

March 12, 2021

Roslyn Holliday Moore, MS  
Acting Director, Office of Minority Health  
United States Department of Health and Human Services  
Tower Oaks Building  
1101 Wootton Parkway  
Suite 100  
Rockville, MD 20852

***Re: Center for Indigenous Innovation and Health Equity***

Dear Director Moore:

On behalf of the undersigned organizations, I write you today to comment on the creation of the Center for Indigenous Innovation and Health Equity. While we applaud the creation of a Center designed to address the issue of health equity in Tribal communities, we have concerns about certain aspects of this proposal. We believe that it fails to consider the sovereignty of Tribal Nations and the existing trust responsibility, as it merely *encourages* the Center to consult with American Indian/Alaska Native (AI/AN) leaders instead of engaging in direct, meaningful Tribal consultation with the Tribal leaders. ***To honor the Trust Responsibility, the Center's work must be Tribally focused and informed by the needs of Tribal Nations.***

Trust Responsibility

We kindly remind the agency that the United States has a unique legal and political relationship with Tribal governments established through and confirmed by the United States Constitution, treaties, federal statutes, executive orders, and judicial decisions. Central to this relationship is the Federal Government's trust responsibility to protect the interests of Indian Tribes and communities, including the provision of health care to AI/ANs. In recognition of the trust responsibility, Congress has passed numerous Indian-specific laws to provide for Indian health care, including laws establishing the Indian health care system and those providing structure and detail to the delivery of care, such as the Indian Health Care Improvement Act (IHCIA).<sup>1</sup> In the IHCIA, Congress reiterated that "Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people."<sup>2</sup> The federal government's work with AI/AN people ***must*** be informed by this responsibility.

Tribal Consultation Must Happen

We believe that the success of the Center will depend on a Tribally informed approach, which can ***only*** be achieved through Tribal Consultation. We know that the Biden Administration has placed

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<sup>1</sup> 25 U. S. C. § 1601 et seq.

<sup>2</sup> Id. § 1601(1)

a particular focus on strengthening Tribal Consultation, as evidenced through the issuing of the “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships”<sup>3</sup> Despite this commitment however, the Request for Information merely says that the “[t]he Center is **highly encouraged** to engage Indigenous leaders and community partners to address AI/AN ... health disparities focus areas that align with their goals and priorities.” We believe that this guidance is insufficient. Tribal Consultation must be at the core of any federal government initiative aimed at assisting Tribal people. As President Joe Biden stated in Section 1 of the aforementioned Memorandum, “[m]y Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship.”<sup>4</sup> ***We respectfully urge the Administration to align all Administration actions with these commitments.***

We also believe that the need for Tribal Consultation is heightened by the ambitions of this Center. The health equity issues that are faced by Tribal communities are deeply rooted and caused by issues, such as poverty, isolation, and neglect, that have plagued us for generations. We do not believe that these issues can be adequately addressed without Tribal voices being central. Addressing these issues will require understanding the history and unique challenges of our communities. To this end, we also believe that Tribes should also be consulted as the Center is seeking partnerships with Universities. Tribes have differing relationships with different Universities and we believe that these relationships should be considered as partnerships are formed. Tribes will be able to offer suggestions on where to look for partnerships and can leverage existing contacts to make sure this initiative is successful. If the Center is going to be successful in their research, they must have the full support of the Tribal Nations that they are seeking to help. Failing to consult Tribes will inevitably result in less productive partnerships, which will undermine the Center’s success.

### Tribes are Sovereign Nations

We also want to further emphasize that Tribes are sovereign nations and that any initiative that seeks to benefit AI/AN people should be mindful of this. We do not believe that this current proposal is mindful of the unique political status of Tribes. Tribal governments are the oldest governments in North America and their existence predates the United States. This was recognized in Article I, Section 8, Clause 3 of the U.S. Constitution, which states that the United States Congress shall have power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The sovereignty of Tribes within the framework of the United States government was further clarified in *Cherokee Nation v. Georgia*,<sup>5</sup> which states that Tribes occupy a unique area within the American political framework as “domestic dependent nations.” The distinctive nature of Tribal Nations has consistently been recognized in American law and jurisprudence. Many AI/ANs were not even United States citizens until the passage of the Indian

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<sup>3</sup> See “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,” <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>, January 26, 2021

<sup>4</sup> *Id.*

<sup>5</sup> 30 U.S. 1 (1831)

Citizenship Act of 1924. Today however, AI/ANs are dual citizens, of their Tribe and the United States government, and this reality should inform any work being done to address long-standing concerns in our communities. As previously stated, the United States has a unique trust responsibility to Tribal Nations, which has repeatedly been invoked in statutes, regulations, agency guidance, and court decisions. It would be improper for the United States to undertake this initiative without working closely with Tribal Nations. The agency **must** keep these considerations in mind as they work to address the long-standing health issues that have plagued our communities. ***We believe that the proposal, as constructed, does not honor Tribal sovereignty and fails to acknowledge the existence of Tribes as distinct political entities.***

Conclusion

There is an urgent need for this Center and its work can greatly benefit Indian Country. However, ***we urge the agency to re-work this proposal to focus on Tribal Nations and take all necessary steps to honor Tribal sovereignty.*** We believe that once the agency makes the necessary adjustments, this proposal will fulfill its potential and to lead to positive change in Indian Country. ***It is important that the agency remembers the Trust Responsibility and the unique government-to- government relationship that exists between Tribes and the federal government.*** As the Center begins to build out, it must work in tandem with Tribes. Our organizations stand ready to assist in these efforts. Thank you in advance for your consideration of our comments.

Sincerely,



Stacy A. Bohlen, CEO, National Indian Health Board



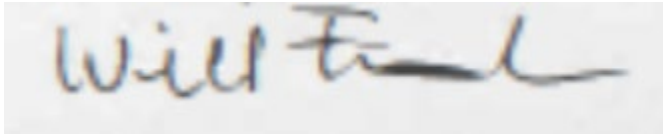
Laura Platero, Executive Director, Northwest Portland Area Indian Health Board



Verné Boerner, President/CEO, Alaska Native Health Board



Kitcki Carroll, Executive Director, United South and Eastern Tribes Sovereignty Protection Fund



Will Funmaker, Chair, Great Lakes Area Tribal Health Board



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