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James Hall

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## COMMENTS

### THE PROMISE ZONE INITIATIVE AND NATIVE AMERICAN ECONOMIC DEVELOPMENT: ONLY THE FIRST STEP FORWARD TOWARD THE PROMISE OF A BRIGHTER FUTURE

James Hall\*

#### Introduction

The Choctaw Nation of Oklahoma is nestled in the southeastern corner of the state, spanning across over 10,000 square miles of rolling green hills in the picturesque Ouachita Mountain Range. Despite its natural beauty, the region's stagnant economy is indicative of the plight of many Native American communities throughout the country.<sup>1</sup> The Choctaw Nation includes some of Oklahoma's poorest counties.<sup>2</sup> For instance, the U.S.

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\* J.D./M.P.A., University of Oklahoma; B.S., Oklahoma State University, 2010.

1. 25 U.S.C. § 4301(a)(8) (2012) (“[D]espite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer higher rates of unemployment, poverty, poor health, substandard housing, and associated social ills than those of any other group in the United States.”); see Katherine Peralta, *Native Americans Left Behind in the Economic Recovery*, U.S. NEWS & WORLD REP. (Nov. 27, 2014), <http://www.usnews.com/news/articles/2014/11/27/native-americans-left-behind-in-the-economic-recovery>; Allie Bidwell, *Are American Indian Students the Least Prepared for College?*, U.S. NEWS & WORLD REP. (Mar. 13, 2014), <http://www.usnews.com/news/blogs/data-mine/2014/03/13/are-american-indian-students-the-least-prepared-for-college>.

2. Press Release, Choctaw Nation of Okla., Choctaw Nation of Oklahoma Designated a ‘Promise Zone’ (n.d.), <https://www.choctawnation.com/news-events/press-media/choctaw-nation-oklahoma-designated-%E2%80%98promise-zone%E2%80%99> (“[The Promise zone] identifies census tracts that experience high poverty and other challenging demographics. These areas are in several southeastern Oklahoma counties, including Atoka, Bryan, Coal, Choctaw, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, and Pushmataha. Of the census tracts involved, nine have poverty rates over 30 percent, the highest of which is a staggering 52.8 percent.”); Trymaine Lee, *‘Promise Zones’ Offer New Hope to Struggling Choctaw Youth*, MSNBC (Mar. 12, 2014), <http://www.msnbc.com/the-reid-report/choctaw-nation-promise-zones> (“About 23% of those living in the Choctaw Nation live below the poverty line — 7 points higher than the national average. In some communities the poverty rate balloons to around 50%. Many children here are impoverished, living in homes without running water. In McCurtain County alone, which has among the highest population of Choctaw, about 34% of the children live in poverty. The teen pregnancy rate is nearly twice the national average, higher than all other races combined. The STD rate is nearly quadruple

Census identified Pushmataha County in the Choctaw Nation as the poorest county in the state where “[a]most 40 percent of children . . . live in poverty . . . [and] the average household income is only \$32,350, compared with the state average of \$45,720 and the national average of \$52,250.”<sup>3</sup> Due to a public health crisis, the region includes the state’s highest rates of heart disease and obesity and many residents have failed to receive screening for potentially treatable and preventable diseases. Despite these daunting challenges, the Choctaw Nation leadership remains diligent in its efforts to reinvigorate the Choctaw economy and optimistic about its future, thanks in part to a new partnership with the federal government.<sup>4</sup>

During the summer of 2015, President Obama made a historic trip to the Choctaw Nation’s capital in Durant, Oklahoma.<sup>5</sup> The theme of his trip was hope for better days and a promise from the federal government to help the Choctaw people achieve their dreams of a more prosperous future. His trip, however, had a deeper sense of symbolism attached to it. President Obama’s dual message was one of healing the trust between the Choctaw Nation and federal government,<sup>6</sup> as well as an update on a stimulus plan to revitalize the Choctaw economy.<sup>7</sup>

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the national average, according to youth outreach workers. And almost one-fourth of area students are enrolled in special education programs.”).

3. Jaclyn Cosgrove, *Federal Initiative Is Part of What Brings Hope to Southeast Oklahoma*, OKLAHOMAN (Sept. 8, 2015), <http://newsok.com/article/5445211>; see also Jens Manuel Krogstad, *One-in-Four Native Americans and Alaska Natives Are Living in Poverty*, PEW RES. CTR. (June 13, 2014), <http://www.pewresearch.org/fact-tank/2014/06/13/1-in-4-native-americans-and-alaska-natives-are-living-in-poverty/>.

4. Chief Gregory E. Pyle, *Promise Zone Offers Opportunities for Growth*, BISKINIK (Durant, Okla.), Feb. 2014, at 2, [https://www.choctawnation.com/sites/default/files/2015/09/29/BISKINIK2014\\_02c\\_original.pdf](https://www.choctawnation.com/sites/default/files/2015/09/29/BISKINIK2014_02c_original.pdf).

5. Kristi Eaton, *Obama Announces Broadband ‘Game-Changer’ While Visiting Choctaw Nation*, INDIAN COUNTRY TODAY MEDIA NETWORK.COM (July 16, 2015), <http://indiancountrytodaymedianetwork.com/2015/07/16/obama-announces-broadband-game-changer-while-visiting-choctaw-nation-161098>.

6. David Osborne, *Poverty in America: Can Obama Bring an End to the Choctaw Nation’s Trail of Tears?*, INDEPENDENT (London) (Jan. 30, 2014), <http://www.independent.co.uk/news/world/americas/poverty-in-america-can-obama-bring-an-end-to-the-choctaw-nations-trail-of-tears-9097463.html> (“That the Nation has been picked for the new programme elicits more pride here than shame, and some even see it as Washington paying partial and belated recompense for past crimes against their ancestors.”).

7. Eaton, *supra* note 5.

The United States is still in the midst of recovering from the Great Recession. That recession hit Indian Country especially hard, and the recovery for tribes has been slower than the rest of the country.<sup>8</sup> Beginning in 2014, the Obama administration, in conjunction with the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture as lead agencies, launched a place-based recovery and response effort to stimulate the economies of certain highly distressed areas across the country. The plan announced in the 2014 State of the Union is called the Promise Zone initiative and it specifically includes certain Native American tribes.<sup>9</sup>

Promise Zones are place-based economic development initiatives designed to partner federal and local officials in the pursuit of goals set by local communities. The initiatives operate in high-poverty areas to foster job creation and generate more opportunities at advancement.<sup>10</sup> President Obama's trip to the Choctaw Nation was symbolic for tribes across the country because of the fact that two of the highly competitive Promise Zone designations include tribal lands—the Choctaw Nation was included in his first round of five Promise Zones,<sup>11</sup> while the Pine Ridge Reservation of the Oglala Sioux Tribe in South Dakota was included in the second round of eight. In total, twenty Promise Zones were designated across the country with the announcement of two final tribes during the spring of 2016—the Spokane Tribe of Indians, Washington and the Turtle Mountain Band of Chippewa Indians in Rolette County, North Dakota.<sup>12</sup>

While only four tribes will benefit from the initiative, the inclusion of Native Americans in the highly selective group suggests a sincere effort on behalf of the federal government to address economic conditions in Indian Country.<sup>13</sup> Despite the ambitious goals of Promise Zones, however, the unique history between the federal government and Native Americans requires further analysis to ensure the plan will work in Indian Country.<sup>14</sup> The idiosyncrasies of federal Indian policy often make economic

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8. Peralta, *supra* note 1.

9. Cecilia Muñoz & Luke Tate, *Accelerating Economic Mobility Through Promise Zone Partnerships*, WHITE HOUSE (Apr. 28, 2015), <https://www.whitehouse.gov/blog/2015/04/28/accelerating-economic-mobility-through-promise-zone-partnerships>.

10. *Id.*

11. *Id.*

12. *Id.* (showing that twenty Promise Zones have been created or announced).

