

Testimony of Chairwoman Tina Gonzales, Shivwits Band of Paiutes
U.S. Senate — Committee on Indian Affairs
S. 1508 — Shivwits Band of Paiutes Jurisdictional Clarity Act

December 17, 2025

Chairman Murkowski and distinguished Members of the Senate Committee on Indian Affairs, my name is Tina Gonzales, and I have the honor to serve as Chairwoman of the Shivwits Band of Paiutes (“Shivwits Band” or “Shivwits”). Thank you for the opportunity to provide testimony on S. 1508, the Shivwits Band of Paiutes Jurisdictional Clarity Act, and thank you to Senator Curtis for his dedication in representing the interests of Native American tribes, and in particular for his notable efforts on S. 1508.

1. History of the Shivwits Band of Paiutes

The Shivwits Band is one of several groups of Paiute Indians that have lived since time immemorial in an area once encompassing more than 30 million acres across present-day southern Utah, northern Arizona, and southern Nevada. The Shivwits were closely tied to their awe-inspiring homelands, living close to water and farming the lands along waterways to cultivate numerous varieties of crops for sustenance and medicinal purposes by implementing irrigation practices.

During the mid-19th century, settlers arrived in the Utah territory and settled on lands traditionally inhabited by the Shivwits. Loss of access to food and water sources and exposure to unfamiliar diseases resulted in decimation of the Shivwits population. By the late 1880s, settlers petitioned the federal government to relocate the Shivwits to a new home on the Santa Clara River, to free up more lands for ranching. As their lands were taken and their traditional sources of food were depleted, Paiute bands like the Shivwits became progressively more dependent on the federal government for survival.

The federal government first recognized the Shivwits Band in 1891, by establishment of the first reservation for the “Shebit tribe of Indians in Washington County, Utah.” Unfortunately, however, the reservation did not include water rights, so the Shivwits Band was forced to abandon its historical farming practices and was left destitute with little resources to survive.

In 1916, President Woodrow Wilson ordered expansion of the Shivwits reservation to 26,880 acres. In 1935, the Shivwits Band voted to accept the Indian Reorganization Act of 1934, and in 1937, Congress added an additional 1,280 acres to the reservation. The Shivwits Band then established its federally approved Constitution and Bylaws in 1940. However, later changes in federal policies toward Indian tribes proved devastating to the Shivwits Band’s efforts to reestablish itself.

2. Federal Termination Era (1953-1968)

Post-World War II, the federal government’s policy toward Indian tribes shifted to one of termination, as Congress adopted various laws aimed at terminating federal obligations to Indian tribes. Well over 100 tribes, bands, and rancherias were terminated through Congressional enactments during what is now referred to as the “Termination Era.”

The Paiute bands of southern Utah, including the Shivwits Band, soon fell within the crosshairs of Termination Era policies. In January 1954, Paiute leaders received copies of S. 2670, the termination bill targeting the Shivwits and other Paiute bands. Letters dated February 2, 1954, informed Paiute leaders of upcoming Congressional hearings regarding S. 2670 in Washington, D.C., scheduled for February 15, 1954. Those letters noted that Paiute leaders could travel to attend the hearings, “provided that the particular groups concerned have ample available tribal funds to cover the expenses of such a trip. *There are no federal funds available for such travel expenses nor for advances to delegates who run out of funds while in Washington.*” Unsurprisingly, the Shivwits Band lacked funds for travel to Washington, D.C., to advocate against its termination. The legislation ultimately sped through Congress, and on September 1, 1954, President Eisenhower signed Public Law 762, thereby terminating the federal government’s trust relationship with the Paiute bands, including Shivwits.

Despite termination, the Shivwits Band forged onward with its trademark resilience, continuing to perform self-governing functions by electing Shivwits Band representatives and holding meetings of its general membership. Although termination had devastating effects on the Shivwits economy, the Shivwits Band held steadfast to their lands and culture. Remarkably, unlike other Paiute bands, the Shivwits Band managed to retain ownership of its lands, leasing those lands to local ranchers.

In short, Termination Era policies did not have the effect that its proponents predicted in regards to integrating Native Americans into “mainstream” America. Huge swaths of Indian lands were lost. Socioeconomic data from that time indicates that terminated Indians continued to have higher unemployment rates, lower incomes, and lower levels of educational attainment than surrounding non-Indian communities, but without federal programs and services to aid in responding to these needs. Congress eventually acknowledged that the Termination Era and its policies were a mistake, and ultimately restored terminated tribes, including Shivwits, to federal status, by passage of individualized “restoration” legislation.

