consultation with the federal government under NHPA, an important change from the single sentence that currently defines Tribal consultation. We are concerned, though, by provisions that would allow agencies to make preliminary decisions regarding historic properties and potential effects prior to adequately consulting with Tribal Nations. The process of consultation must occur early enough to inform the identification and evaluation of these properties and the assessment of project impacts, rather than as a procedural step after agency conclusions have already been reached, and by Tribal Nations' cultural experts, the sole entities qualified to make any determinations on the existence and persistence of Tribal cultural property.

The Ponca Tribe is further concerned that the proposed enforcement of statutory deadlines could impose disproportionate burdens on Tribal Historic Preservation Officers (THPOs), especially those that may already be subject to operating with limited staff and resources. Tribal preservation programs have long faced capacity constraints, and to ensure that paternalistic functions by federal agencies do not arise, we ask that reasonable timelines that facilitate effective review processes are put in place. We ask that provisions in the bill regarding penalties for missing consultation deadlines being limited to more extreme circumstances are honored, safeguarding policies of Tribal self-determination and self-governance.

We are also concerned by restrictions placed upon judicial review by Title III, as judicial review may be the only meaningful means through which we can protect our sacred sites and cultural resources if federal agencies fail to fulfill their consultation obligations. For Tribal Nations, litigation is often sought as a last resort when administrative processes fail to protect our rights and self-interests. This bill eliminates any real remedies available to Tribal Nations by stipulating remand without vacatur as a baseline, thus allowing projects to proceed while remand to address inadequate Section 106 is ongoing. The inclusion of a 150-day statute of limitations, restriction of standing, and requirement that substantive objections are raised to a Section 106 report within 30 days of receipt could limit Tribal Nation's ability to seek relief. We urge you to oppose provisions that unnecessarily restrict our ability to receive timely judicial relief when federal agencies fail to meet their legal obligations.

The Ponca Tribe supports effective permitting reform and responsible infrastructure deployment, but neither at the expense of Tribal consultation, sovereignty, sacred sites, and the United States' trust and treaty responsibilities. Tribal Nations have repeatedly sought early, integrated, and meaningful government-to-government consultation and increases in funding owed for Tribal historic preservation, which would result in faster infrastructure development and greater certainty in the permitting process. All said, we recommend that Title III be removed.

The Ponca Tribe respectfully asks for your continued engagement and consideration of its perspectives, and those of Nebraskans, as these proposed changes advance, and we look forward to working together to ensure that legislation created honors the Government's trust and treaty responsibilities.

Wíbđahą (THANK YOU) for your time.

Candace Schmidt

Candace Schmidt, Chairwoman