13. Eaton, *supra* note 5.

14. *See infra* Part I.

development in tribal communities especially challenging.<sup>15</sup> Fortunately, a dichotomy exists between strategies for tribal economic development that includes examples of an approach that works and one that does not.<sup>16</sup> By applying these approaches to the Promise Zone initiative, a likelihood of the program's success can be ascertained. Likewise, with a better understanding of the Promise Zone initiative, other tribes can learn from the experiences of the Choctaw Nation and Pine Ridge Reservation in crafting their own economic development programs and attempt to take advantage of a new willingness on behalf of the federal government to address tribal economies in a way that promotes tribal sovereignty and self-determination.<sup>17</sup>

Part I of this comment will identify the legislative history of tribal and federal government relations that provided the foundation for delegating self-determination policies to tribes. The importance of the foundation for self-determination principles in tribal economic development will be explored by examining an approach that often works, nation-building, and one that usually does not work, the standard approach. In Part II, prior place-based initiatives that provided the inspiration for Promise Zones will be highlighted and the uncertain legal authority of the current initiative will be explained. Part III will analyze how well certain aspects of the Promise Zone initiative meet the nation-building approach. Part IV will explore areas where the Promise Zone initiative falls short of nation-building and can be improved by adopting aspects that embrace self-determination.

Ultimately, while the Promise Zone initiative is a step in the right direction, its questionable legal authority and its failure to truly embrace all aspects of delegating self-determination authority to tribes prevents it from providing a model example for tribes to pursue. Fortunately, the plan itself can be improved through several legislative proposals. The momentum garnered by the Promise Zone initiative should be bolstered by implementing future programs that take working aspects of Promise Zones, and pair them with other initiatives that will make a deep and lasting impact on the economy in Indian Country.

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15. *See infra* Part I.

16. *See infra* Part I; Stephen Cornell & Joseph P. Kalt, *Two Approaches to the Development of Native Nations: One Works, the Other Doesn't*, in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT* 3 (Miriam Jorgensen ed., 2007). (discussing the standard approach in which tribal economic development initiatives often result in failed outcomes and the nation-building approach that often results in more successful results for tribes).

17. *See infra* Parts III, IV.

*I. Native American Legislative History and a Framework for Evaluating Tribal Economic Development*

*A. Legislative History of Economic Development in Indian Country*

A truly in-depth discussion of the legal history of Native American policy is beyond the scope of this comment.<sup>18</sup> Nevertheless, several key areas of Native American federal legislative history are quite relevant to economic development. The historical path of federal Indian policy has created numerous factors that hinder growth in modern Indian Country.<sup>19</sup> To justify its policy toward Indian affairs, the federal government has held a trust relationship with Native Americans,<sup>20</sup> which is characterized by a duty to protect tribal peoples' interest and welfare.<sup>21</sup> The trust relationship notwithstanding, the best interests of Native Americans are not always at the forefront of U.S. policymaking because the federal government's trust relationship policies are often "determined primarily by non-Indians, with only minimal input from Indians and tribal nations themselves."<sup>22</sup>

The ebb and flow of federal Indian policy creates an ever-evolving timeline in which different "periods" and "eras" are depicted by the federal

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18. 25 U.S.C. § 4301(a)(1) (2012) ("[C]ause 3 of section 8 of article I of the United States Constitution recognizes the special relationship between the United States and Indian tribes.").

19. *Id.* § 4301(a)(7) ("[T]he capacity of Indian tribes to build strong tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities on Indian lands."); *id.* § 4301(a)(11) ("[T]he lack of employment and entrepreneurial opportunities in the communities referred to in paragraph (7) has resulted in a multigenerational dependence on Federal assistance that is . . . (A) insufficient to address the magnitude of needs; and (B) unreliable in availability . . ."); SUSAN WOODROW ET AL., GROWING ECONOMIES IN INDIAN COUNTRY: TAKING STOCK OF PROGRESS AND PARTNERSHIPS 4-6 (Apr. 2012) (Board of Governors of the Federal Reserve System White Paper), <http://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf> (identifying eight broad categories that create barriers to economic development in Native American communities including: (1) insufficient access to capital; (2) capacity and capital constraints of small business resource providers; (3) insufficient workforce development, financial management training, and business education; (4) tribal governance constraints; (5) regulatory constraints on land held in trust and land designated as restricted use; (6) underdeveloped physical infrastructure; (7) insufficient research and data; and (8) a lack of regional collaboration).

20. 25 U.S.C. § 4301(a)(6) ("[T]he United States has an obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes.").

21. JUSTIN B. RICHLAND & SARAH DEER, INTRODUCTION TO TRIBAL LEGAL STUDIES 73 (2d ed. 2010).

22. *Id.*

government's general policy objective of the time in regards to Indian affairs.<sup>23</sup> At one time the federal government sought to isolate Native Americans to "far-removed territories and reservations" so tribes could evolve over time to join Anglo-American society.<sup>24</sup> Later the federal government focused on a policy of assimilation by "the breaking down of tribal communities and their collective landholdings to force tribal members to live like their more individualistic non-Indian neighbors."<sup>25</sup> The negative impacts of these misguided policies still affect the socio-economic status of Native Americans to this day.<sup>26</sup> The different periods on the timeline of federal Indian policy reveal how quickly objectives can change and how tribes may lose rights they once enjoyed. Native American legislative history depicts a bleak picture, especially for tribes like the Choctaw Nation that endured the infamous "Trail of Tears" in order to reach its current location in Oklahoma.

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23. *Id.* at 75 (depicting a timeline that includes dramatically different and quickly changing federal Indian policy periods and eras including the Colonial Period, 1492-1776; Confederation Period, 1776-1789; Trade and Intercourse Act Era, 1789-1835; Removal Period, 1835-1861; Reservation Period, 1861-1887; Allotment Period and Forced Assimilation, 1871-1934; Indian Reorganization Act Period, 1934-1940; Termination Era, 1940-1962; Self-Determination Era, 1962-Present).

24. *Id.* at 73; *see id.* at 75 (describing the Removal Period of 1835-1861 as a period in which federal policy consisted of "[e]xtinguishment of Indian title to eastern lands and removal of Indians beyond state boundary lines westward"; and summarizing the Reservation Era of 1861-1887 as "westward non-Indian settlement leapfrogs the Indian Territory to California, creation of reservations within states and territories, with resulting Indian Wars").

25. *Id.* at 73; *see id.* at 75 (describing the Allotment Period and Forced Assimilation of 1871-1934 as a period in which treaty making ended, "federal courts [were] given some criminal jurisdiction over crimes committed by Indians in Indian Country, the federal government individually allot[ted] tribal lands, and open[ed] up remainder for non-Indian settlement").

26. Jenny Small, *Financing Native Nations: Access to Capital Markets*, 32 REV. BANKING & FIN. L. 463, 472 (2013) (citing *Poverty and Possibilities in Indian Country*, INDIAN REP. (Friends Comm. on Nat'l Legislation, D.C.), Spring 2012, at 1 (stating that one in three Native Americans on reservations live in poverty and Native Americans on such reservations struggle "to make a living")); *see also* Duane Champagne, *Ramping Up Economic Development Policy for Tribes*, ARIZ. INDIAN GAMING ASS'N (Feb. 15, 2012), <http://www.azindiangaming.org/ramping-up-economic-development-policy-for-tribes/>; Jessica A. Shoemaker, Comment, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WIS. L. REV. 729, 739-40; Angeliqwe EagleWoman, *Tribal Nations and Tribal Economics: The Historical and Contemporary Impacts of Intergenerational Material Poverty and Cultural Wealth Within the United States*, 49 WASHBURN L.J. 805, 817 (2010); *see* WOODROW ET AL., *supra* note 19.