3. Restoration of the Shivwits Band’s Federally Recognized Status

In 1979, S. 1273 was introduced in the Senate, with aims to restore federal status and services to Shivwits and the other Paiute bands. On November 8, 1979, before the Senate Select Committee on Indian Affairs, Utah Congressman Dan Marriott explained his support of restoration of Shivwits and the other Paiute bands:

As I see it, for Congress to terminate the Paiute Bands was the equivalent of giving a lame, jobless man and his family a new house, then looking the other way when the mortgage came due. It simply wasn’t fair. It wasn’t right. ***This Committee and this Congress has the power and the opportunity to restore to the Paiute people of Utah benefits and a measure of dignity which were wrongfully taken from them 25 years ago.*** I urge that we do so by swiftly enacting the legislation now before you.

On April 3, 1980, Congress restored the Shivwits Band and other Paiute bands to federally recognized status by passage of the Paiute Restoration Act, Public Law No. 96-227, thereby

reestablishing the trust relationship between the federal government and the Paiute bands, including Shivwits.

4. Roadblocks to Shivwits Economic Development

Since restoration in 1980, the Shivwits Band has continued its dedicated efforts to strengthen its sovereignty. While restoration has yielded notable improvements in the quality of life for Shivwits Band members, restoration did not bring substantive economic development to Shivwits Band lands, without which true self-determination and self-sufficiency remain unattainable. As a result, the Shivwits Band has remained dedicated to confronting economic challenges, continuously searching for economic development opportunities that will allow the Shivwits Band to supply governmental services and employment options to Shivwits members, and to become independent from reliance on federal funding, which is very limited and is generally tied to implementation of federally conceived programming.

The story of the Shivwits Band is one of determined resilience in the face of relentless challenges and broken promises. After years of searching for suitable business investments, recent potential development opportunities on the Shivwits Reservation has opened the door for sustainable economic expansion for the Shivwits Band. Unfortunately, however, as discussed below, a 2022 decision by the Tenth Circuit Court of Appeals has presented a roadblock to these opportunities, and has stunted the Shivwits Band’s ability to engage in economic development and self-determination.

The decision in question, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892 (10th Cir. 2022) (hereinafter, “*Lawrence*”), holds that, even where an Indian tribe has provided a clear and valid waiver of its sovereign immunity in an agreement, Utah state courts lack subject matter jurisdiction to hear cases arising under that agreement and within Indian country, absent some form of Congressional authorization of such jurisdiction (which Congressional authorization, *Lawrence* suggested, could be invoked if the requirements of 25 U.S.C. §§ 1322 and 1326 were met). As discussed below, 25 U.S.C. §§ 1322 and 1326 derive from Public Law 280, an enactment that was part of the suite of harmful Termination Era legislation aimed at ending federal obligations to Indian tribes. The *Lawrence* case’s holding, based upon a flawed interpretation and application of 25 U.S.C. §§ 1322 and 1326, along with language in the Paiute Restoration Act, has resulted in outside developers being unwilling to engage the Shivwits Band for long-term economic development activities, because non-Indian businesses and entities are not guaranteed a state court forum for resolving disputes arising under contracts with the Shivwits Band. S. 1508 is therefore intended to supply the Congressional authorization for state court jurisdiction required by *Lawrence*.

A. Public Law 280

Public Law 280, or “P.L. 280,” is the common reference to the Act of Aug. 15, 1953, 67 Stat. 588, which is codified in part at 25 U.S.C. §§ 1321–1326. P.L. 280 is a Termination Era law that controversially transferred legal jurisdiction over individual Indians from the federal government to state governments in certain states, which altered previous longstanding dynamics of legal authority between federal, state, and tribal governments. Before P.L. 280, the federal government and tribes shared jurisdiction over almost all civil and criminal matters involving

individual Indians in Indian country, and states had no jurisdiction in Indian country. By P.L. 280, Congress mandated that six (6) states (CA, MN, NE, OR, WI, and AK)—referred to as the “mandatory” P.L. 280 states—had extensive criminal and civil jurisdiction over all persons within Indian country, including individual Indians and non-Indians, within those mandatory states. As it pertains to civil jurisdiction, the law granted those states the authority to hear all civil causes of action “*between Indians or to which Indians are parties*” arising in Indian country. *See* 25 U.S.C. § 1360(a) (emphasis added).

Separately, P.L. 280 also permitted some other states to acquire jurisdiction over individual Indians within Indian country at the state’s option—called the “optional” P.L. 280 states. Utah is one of those “optional” P.L. 280 states. When passed in 1953, Congress wrote P.L. 280 to provide that “optional” states could legislate to accept some degree of jurisdiction over individual Indians within Indian country, without the consent of the Indian tribes in that state. However, that consent requirement (or lack thereof) changed in 1968, when Congress amended P.L. 280 to require a tribe’s consent to state jurisdiction (manifested by a special election) before a state could opt-in to assume jurisdiction over the individual Indians within a tribe’s Indian country under P.L. 280. The P.L. 280 provision that permits a state, at its option, to acquire civil jurisdiction over the individual Indians within a tribe’s Indian country (with the tribe’s consent) is codified at 25 U.S.C. § 1322. The provision expressing that a tribe’s consent to state jurisdiction over individual Indians must be manifested by a special election is codified at 25 U.S.C. § 1326.

