

**STATEMENT OF
KEVIN WASHBURN
NOMINEE FOR THE POSITION OF
ASSISTANT SECRETARY FOR INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

SEPTEMBER 14, 2012

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee. My name is Kevin Washburn, and I am a member of the Chickasaw Nation of Oklahoma. I am honored to be President Obama's nominee for Assistant Secretary for Indian Affairs. And it is the highest honor to have Chickasaw Governor, Bill Anoatubby here to introduce me.

With me today are my wife, Elizabeth Rodke Washburn, and our two boys Cole and Ford. My wife is a lawyer who sometimes practices Indian law. She is my chief guide, partner and supporter. And if not for her influence in my life, I would have no business being before you today. Libby is also a member of the Chickasaw Nation. Her parents still own their family's original Chickasaw allotment from 1906, which now consists of 220 acres near Paola, Oklahoma.

I spent much of my childhood growing up in towns within the former reservation boundaries of the Chickasaw Nation, including Purcell and Ada. My Chickasaw lineage comes through my mother, Shirley, who worked for the Chickasaw Nation as a Community Health Representative before she retired, and who now serves as a member of our tribal Elder's Council. During much of my childhood, she was a single working mother, and it was by force of will that she successfully raised three children. Like some Indian women, my mother has a lot of strength and has even been accused of being domineering on occasion. I would never say that, of course, but I am grateful to Governor Anoatubby for appointing her to the Elder's Council several years ago. This keeps her busy and continues to give her life important purpose in retirement.

When I accepted the President's nomination to serve as Assistant Secretary of Indian Affairs, I was, and am, happily serving as Dean of the University of New Mexico Law School (UNM Law School), what I believe is one of our country's finest law schools. UNM Law School has produced many people who have served our nation here in Washington D.C., including Senator Tom Udall, Federal Circuit Court Judge Jimmie Reyna, and former Federal Communications Commissioner Gloria Tristani. The UNM Law School has also produced New Mexico's current Chief Justice, Attorney General, and United States Attorney, among other key officials in that state. In addition to serving this fine law school, I have been living in beautiful New Mexico, and working closely with the legal and judicial community in the state.

Serving as Assistant Secretary will not be an easy job, in part, because of the breadth and diversity of the constituents served by the position. I have a healthy respect for the challenges I would face if I am confirmed to serve in this important position.

I believe, however, that this is a special time of opportunity in Indian affairs, in large part, because of the many accomplishments of Congress and this Administration. With this Committee's leadership in Congress and the commitment of the Obama Administration, I believe that the United States has moved dramatically forward in Indian affairs within the last four years. These accomplishments inspired me to accept this nomination.

For example, Congress, working with the Administration, achieved settlement of the Cobell case, a case that was decades in the making and which cast a long dark shadow over the administration of Indian affairs since it was filed in 1996. There are some significant hurdles left for the settlement to be successful, but your commitment to settle the case has created strong goodwill in Indian country. And while working to pass the Cobell Settlement, Congress, with the support of the Administration, also enacted several other significant pieces of legislation, including, permanent reauthorization of the Indian Health Care Improvement Act, amendments to strengthen enforcement of the Indian Arts and Crafts Act, the Tribal Law and Order Act, a bill that I worked on and testified about, four Indian water settlements affecting seven tribes across the West, and most recently the Helping Expedite and Advance Responsible Tribal Home ownership Act (HEARTH Act).

While more work needs to be done in each of these areas, Congress and this Administration, has shown that, with cooperation and commitment, much can be accomplished to improve the everyday lives of Indian and Native communities.

As a result of these recent accomplishments, I came to realize that it might be a very special time to be in a leadership position in Indian affairs. The challenges are extreme, but the opportunities for improvement are real.

The next Assistant Secretary will have a significant role in implementing these new laws including the land consolidation plan under the Cobell settlement, the Tribal Law and Order Act, and the HEARTH Act. If I am confirmed, I look forward to help implement these new laws.

I strongly believe in public service. Except for one year teaching at Harvard Law School, my entire career has been spent in government public service or teaching in public law schools. I have nearly a decade of experience in federal public service in a variety of different contexts and primarily in Indian affairs. After leaving federal government service, I spent much of the next decade in academia critiquing federal Indian policy and working with Indian tribes in a variety of roles.

In sum, I have committed most of my adult life to understanding and seeking to reform federal Indian policy so that it serves American Indians and tribes better. For a person with my interests, there could be no better position from which to further this kind of work than the Assistant Secretary position.

Among the principles that will guide me if I am confirmed to be the Assistant Secretary for Indian Affairs is a strong commitment to tribal self determination and self governance. My commitment to these bedrock principles are borne not just from the lofty political philosophies that undergird the U.S. Constitution, but from gritty personal experience.