The Indian Reorganization Act Period and the Self-Determination Era have the most relevance to current federal Indian policy and tribal economic development.<sup>27</sup> The Indian Reorganization Act Period marked a turn in U.S. history where the federal government actually recognized legitimate sovereign authority for tribes instead of an attempt to extinguish title or assimilate Indians and weaken sovereignty.<sup>28</sup> In 1934, Congress passed the Indian Reorganization Act (IRA),<sup>29</sup> “which provided a process for tribes to adopt constitutions, form economic development corporations, and borrow money from the Bureau of Indian Affairs.”<sup>30</sup> This new policy set a goal of tribal self-sufficiency, in which tribes had freedom to set their own policies, within certain limits, with the assistance of the Bureau of Indian Affairs (BIA).<sup>31</sup> The most positive aspect of the IRA is that it provided a “foundation that native nations can use today to develop their economies.”<sup>32</sup> But the IRA is not without its criticisms, one being that the real core of the act was the organization of tribal governance structures into forms that fit the parameters of the IRA—including approval by the Secretary of the Interior—instead of allowing tribes to keep their traditional tribal forms of governance.<sup>33</sup> This downside of the IRA was a tradeoff between tribal traditions for governance structures and arrangements that largely mirrored American governance formations.<sup>34</sup> Even though the IRA Period was mainly a positive development and included advancements of

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27. See RICHLAND & DEER, *supra* note 21, at 75. The Indian Reorganization Act Period of 1934-1940 followed the Allotment Period, and during that time “tribes adopt[ed] constitutions and establish[ed] tribal councils and business committees.” *Id.* The Termination Era of 1940-1962, in which Congress sought to terminate federal supervision and subject tribes to state jurisdiction, ended the IRA Period. *Id.* The Self-Determination Era began in 1962 and is still recognized as the present federal Indian Policy. *Id.* It has included a “[r]evitalization of tribal entities and improvement of conditions on reservations, restoration of some tribes to federal recognition and supervision, passage of Indian Civil Rights Act, the Indian Self Determination and Education Assistance Act, the Indian Child Welfare Act, Indian Tribal Government Tax Status Act, Indian Land Consolidation Act, [and] Indian Gaming Regulatory Act.” *Id.*

28. Small, *supra* note 26, at 471.

29. Ch. 576, 48 Stat. 984 (codified as amended in scattered sections of 25 U.S.C.).

30. Richard J. Ansson, Jr. & Ladine Oravetz, *Tribal Economic Development: What Challenges Lie Ahead for Tribal Nations as They Continue to Strive for Economic Diversity*, 11 KAN. J.L. & PUB. POL’Y 441, 444 (2001-2002).

31. *Id.*

32. Small, *supra* note 26, at 471.

33. RICHLAND & DEER, *supra* note 21, at 99-103.

34. *Id.*

tribal autonomy, it did not achieve maximum sovereignty for Indian nations.

The progress of federal Indian policy created by the IRA Period was briefly interrupted by another setback during the Termination Era in which some tribes experienced a “complete economic collapse.”<sup>35</sup> The Termination Period eventually ended in the 1960s with a transition to the present Self-Determination Era. The Self-Determination Era did not occur easily, but was instead the result of considerable struggle by Native American leaders seeking to increase their autonomy.<sup>36</sup> Activist groups, such as the American Indian Movement (AIM), led a grassroots movement that focused on changing federal policy toward more tribal sovereignty and a revolt against excessive control by the BIA over tribal affairs.<sup>37</sup> Activism by AIM and other similar groups often included controversial and at times militant aspects.<sup>38</sup> Nevertheless, the movement was successful at raising the awareness needed for Indian sovereignty, which ushered in the new Self-Determination Era.<sup>39</sup> This Era is characterized by a federal policy of granting self-determination to tribes in their own political and economic matters, which continues to primarily influence the current federal policy toward Native American affairs.<sup>40</sup>

In the early 1970s, President Nixon “reinvigorated” the principles of the IRA “by advocating that tribes should strive to attain economic and political self-sufficiency.”<sup>41</sup> A significant development occurred later in the decade with the passage of the Indian Self Determination and Education Assistance Act<sup>42</sup> of 1975 (ISDEAA). The ISDEAA remains one of the most significant legislative achievements of the Self-Determination Era.<sup>43</sup> The

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35. Small, *supra* note 26, at 471.

36. John C. Mohawk, *Indian Economic Development: An Evolving Concept of Sovereignty*, 39 BUFF. L. REV. 495, 495-96 (1991).

37. *Id.* at 497-98.

38. *Id.* at 495 (stating that the Indian movement for sovereignty “included the occupation of Alcatraz Island, the struggle for Indian fishing rights on the Columbia River, the Pit River Indians’ struggle for land rights, the Trail of Broken Treaties, the occupation of Wounded Knee in 1973, and a number of other events”).

39. *Id.*

40. Ansson & Oravetz, *supra* note 30, at 444.

41. *Id.*

42. Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975).

43. 25 U.S.C. § 4301(a)(2) (2012) (“[B]eginning in 1970, with the inauguration by the Nixon Administration of the Indian self-determination era, each President has reaffirmed the special government-to-government relationship between Indian tribes and the United States . . .”).

act “transferred significant amounts of control and funding from the BIA and other federal agencies to tribes as ‘subcontractors’ to open and manage their own service agencies and providers.”<sup>44</sup> It also allowed for “complete control over all federal funds and services” in some instances.<sup>45</sup> Given the drastic change in policy from the historical perspective, the implementation of the ISDEAA has encountered problems due in large part to the direct contradiction between its goals of increasing sovereignty and those of the past that mainly stifled sovereignty.<sup>46</sup> Nevertheless, the ISDEAA and the Self-Determination Era have “moved federal policy in the direction of greater autonomy for Indian nations, and handed tribes some significant resources to use for redevelopment.”<sup>47</sup> The ISDEAA gave self-determination policy legislative authority and remains the primary basis for the Self-Determination Era to this day.

Despite the ISDEAA’s progress, some critics argued that the self-determination policy in the act did not go far enough in allocating true autonomy to tribes in governing their own affairs. These critics viewed the ISDEAA as the federal government simply “agreeing to legal compliance with the self-determination policy by granting Indian participation in Anglo activities,” instead of actually allowing tribes to formulate and undertake their own policies.<sup>48</sup> In essence, the ISDEAA only authorized tribes to take part in preexisting federal programs, instead of allowing tribes to actually create their own initiatives designed to address specific local matters.

These concerns with self-determination in the act led to a reform effort in 1988 that amended the ISDEAA<sup>49</sup> and authorized the Tribal Self-Governance Demonstration Project.<sup>50</sup> The Demonstration Project allowed for a small number of qualifying tribes to enter into compacts with the federal government and receive large block funds from their existing BIA funding.<sup>51</sup> Previously, such funds were filtered through the BIA, which

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44. RICHLAND & DEER, *supra* note 21, at 68.

45. *Id.*

46. Carole Goldberg, *Federal Self-Determination and Self-Governance Policies, 1970-Today* (2002) (unpublished material on file with the UCLA Native Nations Law and Policy Center), *in* RICHLAND & DEER, *supra* note 21, at 88, 89.

47. *Id.*

48. *Id.*

49. *Id.*

50. Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100-472, 102 Stat. 2285, *amended by* Tribal Self-Governance Amendments of 2000, Pub. L. No. 106-260, 114 Stat. 711.

51. Goldberg, *supra* note 46, *in* RICHLAND & DEER, *supra* note 21, at 89.

allowed the Bureau to have more involvement in ordinary tribal affairs.<sup>52</sup> Instead, the Demonstration Projects allowed tribes that exhibited “sound fiscal management and a history of successful administration” of funds to manage themselves with much less involvement from the BIA and other federal agencies.<sup>53</sup> The result was “more money with fewer bureaucratic restrictions in the hands of tribal governments” and a federal-tribal relationship based on mutual consent.<sup>54</sup> The Tribal Self-Government Act<sup>55</sup> of 1994 (TSGA) made the self-governance policy of the Demonstration Project permanent and allows for additional tribes to take part in such compacts with other government agencies outside of the BIA.<sup>56</sup> The Demonstration Project and TSGA reforms are not available to all tribes, but the efforts still represent a profound advancement of self-determination policies under the ISDEAA.