As a result of the 1968 P.L. 280 amendments, any “optional” P.L. 280 state’s passage of legislation after 1968, in which the state purports to acquire jurisdiction over individual Indians within Indian country in that state under 25 U.S.C. § 1322, is effective only where a tribe holds a special election whereby the members of that tribe vote to consent to the state’s jurisdiction over the individual Indians within the tribe’s Indian country under 25 U.S.C. § 1326. The State of Utah passed such legislation in 1971, making Utah the only “optional” P.L. 280 state that passed legislation under 25 U.S.C. § 1322 to acquire civil jurisdiction over individual Indians within Indian country in Utah after the 1968 amendments to P.L. 280. *See* Cohen’s Handbook of Federal Indian Law § 7.04[3][a], fn. 23 (Nell Jessup Newton & Kevin K. Washburn, eds. 2024). As a result, the State of Utah can only exercise global civil jurisdiction over individual Indians in Indian country where a tribal government in Utah holds a special election under 25 U.S.C. § 1326, and the tribe’s members vote to consent to Utah state jurisdiction over the individual Indians within the tribe’s Indian country.

Notably, and relevant here, P.L. 280 is intended to confer state court jurisdiction over civil causes of action involving individual Indians, rather than Indian tribal governments, as the civil jurisdiction provisions of P.L. 280 allow states to hear “civil causes of action between Indians or to which Indians are parties.” 28 U.S.C. § 1360(a) (emphasis added); *see also* 25 U.S.C. § 1322. This language refers to suits involving individual Indians only, and does not mention suits against tribes. *See Bryan v. Itasca County*, 426 U.S. 373, 389 (1976) (observing that “there is notably absent” from P.L. 280 “any conferral of state jurisdiction over tribes themselves”); *Parker Drilling Co. v. Metlakatla Indian Comm.*, 451 F.Supp. 1127, 1139 (quoting *Bryan*); *Meier v. Sac & Fox Indian Tribe of Mississippi*, 476 N.W.2d 61, 63 (Iowa 1991) (providing that “the language of Public Law 280 . . . clearly confers narrow civil jurisdiction over individual Native Americans, and not the Tribe per se”); *Long v. Chemehuevi Indian Reservation*, 115 Cal.App.3d 853 (Cal.App.4th Dist. 1981) (“No case has been cited to us, and we have found none, which concludes

or even suggests, that [28 U.S.C. § 1360] conferred on California jurisdiction over the Indian tribes, as contrasted with individual Indian members of the tribes.”).

Therefore, even where a tribe holds a special election under 25 U.S.C. § 1326, and its members vote to allow state court jurisdiction over civil causes of action involving individual Indians, such an election would not confer state court jurisdiction over civil causes of action involving the tribe itself, or to which the tribe itself is a party.

B. *Paiute Restoration Act and Public Law 280*

Several post-1968 federal statutes affording restoration or federal recognition to individual tribes specified that the state must only exercise civil and criminal jurisdiction over individual Indians in Indian country as if that state had assumed such jurisdiction with the consent of the tribe under P.L. 280 as amended in 1968. As discussed below, the Paiute Restoration Act is one such federal statute.

Relevant here, Section 7(b) of the Paiute Restoration Act provides that the “State of Utah shall exercise civil and criminal jurisdiction with respect to the reservation and persons on the reservation **as if it had assumed jurisdiction pursuant to [P.L. 280 and its 1968 amendments], and pursuant to sections 63-36-9 through 63-36-21 of the Utah State Code.**” (emphasis added.) Section 7(b) is therefore written to provide that the State of Utah can only exercise civil jurisdiction over the Paiute bands (including Shivwits) pursuant to P.L. 280’s tribal consent requirements and Utah law passed in 1971, which Utah law accepts jurisdiction over the individual Indians within Indian country in Utah only where the tribe in question has held a special election whereby its members vote affirmatively to confer such jurisdiction as required by P.L. 280. The Paiute Restoration Act’s provision on jurisdiction places the Shivwits Band at risk of a fate similar to that in *Lawrence*. Under *Lawrence*, Section 7(b)’s language acts as a jurisdictional limitation, given the provision requiring compliance with P.L. 280 **and its 1968 amendments** (i.e., tribal consent by special election requirement).