The Tribal Self-Governance program has had a deep personal impact on my life. As I mentioned earlier, during much of my childhood my mother was a working single mother with three children. I grew up as a child in the 1970s and 1980s going to Indian Health Service (IHS) hospitals for medical and dental care.

When I was a child, we often waited hours beyond the time of our appointment to be seen at the IHS hospital, as a result my mother often had to take all three kids to the hospital even if only one of us had an appointment because she had no idea if the appointment would be concluded by the time the other children would be finished with school. I had a brother who suffered from asthma throughout his childhood, and thus I spent many hours of my youth with both my siblings and my mother in IHS hospitals in Ada and Tahleah, Oklahoma. We did not know any other way.

I am proud to say that, under the leadership of Governor Bill Anoatubby, the Chickasaw Nation took over the operation of the Carl Albert Indian Hospital under a 638 contract and later a self-governance compact. Frankly, this action was initially controversial. Our modern government was still relatively young, and after decades of being taught that we could not run this sort of program ourselves, I think that some Chickasaw citizens were a little skeptical about whether this was a good idea.

Soon, however, positive reports from back home started coming in. The first report I heard was my mom telling me that she had a doctor's appointment for a given time, and that she received a call from the hospital before she even left home telling her not to come at that time, but to come an hour later because they were running late. That does not sound like a difficult thing to accomplish, but it had never happened before. It was a simple courtesy. That phone call said, "we know that your time is important, and we do not want to waste your time."

To my family, it was a clear recognition that it was a new day for the Chickasaw Nation. In addition to medical care, real customer service and respect would now be provided to us at what had become our own hospital. The story of Chickasaw healthcare has another wonderful chapter that I will not explain here in order to save time. But let me say that healthcare was merely one of the areas where self-governance has improved Chickasaw lives. Another very visible and highly successful effort was in the area of law enforcement with the restoration of the Chickasaw Light Horseman.

But I would like to explain the lessons that I learned about tribal self-governance. As a political matter, Governor Anoatubby took a significant personal risk in pursuing self-governance over a matter so important to our people as healthcare. But if you wonder why he has been our Governor for 25 years it is because he believed in Chickasaw people even when we did not fully believe in ourselves.

My pride as a Chickasaw citizen grew substantially when my tribal government demonstrated it could provide services to Indian people better than the federal government can. And I am convinced that this is not just a matter of a Chickasaw ingenuity, or an Oklahoma work ethic, or even Governor Anoatubby's courageous vision. I think that there is a deeper truth at work and it is this: Indian tribes can serve their citizens, in many cases, better than the federal government can.

I am proud to say that the government to government relationship between the federal government and tribes is strong today because tribal self-governance is at its modern zenith.

My own personal commitment to the principle of tribal self-governance was further strengthened when I became a federal prosecutor. As an Assistant U.S. Attorney in Albuquerque, I handled cases from the Navajo, Mescalero and Jicarilla Apache reservations, locations 200 miles away from where I sat at my desk in Albuquerque near the federal courthouse.

I learned that some important government services, like criminal justice, are very difficult to provide from hundreds of miles away. I saw more evidence of this in Minnesota, where Assistant U.S. Attorneys in Minneapolis are the primary felony prosecutors on the Red lake reservation, a five hour drive away.

In my writings as an academic, I have questioned the logic of federal agencies serving Indian people. Let me note that I do not question the federal public servants who work in the Indian country context because I have found them to be capable, diligent, and hard-working. But the overall structure of having services provided by people hundreds of miles away is rarely effective. And this brings me back to the basic principle that Indian tribes can serve their citizens, in many cases, better than the federal government can.

I earned tenure at a top 20 law school largely on this basic insight: Indian self-governance has improved education, health care, and most other governmental services on reservations, but we have not adopted a self-governance model for criminal justice in Indian country. I am proud that my work contributed to your enactment of the Tribal Law and Order Act two years ago, which begins to address this problem.

Now, I realize that immediate conversion to full self-governance is not the answer for every tribe, and that an important aspect of tribal self-determination is insuring that tribes are able to choose whether they wish contract, compact or be a "direct-service" tribe for federal programs.

I have been educated recently by a tribal leader who helped me to understand that "direct-service" tribes wish to receive the benefits of the all of the solemn treaty promises made by the federal government. And if I am confirmed, I vow to work hard to insure that those important promises are kept.

If confirmed, I also pledge to consult openly and frequently with tribal leaders and to work cooperatively with this Committee in addressing all of the important issues that affect the lives of American Indians and Alaska Natives. I have a record of working with this Committee on

numerous past occasions, both on legislation and as a witness in areas of subject matter expertise. It is an honor to appear before you now, but as a nominee.

I look forward to your questions.