Even though the ISDEAA moved federal policy toward more autonomy for tribes,<sup>57</sup> the Self-Determination Era can quickly change and Native American tribes may once again see a decrease in their sovereignty. Examining the historical timeline of federal Indian policy reveals a fluctuation in which nothing is certain. Tribal leaders must maintain painstaking adherence to maximizing tribal sovereignty. Programs designed to bolster economic development for tribes must adhere to the strictest aspects of sovereignty, so as to not take a step back into one of the prior periods of Native American history with the federal government. Current tribal leaders working with the federal government at implementing programs such as the Promise Zone initiative should not be satisfied by the status quo of top-down, federally developed programs. Instead, they should follow the example set by the legislative reformers who created the Demonstration Project. These reformers were not satisfied by the status quo and instead chose to improve the ISDEAA by increasing sovereignty through the grant of block funding, which increased the overall level of tribal autonomy under the ISDEAA.

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52. *Id.*

53. *Id.*

54. *Id.*

55. Indian Self-Determination Act Amendments of 1994, Pub. L. No. 103-413, 108 Stat. 4250.

56. Goldberg, *supra* note 46, in RICHLAND & DEER, *supra* note 21, at 89-90.

57. 25 U.S.C. § 4301(a)(12) (2012) (“[T]he twin goals of economic self-sufficiency and political self-determination for Native Americans can best be served by making available to address the challenges faced by those groups . . . (A) the resources of the private market; (B) adequate capital; and (C) technical expertise.”).

*B. A Dichotomy of Native American Economic Development Approaches to Study Promise Zones*

The study of Native American economic development is a relatively new field that began around the same time as the Self-Determination Era in the 1960s.<sup>58</sup> Since 1987, the Harvard Project on American Indian Economic Development has studied various Native economic development initiatives across the United States and Canada in order to find which approaches are most effective.<sup>59</sup> The Harvard Project attempts to identify best practices that other tribes can follow in their own pursuit of sustained and self-determined development.<sup>60</sup> Through their extensive research, Harvard Project scholars have developed a means to study economic development in Indian Country by placing programs on a spectrum between what they call the standard approach and the nation-building approach.<sup>61</sup> Programs usually have a mix of both approaches and fall somewhere between the two on their spectrum.<sup>62</sup> The Harvard Project has observed that Native economic development programs that follow practices consistent with the standard approach are typically less successful than initiatives that adopt best practices<sup>63</sup> exemplified in the nation-building approach.<sup>64</sup> The Harvard

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58. Mohawk, *supra* note 36.

59. *About Us*, HARVARD PROJECT ON AM. INDIAN ECON. DEV., <http://hpaied.org/about> (last visited Mar. 10, 2016) (“The Harvard Project aims to understand and foster the conditions under which sustained, self-determined social and economic development is achieved among American Indian nations through applied research and service.”).

60. *Id.*

61. Cornell & Kalt, *supra* note 16, at 7.

62. *Id.* at 32.

63. *See id.* at 4-5 (showing examples of tribes that adopted nation-building approaches include the Mississippi Band of Choctaw who attracted manufacturing businesses to relocate to tribal lands, enabling the Tribe to reinvigorate its economy and improve the quality of life for residents; the Confederated Salish and Kootenai Tribes of the Flathead Reservation who reversed the result of allotment policies that decreased their sovereignty by assuming management of its own land base and natural resources and acquiring complete control over all federal programs on the Reservation, leading to improved economic conditions; and the Native community of Akiachak, Alaska that acquired self-rule for its city resulting in infrastructure investments and a wide array of tribal provided public services to residents).

64. The authors contrast the standard approach and the nation-building approach as follows:

The standard approach to development of Native nations has give primary characteristics: (1) decision making is short term and nonstrategic; (2) persons or organizations other than the Native nation set the development agenda; (3) development is treated as primarily an economic problem; (4) Indigenous culture is viewed as an obstacle to development; and (5) elected leadership

Project spectrum provides the best opportunity to analyze the Promise Zone initiative. If Promise Zones come closer to nation-building, then the initiative's chances of success in Indian Country are greatly enhanced. Additionally, tribal leaders and policymakers should consider revisions of aspects in Promise Zones that are more aligned with the standard approach.

The standard approach, with its tendency toward failed economic development programs, often includes approaches that do not maximize self-determination for Native nations. In the standard approach, tribes often display a tendency to prefer "short term and nonstrategic" solutions to problems instead of addressing long-term concerns and answering the fundamental questions of what type of society and culture they want to build.<sup>65</sup> While short-term concerns are important for tribal leaders, an overemphasis on addressing economic indicators in a nonstrategic manner at the expense of long-term issues, such as advancing education or lessening violence toward women, can perpetuate a stagnate economy and regressive society.

Additionally, many tribes are heavily dependent on federal funds to provide needed resources to their people. Unfortunately, "[m]ost federal dollars are program specific" and "are developed in federal offices or Congress, often with little" input from Native American stakeholders.<sup>66</sup> Tribes are forced to use the funds they receive to implement federal government programs instead of developing their own programs. Few federal funds come to tribes "via block grants, a mechanism that would place more decision-making power in Indian hands."<sup>67</sup> The lack of discretion over how funds are used and a focus on short-term, nonstrategic issues creates a wasteful incentive in which tribes pursue any federal funding opportunity regardless of the fit it has with their "long-term tribal

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serves primarily as a distributor of resources.

*Id.* at 7-8.

[W]e can generalize from various cases and details to identify five primary characteristics of the nation-building approach: (1) Native nations comprehensively assert decision-making power (practical sovereignty, or self-rule); (2) nations back up decision-making power with effective governing institutions; (3) their governing institutions match their own political cultures; (4) decision making is strategic; and (5) leaders serve as nation builders and mobilizers.

*Id.* at 18.

65. *Id.* at 7.

66. *Id.* at 10.

67. *Id.*

needs.”<sup>68</sup> The emphasis on the short-term also prevents tribes from pursuing efforts to strengthen their tribal governments and institutions and often leads to failed tribal businesses and enterprises.<sup>69</sup>

The nation-building approach, and more successful economic outcomes, is on the other end of the Harvard Project spectrum. In contrast to the standard approach, the emphasis on self-determination is the most indicative characteristic of the nation-building approach.<sup>70</sup> Through self-determination, tribes are able to reflect more of their own "interests, perceptions, and concerns" in policies they create themselves, instead of implementing the interests of non-Indians through program specific policies created by the federal government.<sup>71</sup> Self-determination and self-governance also promote accountability by “marr[ying] decisions and their consequences, leading to better decisions.”<sup>72</sup> More accountability and greater self-determination also give tribes an incentive to reform their governing institutions and take a self-initiative approach to solving problems of tribal members.<sup>73</sup> Nation-building also places more of an emphasis on long-term, strategic issues by addressing underlying issues that impact tribal society.<sup>74</sup> For instance, early learning, which can one day create a more educated workforce with higher employment rates and wages, receives more of an emphasis. Investment in infrastructure, another common nation-building characteristic, is emphasized because it attracts outside businesses to tribal lands. Additionally, public health and attitudes towards violence and crime receive more attention in order to build a healthier and safer society.

Tribes play an important role in implementing the nation-building approach by proving that they have the governmental and institutional capacities to address problems they face in their economies. The role of non-Indigenous governments is paramount to an effective implementation of nation-building. According to the Harvard Project, for nation-building to work, non-Indigenous governments must transition from a “decision-making role” to an advisory and “resource role.”<sup>75</sup> The Harvard Project has identified several traits that non-Indigenous governments can follow to

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68. *Id.*

69. *Id.* at 16-17.

70. *Id.* at 21.