C. *Lawrence Case*

In *Lawrence*, a Utah tribe waived its sovereign immunity for suits arising from a contract with a non-Indian consultant, which contract was the subject of the underlying lawsuit. Under the terms of the contract, the tribe also expressly waived any arguments regarding exhaustion of tribal court remedies and agreed to submit to the jurisdiction of any court of competent jurisdiction. Despite these waivers, once disputes arose under the contract in question, the tribe fought the consultant’s efforts to have the disputes heard in Utah state court. Notwithstanding the tribe’s immunity waiver and contractual consent to state court jurisdiction, the Tenth Circuit Court of Appeals in *Lawrence* held that Utah state courts could not exercise civil jurisdiction over that specific contractual dispute absent some form of Congressional authorization to the state to exercise such jurisdiction. *Lawrence* suggested that P.L. 280, specifically 25 U.S.C. §§ 1322 and 1326, could supply the basis for such Congressional authorization, but only where the tribe in question had complied with the statutory requirements set forth therein.

However, because P.L. 280 confers state court jurisdiction over civil causes of action involving individual Indians, a special election under 25 U.S.C. § 1326 would do nothing to affect

consent by the tribe itself to state court jurisdiction, which is instead generally manifested by a tribe's approval and execution of the contract in question pursuant to tribal law. 28 U.S.C. § 1360(a); 25 U.S.C. §§ 1322, 1326. Accordingly, P.L. 280 does nothing to confer state jurisdiction over tribes, and as a result, P.L. 280 (and fulfillment of the requirements of 25 U.S.C. §§ 1322, 1326) does not actually supply the Congressional authorization required by *Lawrence* for state court jurisdiction over suits involving tribes.

As any third-party developer or investor would be engaging with the Shivwits Band in regards to any development project, those developers require certainty as to the availability of a forum in which to resolve disputes that arise during the course of the development project. As is true in every other jurisdiction of the United States, tribes within the Tenth Circuit, like the Shivwits Band, should be able to selectively consent to state court jurisdiction in contracts, by agreeing to waive their sovereign immunity for suits arising under that contract and consenting to state court as a court of competent jurisdiction as to specific legal actions. The *Lawrence* decision has robbed tribes, including the Shivwits Band, of their ability to so selectively consent to state court jurisdiction, resulting in uncertainty for outside investors looking to engage the Shivwits Band in economic development and other business opportunities.

Notwithstanding the above, one clear takeaway from the *Lawrence* decision is that *some form* of Congressional authorization is required before state courts may permissibly exercise jurisdiction over civil causes of action involving the Shivwits Band. *Lawrence* suggests that P.L. 280's Secretarial election provisions could be the source of that Congressional authorization. But, as discussed in detail above, given the limitations on P.L. 280's applicability (i.e., its application only to suits involving individual Indians), the Secretarial election provisions of P.L. 280 actually do not definitively supply the needed Congressional authorization for state court exercises of jurisdiction over suits involving the Shivwits Band as required under *Lawrence*. S. 1508 is intended to supply that certain and clear Congressional authorization, as required under *Lawrence*, for state courts' exercise of jurisdiction over civil causes of action involving the Shivwits Band, where the Shivwits Band consents to such jurisdiction by contract or agreement, and where the Shivwits Band provides a valid limited waiver of its sovereign immunity from unconsented suit.

5. Need for S. 1508

S. 1508 is intended to carry out *Lawrence's* mandate that some form of Congressional authorization is required before a state court can exercise subject matter jurisdiction over civil causes of action involving the Shivwits Band, where the Shivwits Band has agreed by contract to subject itself to state court jurisdiction. As a result of *Lawrence*, until passage of S. 1508 is secured, non-Indian businesses and entities are not guaranteed a state court forum for resolving disputes arising under contracts with the Shivwits Band. Therefore, those outside businesses and entities are reticent to engage the Shivwits Band in business relationships.

Recently, the Shivwits Band was presented with a promising business opportunity to develop its lands; however, without assurances that there will be a forum available in which to resolve disputes, the Shivwits Band is concerned that this opportunity, and any future opportunities, will not be realized. The Shivwits Band's self-determination and independence depends on a federal legislative fix that allows the Shivwits Band to selectively consent to state court jurisdiction in individual agreements, rather than holding a special election to adopt a global

and permanent consent to state court jurisdiction over individual Indians within the Shivwits Band's Indian country, which in reality does not actually present a solution to this issue.

S. 1508 offers the Congressional authorization that the Shivwits Band needs to address the problem created by *Lawrence*. Affirming the Shivwits Band's ability to consent to state court jurisdiction in individual contracts and agreements is essential to ensuring that the Shivwits Band can engage outside businesses for long-term economic development benefitting not only the Shivwits Band's community, but local Utah communities as well. By passage of S. 1508, you would be championing legislation to assist the Shivwits Band in resolving the issue created by *Lawrence*, so that the Shivwits Band and surrounding community can enjoy the benefits of economic development, stability, and financial security.

Thank you again to this Committee for holding this hearing and for your consideration of S. 1508, and to Senator Curtis for his tireless work on behalf of the Shivwits Band. I am happy to answer any questions that you may have.