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Statement on Signing the PROGRESS for Indian Tribes Act of 2019

October 21, 2020

Today, I have signed into law S. 209, the "PROGRESS for Indian Tribes Act of 2019" (the "Act"). This Act makes several amendments to enhance tribal self-governance under the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and helps promote my Administration's goal of further empowering tribes. For example, the Department of Transportation recently implemented the Tribal Transportation Self-Governance Program, which provides federally recognized tribes and tribal organizations with greater control, flexibility, and decision-making authority over Federal funds used to carry out tribal transportation programs, functions, services, and activities in tribal communities. I note, however, that the Act includes several provisions that raise constitutional concerns.

First, section 408(g)(3)(B)(ii) of the ISDEAA, as amended by the Act, purports to prohibit the Secretary of the Interior from reducing the amount of funding under title IV of the ISDEAA except as required by, among other things, "a congressional directive in legislation or an accompanying report." Unless incorporated into the legislation itself, an accompanying report will not have undergone bicameralism and presentment under Article I, section 7 of the Constitution. Deeming a directive in such a report to be mandatory would unconstitutionally delegate lawmaking authority to the committee or conference that produced it, and would be in contravention of the separation of powers. My Administration will give appropriate consideration to these accompanying reports but will not consider them legally binding.

Second, section 105(p) of the ISDEAA, as amended by the Act, purports to apply a rule of interpretation in the administration of the ISDEAA to "all Federal laws . . . and Executive orders." One of the means by which I carry out my constitutional responsibility under Article II, section 3, to "take Care that the Laws be faithfully executed," is through the issuance of Executive Orders to supervise the executive branch. It is thus my responsibility to ensure that any Executive Order I issue heeds the rule of interpretation for Federal laws in amended section 105(p), but that provision cannot itself amend or change the meaning of Executive Orders, any more than an Executive Order can amend or change the meaning of a statute.

Finally, section 407(i) of the ISDEAA, as amended by the Act, purports to negate the application of any "law or regulation pertaining to Federal procurement (including Executive Orders)" to construction programs carried out under title IV of the ISDEAA. I understand this provision only to change the governing law, not to rescind or direct the withdrawal of any Executive Order or to negate the legal effect of any Executive Order insofar as it may be designed to ensure compliance with the Constitution or is otherwise an exercise of those Article II powers with which the Congress may not interfere (such as the President's power to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices").

DONALD J. TRUMP

The White House,
October 21, 2020.

NOTE: S. 209, approved October 21, was assigned Public Law No. 116–180. An original was not available for verification of the content of this statement.

Categories: Bill Signings and Vetoes : PROGRESS for Indian Tribes Act of 2019, signing statement.

Subjects: American Indians and Alaska Natives : Tribal nations, relations with Federal Government; Interior, Department of the : Secretary; Legislation, enacted : PROGRESS for Indian Tribes Act of 2019.

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