71. *Id.* at 21.

72. *Id.*

73. *Id.* at 27.

74. *Id.* at 32-33.

75. *Id.* at 27.

achieve the transition that facilitates nation-building. If the Promise Zone initiative truly embraces self-determination and follows the best practices of nation-building it must include the following:

- A programmatic focus on institutional capacity-building, assisting Native nations with the development of governmental infrastructure that is organized for self-rule, respects indigenous political culture, and is capable of governing well.
- A shift from program funding to block grants, thereby putting decisions about priorities in Indian hands.
- The development of program evaluation criteria that reflect the needs and concerns not only of funders but of Native nations as well.
- A shift from consultation to partnerships in which Native nations and outside governments make joint decisions where the interests of both are involved.<sup>76</sup>

## *II. The Promise Zone Initiative*

### *A. Promise Zones: The Latest in a Long Line of Promises for Prosperity*

The Promise Zone initiative is the latest example of place-based economic development initiatives advanced by the federal government. The late Jack Kemp, former Republican Congressman and Secretary of Housing and Urban Development, is largely credited as the forefather of place-based economic development in America. His proposal for Enterprise Zones<sup>77</sup> in the 1980s was the first large scale endeavor to address poverty through this type of economic development vehicle in the United States.<sup>78</sup> While Kemp did not come up with the idea of place-based economic development himself, he did champion the idea and was zealous at bringing it into mainstream American politics.<sup>79</sup>

Throughout its history, the basic concept of place-based economic development has received bipartisan support. This is evidenced by the

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76. *Id.*

77. *See* 42 U.S.C. § 11501 (2012).

78. Sam Tanenhaus, *Note to Republicans: Channel Jack Kemp*, N.Y. TIMES (Apr. 5, 2014), [http://www.nytimes.com/2014/04/06/sunday-review/note-to-republicans-channel-jack-kemp.html?\\_r=0](http://www.nytimes.com/2014/04/06/sunday-review/note-to-republicans-channel-jack-kemp.html?_r=0).

79. *Id.*

evolution from Enterprise Zones in the 1980s to Empowerment Zones, Renewal Communities, and Enterprise Communities<sup>80</sup> managed by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) under the Clinton Administration in the 1990s. Most recently, Senator Rand Paul, former 2016 Republican presidential candidate, authored the Economic Freedom Zones Act<sup>81</sup> of 2015 that would create Economic Freedom Zones designed to address many of the same concerns as Promise Zones through a more market-based approach.<sup>82</sup> Economic Freedom Zones would encompass many more tax incentives than Promise Zones.<sup>83</sup> The plan places far less emphasis on prioritizing federal grants for applicants, but would reduce the regulatory burden on designees.<sup>84</sup> The bill's cosponsor, Senate Majority Leader Mitch McConnell, has also expressed support for Promise Zones and attended the White House event, along with Senator Paul, designating the first round of Promise Zones. While the chances of the bill making it out of the Finance Committee are uncertain, if it should become law, Economic Freedom Zones would provide yet another option that tribes could pursue to bolster economic development. This is because decreased regulations and lower federal taxes for tribes is consistent with an increase in sovereignty and self-determination.

The White House does not hide its optimism for Promise Zones when it describes the program, and on its face the description of the initiative appears to embrace many nation-building principles. President Obama's Promise Zone initiative is an ambitious agenda with a ten-year term designed to promote economic development in some of the nation's most economically distressed areas.<sup>85</sup> The crux of the program is the federal

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80. 26 U.S.C. § 1391 (Westlaw through Pub. L. No. 114-229).

81. Economic Freedom Zones Act of 2015, S. 790, 114th Cong.

82. Tanenhaus, *supra* note 79.

83. *Id.*

84. *Id.*

85. *Third Round Promise Zones Competition*, U.S. DEP'T OF HOUSING & URBAN DEV., <https://www.hudexchange.info/news/third-round-promise-zones-competition/> (last visited Oct. 18, 2015); *see also* Press Release, U.S. Dep't of Hous. & Urban Dev., Obama Administration Announces Eight Additional Promise Zones to Build Community Prosperity (Apr. 28, 2015), [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2015/HUDNo\\_15-049](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-049) ("Promise Zones are high poverty communities where the federal government partners with local leaders to increase economic activity, improve educational opportunities, leverage private investment, reduce violent crime, enhance public health and address other priorities identified by the community. Through the Promise Zone designation, these communities will work directly with federal, state and local agencies to

government partnering with local leaders in distressed areas identified as “Promise Zones” to assist them with the bureaucratic process of attaining funding through various sources—such as federal grants and New Market Tax Credits—so that local communities can reach the goals they created themselves in the application process for designation.<sup>86</sup>

At least at the outset, the Promise Zone initiative appears to be aligned with several of the factors identified as important to nation-building in non-Indigenous government and Native partnerships.<sup>87</sup> Each designee develops its own plan on how it “will partner with local business and community leaders to make investments that reward hard work and expand opportunity.”<sup>88</sup> Instead of the federal government dictating and micro-managing policy decisions, “[a] federal liaison will be assigned in each designated community to help leaders and partners navigate the federal resources they need to accelerate efforts to revitalize their communities.”<sup>89</sup> One of the initiative’s stated goals “is developing and testing ways to align federal programs more efficiently to the priorities set out by community leaders. The processes, strategies and innovations achieved in these communities can be used to improve how the federal agencies interact with communities across the country.”<sup>90</sup> Additionally, Promise Zone designees “receive any available . . . preference for certain competitive Federal programs and . . . technical assistance.”<sup>91</sup>

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give local leaders proven tools to improve the quality of life in some of the country’s most vulnerable areas.”)

86. *Promise Zones*, U.S. DEP’T OF HOUSING & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/economicdevelopment/programs/pz/overview](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economicdevelopment/programs/pz/overview) (last visited Oct. 18, 2016) (“For the communities selected, the federal government will partner to help the Promise Zones access resources and expertise to help communities thrive. In 2015, 12 agencies are providing preferential access in 37 programs. Promise Zones’ federal partners include the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture, U.S. Department of Commerce, Corporation for National and Community Service, U.S. Department of Education, U.S. Department of Health and Human Services, U.S. Department of Justice, U.S. Department of Labor, National Endowment for the Arts, Small Business Administration, U.S. Department of Transportation, and the U.S. Department of the Treasury.”).

87. *See supra* Part I.

88. *Federal Resources for Rural and Tribal Communities*, U.S. DEP’T OF HOUSING & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/economicdevelopment/programs/pz/rural\\_tribal](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economicdevelopment/programs/pz/rural_tribal) (last visited Apr. 11, 2016).

89. *Id.*

90. *Id.*

91. *Second Round Promise Zone Application Guide: Urban Application Overview*, U.S. DEP’T OF HOUS. & URBAN DEV. 1, <http://portal.hud.gov/hudportal/documents/huddoc?id=>

Receiving preference and assistance could help tribes more efficiently pursue funding options that actually meet their needs, while allowing tribes more authority and autonomy in decision making. But questions remain about whether this grant funding structure is the best available option for tribes, and whether other tribes should pursue it in future programs beyond the Promise Zone initiative.<sup>92</sup>

Additionally, critics have voiced concerns that diminish some of the White House's optimism regarding the initiative. Some critics believe President Obama realized he would be unable to achieve many legislative victories with a Republican majority in the House in 2014.<sup>93</sup> The likelihood of comprehensive legislation proposed by the White House decreased again when Republicans took control of the Senate during the 2014-midterm elections. Thus, President Obama apparently settled for ways to "boost his legacy without the House and Senate" through executive orders and public-private partnerships.<sup>94</sup> The Promise Zone initiative is an example of the sort of public-private partnership President Obama had to settle for, in which the President directs agencies under his Executive Branch authority to carry out his agenda.<sup>95</sup> The initiative still has the ability to impact designees on a smaller scale, but its origin as a tempered concession to the inability to achieve desired legislative action limits the program's scope and efficacy.<sup>96</sup>

### *B. Questionable Legal Authority and an Uncertain Future*

Following President Obama's first round of Promise Zone designations in 2014, Democrat Senator Bob Casey and Representative Gary Peters introduced bills to the 113th Congress that would have enacted the Promise

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PZ\_R2\_App\_Guide\_Urban.pdf (last visited Apr. 10, 2016) [hereinafter *Second Round Promise Zone Application Guide*].

92. See *infra* Part III.

93. Amie Parnes, *Obama Hopes to Boost His Legacy Without the House and Senate*, HILL (Jan. 9, 2014), <http://thehill.com/business-a-lobbying/194886-obama-hopes-to-boost-legacy-sans-congress>.

94. *Id.* (reporting that some senior administration officials have conceded to resorting to non-legislative avenues to promote the Obama agenda).

95. *Id.*

96. Lee, *supra* note 2 ("As part of the president's 2015 budget proposal, Obama asked for \$100 million to support the current Promise Zones and \$200 million to expand the program to include an additional 40 communities. Many of the program's details remain vague. And while the launch of the zones highlight Obama's efforts to keep a promise to make 2014 a year of robust executive action, the sheer depth of the social and economic problems facing young Choctaws and Native American youth on and off reservations show such efforts to be a pebble in the proverbial pool of despair.").

Zone Job Creation Act<sup>97</sup> of 2014 and provided legislative authority for the initiative. Their bills largely mirrored the White House's plan and would have designated the U.S. Housing and Urban Development and the U.S. Department of Agriculture as the lead government agencies in charge of Promise Zones.<sup>98</sup> These bills also would have amended the federal tax code by enacting a Promise Zone employment credit and creating a new designation for Promise Zone Property, which would have been eligible for favorable tax expensing under I.R.C. §§ 168 and 179.<sup>99</sup> Representative Peter's bill was referred to the House Ways and Means Committee, and Senator Casey's bill was referred to the Senate Finance Committee, but neither received any further action.

In the absence of legislative authority, the Obama administration must rely on the administrative process for implementing the priority status of Promise Zone grant applicants. For instance, before any Promise Zones were even designated, the U.S. Department of Education issued a Notice of Proposed Priority (NPP) on October 25th, 2013. The NPP stated the Department of Education's intent to use "priority, as appropriate, in any discretionary grant competition" for applicants in Promise Zone areas.<sup>100</sup> The NPP received ten comments and Final Priority was announced on March 27, 2014 with no changes made.<sup>101</sup> The authority cited in the Final Priority was 20 U.S.C. § 1221e-3, and § 3474, which delegate authority to the Secretary and wide discretion in administering Department of Education authorized programs.

The U.S. Secretary of Housing and Urban Development is authorized to make loans or grants and such authorization "shall be final and conclusive upon all officers of the Government."<sup>102</sup> Like the Secretary of Education, the Secretary of HUD is also given wide discretion to disperse funds delegated to the agency in its budget and provides a similar process for implementing priority to the Promise Zone initiative.<sup>103</sup> HUD is required to issue Notices of Funding Availability (NOFA) each year for all competitive discretionary awards granted by the agency, which include awards Promise

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97. H.R. 4941, 113th Cong. (2014); S. 2597, 113th Cong. (2014).

98. H.R. 4941 § 1400V-1.

99. *Id.* §§ 1400V-2 to 1400V-3.

100. Proposed Priority—Promise Zones, 78 Fed. Reg. 36913-15 (proposed Oct. 25, 2013) (later finalized as 79 Fed. Reg. 17035).

101. Final Priority-Promise Zones, 79 Fed. Reg. 17035-37 (announced Mar. 27, 2014) (no substantive changes made from 78 Fed. Reg. 36913).

102. 42 U.S.C. § 3535(h) (2012).

103. *Id.*

Zone designees seek.<sup>104</sup> For example, HUD's FY 2015 NOFA for Discretionary Programs describes the priority the agency gives to Promise Zone grant applicants.<sup>105</sup> According to the NOFA, "up to 2 bonus points may be awarded for activities supporting Preferred Sustainability Status Communities or Promise Zones."<sup>106</sup> While current Obama administration officials, such as Cabinet level Secretaries at the Departments of Education and HUD, have wide discretion to implement the President's policies, relying on the administrative process does not provide much certainty to Promise Zone designees because the next administration can easily reverse the course and choose not to continue the initiative.

In fact, in addition to its lack of legislative certainty, actual designation as a Promise Zone is completely devoid of any actual, direct funding. True, designees might receive preferential treatment and assistance in pursuing funding through various government agencies, but this process still adds layers of bureaucratic red tape.<sup>107</sup> Additionally, since the initiative relies on the administrative process and each agency goes through its own individual notice and comment process, not all federal agencies are participating in the Promise Zone preferential treatment and the agencies that do are not consistent in how they apply preference.<sup>108</sup> That is why the National Congress of American Indians has proposed extending "the current Promise Zone priority consideration to all Federal competitive grant programs in all Federal agencies and to all Federal procurement opportunities."<sup>109</sup> Receiving assistance and guidance from a federally appointed liaison may help tribes navigate the funding maze in order to find grants that better fit their individual goals. It also may alleviate some of the wasted resources commonly found in the standard approach that are used in pursuing any and

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104. *Id.* § 3545(a).

105. U.S. DEP'T OF HOUS. & URBAN DEV., GENERAL SECTION TO THE FISCAL YEAR 2015 NOFAS FOR DISCRETIONARY PROGRAMS 21-22 (No. FR-5900-N-01, Oct. 10, 2014), <http://portal.hud.gov/hudportal/documents/huddoc?id=2015nofa-gensec.pdf>.

106. *Id.* at 21.

107. *See supra* Part I.

108. *Support for Tribal Governments, in NAT'L CONGRESS OF AM. INDIANS, FISCAL YEAR 2017 INDIAN COUNTRY BUDGET REQUEST* 27, 29 (2016), <http://www.ncai.org/resources/ncai-publications/NCAI-2017-BudgetReport-Layout-FINAL.pdf> [hereinafter NCAI FY 2017 BUDGET REQUEST] ("Unfortunately, not all Federal agencies have provided preference points for their competitive grant applications, and those Federal agencies that have provided preference points have done so only with a limited number of their competitive programs.").

109. *Id.*

every available source of federal funding.<sup>110</sup> The program, however, is still heavily dependent on project categorical grants from the federal government, instead of more open-ended discretion on the use of funds by tribes.

*C. Lessons Learned from the Past: Promise Zones Compared to Empowerment Zones*

Empowerment Zones largely provided the inspiration for shaping Promise Zones.<sup>111</sup> In addition to receiving legislative authority, a key aspect of Empowerment Zones that differentiates them from Promise Zones is the comprehensive structure of tax incentives designed to enhance capital investment within the designated boundaries.<sup>112</sup> The Empowerment Zones apparatus includes several wage credits, deductions, and investment incentives that have been repeatedly extended since the inception of the program in 1993.<sup>113</sup> For example, the program includes an Empowerment Zone Employment Credit, which is an “annual tax credit up to \$3,000 for employees who live and work in an EZ . . . equal to 20% of the first \$15,000 in employee salary.”<sup>114</sup> The Tax Relief Extension Act of 2015 would extend Empowerment Zone tax credits until December 31, 2016.<sup>115</sup> Despite the White House’s promises for tremendous potential and worthy causes, a vital piece of the Promise Zone initiative—Promise Zone tax credits—has not been enacted<sup>116</sup> and cannot be pushed through the

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110. See *supra* Part I for a discussion on the ineffective standard approach to Native American Economic Development.

111. *Welcome to the Community Renewal Initiative*, U.S. DEP’T OF HOUSING & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/economic\\_development/programs/rc](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economic_development/programs/rc) (last visited on Apr. 10, 2016) (“Introduced in 1993, the Empowerment Zone (EZ), Enterprise Community (EC), and Renewal Community (RC) Initiatives sought to reduce unemployment and generate economic growth through the designation of Federal tax incentives and award of grants to distressed communities.”).

112. *Id.*

113. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, title XIII, § 13301(a), 107 Stat. 312, 549; Small Business Job Protection Act of 1996, Pub. L. No. 104-188, title I, § 1201(e)(4), 110 Stat. 1755, 1772; Taxpayer Relief Act of 1997, Pub. L. No. 105-34, title IX, §§ 951(b), 952(b), 111 Stat. 788, 885, 887; Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, title I, § 113(a), 114 Stat. 2763, 2763A-601 (2000).

114. *Empowerment Zone Tax Incentives Summary Chart*, U.S. DEP’T OF HOUSING & URBAN DEV. (Aug. 2013), <https://www.hudexchange.info/resources/documents/Empowerment-Zone-Tax-Incentives-Summary-Chart.pdf>.

115. S. 1946, 114th Cong. § 139 (2015).

116. Press Release, U.S. Dep’t of Hous. & Urban Dev., Fact Sheet: New Promise Zones Building Stronger Ladders of Opportunity (Apr. 28, 2015), <https://www.whitehouse.gov/>

administrative process the way the Department of Education implemented priority status for grant applicants. Addressing the need for inclusion of Promise Zone tax credits in the federal budget, HUD Secretary Shaun Donovan said,

Without these tax benefits . . . Promise Zones will work . . . but . . . they won't work to full capacity . . . tax credits are a critical part in accelerating job creation in these communities. We can improve the housing, we can make sure the educational opportunities are there. But if there isn't a job available at the end of that path, it's going to be a heck of a lot harder for the kids to get ahead.<sup>117</sup>

Until tax incentives are passed into law, the opportunities to obtain funding will remain in flux from year to year due to reliance on obtaining funds through the federal government grant system.<sup>118</sup> This funding

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sites/default/files/docs/nationalfactsht.pdf (“Cutting Taxes for Businesses: Finally, President Obama has proposed, and called on Congress to act, to cut taxes on hiring and investment in areas designated as Promise Zones—based upon the proven model of Empowerment Zones tax credits—to attract businesses and create jobs.”).

117. Ken Steif, *Promise Zone Tax Incentives Offer Rare Opportunity for Bipartisan Urban Renewal*, PLANPHILLY (Jan. 15, 2014), <http://planphilly.com/articles/2014/01/15/promise-zone-tax-incentives-offer-rare-opportunity-for-bipartisan-urban-renewal>.

118. *Federal Partner Funding and Technical Assistance Opportunities*, U.S. DEP'T OF HOUSING & URBAN DEV., <https://www.hudexchange.info/programs/promise-zones/federal-partner-funding-and-technical-assistance-opportunities/> (last visited Sept. 26, 2015).

On July 14, 2014, U.S. Senator Bob Casey of Pennsylvania introduced S. 2597, a bill that would add business tax incentives to the Promise Zones Initiative. On June 23, 2014 Representative Gary Peters of Michigan introduced H.R. 4941, a companion bill in the U.S. House of Representatives. The bills would provide an employment tax credit to employers who employ a resident of the Promise Zone or who locate their businesses within a Promise Zone. Expensing of certain business/industrial property located within a Promise Zone are also proposed in the bills.

During this term, the specific benefits made available to Promise Zones will vary from year to year, and sometimes more often than annually, due to changes in the agency policies and changes in appropriations and authorizations for relevant programs. All assistance provided to Promise Zones is subject to applicable regulations, statutes, and changes in federal agency policies, appropriations, and authorizations for relevant programs.

*Id.*

uncertainty is a detriment to long-term planning strategies and prevents tribes from maximizing nation-building.<sup>119</sup>

The National Congress of American Indians is a strong supporter of Promise Zone tax credits. The NCAI has passed resolutions calling for legislation and inclusions to the federal budget for employee credits and more favorable depreciation schedules for businesses that invest in Promise Zones. Their proposals are similar to the bills proposed by Senator Casey and Representative Peters. According to the National Congress of American Indians (NCAI) Resolution #ANC-14-035, an “employment credit would apply to the first \$15,000 of qualifying zone employee wages. The credit would be twenty percent for zone residents who are employed within the zone and ten percent for zone residents employed outside the zone.”<sup>120</sup> As for the depreciation schedule, NCAI’s proposal calls for an

additional first-year depreciation of 100 percent of the adjusted basis of the property for qualified property. Qualified property for this purpose includes tangible property with a recovery period of 20 years or less, water utility property, certain computer software, and qualified leasehold improvement property. Qualified property must be new property. The taxpayer must purchase (or begin manufacture or construction of) the property after the date of the zone designation and before the designation ends.<sup>121</sup>

NCAI’s proposal also plans to address program evaluation by studying the effect of these credits at meeting goals through a plan in which “data from these tax incentives will be collected by the Secretary of the Treasury and the Secretary of Commerce to measure the Promise Zone’s impact on job creation and economic development in Indian Country.”<sup>122</sup>

Despite the differences between Promise Zones and Empowerment Zones, some have criticized the new initiative because it too closely

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119. See *supra* Part I for a discussion on the more effective approach to Native American economic development—the nation-building approach—and the importance of long-term, strategic planning.

120. Sara-Jane Smallwood, *NCAI Resolution #ANC-14-035: Support for Enactment of Promise Zone Tax Credits*, NAT’L CONGRESS OF AM. INDIANS, <http://www.ncai.org/resources/resolutions/support-for-enactment-of-promise-zone-tax-credits> (last visited Oct. 18, 2016).

121. *Id.*

122. *Id.*

resembles the former.<sup>123</sup> Early rounds of Empowerment Zones “offered tax and regulatory relief to businesses, but also mixed in block grants.”<sup>124</sup> But block grants were discontinued in favor of more focus on tax credits.<sup>125</sup> Extensive research has been conducted on the impact of Empowerment Zones, resulting in little conclusive evidence that they had any meaningful impact.<sup>126</sup> Skeptics fear Promise Zones may be more of the same failed policies. But the new initiative attempts to reach deeper than simply moving money around, because while “past interventions sought primarily to spur economic activity, Promise Zones tries to tackle a larger spectrum of social and health needs.”<sup>127</sup> This aspect of Promise Zones is consistent with the long-term, strategic focus on improving the underlying issues affecting societies that have worked before in Native American nation-building approaches.<sup>128</sup>

A return to the use of block grant funding would certainly help as well. Some Empowerment Zone studies have found “the inclusion of block grants along with tax breaks” had positive impacts on employment and wages.<sup>129</sup> While the evidence from these studies may not be completely conclusive of place-based economic development, they do provide some credence and policy justification for a switch to greater use of block grants in addition to pursuing enactment of Promise Zone tax credits.<sup>130</sup> Yet, some who have specifically studied the effect of tax incentives in Native American communities argue these incentives may not be such a critical

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123. J.B. Wogan, *Obama Tries to End the Cycle of Broken Poverty Promises*, GOVERNING (July 2015), <http://www.governing.com/topics/health-human-services/gov-promise-zones-obama-poverty.html>.

124. *Id.*

125. *Id.*

126. *Id.* (“In 2006, the U.S. Government Accountability Office determined that some Empowerment Zones had indeed seen improvements in poverty, unemployment or growth in total jobs and businesses; however, it reported, those changes couldn’t be linked to federal policy and might be attributed to a better national economy or other outside forces. . . . Some research indicates that the government-designated zones actually drew jobs away from other places -- reshuffling the location of those jobs rather than creating new ones.”)

127. *Id.*

128. *See supra* Part I.

129. Wogan, *supra* note 123.

130. *See* Matias Busso, Jesse Gregory & Patrick M. Kline, *Assessing the Incidence and Efficiency of a Prominent Place Based Policy*, 103 AM. ECON. REV. 897 (2013); *see also* David Neumark & Helen Simpson, *Place-Based Policies* (Nat’l Bureau of Econ. Research, Working Paper No. 20049, 2014), <http://www.nber.org/papers/w20049.pdf>.

factor by themselves.<sup>131</sup> If tax incentives are not as effective in Indian Country, then the need for block grants or some other direct funding source in future Native American economic development programs is even greater.

The Charles Trimble Company is one of the entities skeptical of tax incentive effectiveness in Indian Country. Charles Trimble Company conducted “studies on tax-and regulatory-relief incentives to attract capital and industry to Indian reservations” in the 1980s.<sup>132</sup> Part of their study included a survey of corporate executives, asking them to prioritize several factors that influence their decision to move part of their business to a particular area.<sup>133</sup> Such factors as “markets, infrastructure, transportation and municipal services (e.g. security and waste management)” were ranked high, however tax incentives were only considered to possibly “tip the scale if two equally attractive prospects were in contention.”<sup>134</sup> According to the executives surveyed, “the availability of a motivated and job-ready workforce” was the most important factor influencing their decision.<sup>135</sup>

Native nations must receive some type of direct funding in order to achieve the type of infrastructure and workforce businesses desire. The Promise Zone initiative includes attempts to address infrastructure, workforce, and the quality of education through a broad base focus by funding these projects through the federal grant funding process. Nevertheless, the enactment of Promise Zone tax credits should still be pursued in Congress, as it would be a nice bonus for prospective businesses, which could influence investment decisions in a close call. Given the uncertainty regarding tax incentives, the primary funding structure tribes should consider in future Promise Zone-styled economic development programs should be a focus on forms that provide tribes more authority and discretion, such as block grants, instead of merely preferential points for predetermined grant programs offered by federal agencies in the form of project categorical grants.<sup>136</sup> The combination of tax credits and block

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131. See Chuck Trimble, *The Tantalizing Promise of Promise Zones*, INDIAN COUNTRY TODAY MEDIA NETWORK.COM (Jan. 24, 2014), <http://indiancountrytodaymedianetwork.com/2014/01/24/tantalizing-promise-promise-zones>.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. See *supra* Part I (explaining that a transition from program specific federal grants (also known as project categorical grants) is one of the primary teachings of nation-building); see *infra* Part III (providing more in depth analysis regarding the different forms of grant funding).

grants worked for some Empowerment Zones and should be considered again in regards to Promise Zones.<sup>137</sup>

### *III. Promise Zones in Indian Country*

#### *A. Promise Zone Aspects That Promote Nation-Building*

In order for nation-building approaches to work in Native communities, non-Indigenous government partners must delegate authority to tribes so that tribes can implement self-determination principles into economic development programs. The Harvard Project teaches that nation-building is best achieved when these partnerships focus on building tribal institutional capacities and include tribal leaders in the decision making process.<sup>138</sup> Additionally, nation-building requires program evaluation that addresses tribal concerns and informs tribal leaders about the effects of their decisions.<sup>139</sup> Finally, nation-building is best achieved through a shift in funding mechanisms to structures like block grants that maximize tribal discretion and authority.<sup>140</sup>

The Promise Zone initiative includes three aspects that come closer to the nation-building end of the Harvard Project spectrum. First, tribes are given an incentive to reform their own governmental and institutional structures through a stringent application process that designates tribes who have demonstrated the capacity to improve their economies. Second, Promise Zone administrators allow tribal leaders to set their own goals. Although tribes are chosen based on whether their goals match that of the Promise Zone initiative itself, tribes are still given more authority than in the past. Once tribes are chosen, the program is designed to provide resources to create results that benefit tribal members based on needs identified by tribal leaders. Finally, even though the Promise Zone initiative is in the early stages, an apparatus for evaluating the program is underway. The program evaluation will address tribal concerns and help tribal leaders better meet the needs of their members.

#### *B. An Application Process That Incentivizes Tribes Embracing Nation-Building Principles*

Even at the outset of applying for Promise Zone designation, the application process itself is quite informative as to the initiative's inclusion

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137. See Neumark & Simpson, *supra* note 130; see also Busso Et Al., *supra* note 130.

138. See *supra* Part I.

139. *Id.*

140. *Id.*

of nation-building approaches. Promise Zone applicants endure a stringent application process in order to receive designation.<sup>141</sup> Tribes who are already making efforts to improve their economies stand the best chance at achieving designation. Many of the factors the Promise Zone application considers are focused on long-term, strategic issues common in nation-building approaches. Additionally, the process requires a lead applicant that expresses organizational and leadership abilities. While it is unlikely that the primary intent of the federal government is to promote nation-building, such rigorous application processes implicitly reward tribes who have already begun to adopt nation-building approaches.

The Choctaw Nation was designated as a Promise Zone in large part because of its efforts to achieve sustainable economic growth prior to applying for inclusion in the Promise Zone initiative. Luke Tate, a senior advisor at the White House Domestic Policy Council, described the decision to choose the Choctaw Nation by saying, “The federal government did not go out and arbitrarily pick a bunch of Promise Zones across the country . . . the Choctaw Nation was chosen as one of the first Promise Zones in the country is because of how motivated its leaders . . . to make change.”<sup>142</sup>

The Choctaw Nation Promise Zone Director, Sara-Jane Smallwood, firmly believes the Tribe would still be investing in its future and setting the

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141. See *Second Round Promise Zone Application Guide*, *supra* note 91. The application process requires applicants to provide “a clear description of how the Promise Zone designation would accelerate and strengthen the community’s efforts at comprehensive community revitalization.” *Id.* at 1. Effective leadership is a necessity because the Promise Zone application requires a “lead applicant,” which acts as a liaison between the government and other stakeholders within the area. *Id.* at 6. The application requires the submission of materials that indicate the need, strategy, capacity and local commitment of the potential Promise Zone designee. *Id.* at 9-18. Applications are weighted on a 100-point scale. *Id.* at 4. Need is weighted at ten points and considers the poverty rate, serious and violent crime rate, unemployment rate, and long-term vacancy rate of residential properties. *Id.* at 9-10. Strategy is weighted at forty points and is broken up into subcategories including a needs and assets assessment worth ten points. *Id.* at 10-11. Promise Zone Plan is worth twenty-five points, and a sustainability and financial feasibility statement worth five points. *Id.* at 11-13. Capacity and local commitment is weighted at fifty points and includes subcategories including partnership structure worth ten points, capacity of lead applicant worth eight points, capacity of implementation partner organizations worth eight points, data and evaluation capacity worth three points, resident engagement capacity worth three points, strength and extent of local government commitment worth ten points, and strength and extent of partnership commitment worth eight points. *Id.* at 14-18.

142. Cosgrove, *supra* note 3.

same long-term, strategic goals even without Promise Zone designation,<sup>143</sup> but designation is greatly facilitating the Tribe's efforts.<sup>144</sup> Smallwood described the Choctaw Promise Zone designation by saying:

What we're doing is so much bigger than the Promise Zone . . . .  
The Promise Zone is a recognition of what we're doing by the president and by every single federal department and agency. The Promise Zone was awarded to communities that have a unique formula of high poverty but high capacity. . . . I know we have a lot of things that are pretty bad, some bad statistics, but I can't even imagine where we would be if it weren't for the Choctaw Nation.<sup>145</sup>

Because of its voluminous and highly competitive nature, the application process might be intimidating for some tribes, but it provides an incentive to unite for a cause and possibly reform inefficiencies within respective governmental structures in order for tribes to be able to pursue competitive programs such as the Promise Zone initiative. It also ensures that tribes who are in dire need of economic stimulus will be considered, thus addressing the meager economic conditions in Indian Country. The process also forces applicants to address broad-based, long-term goals such as improving education and reducing crime. Most importantly, the rigorous application process guarantees that tribes who are willing and able to seriously address the problems faced by their people are considered before those who are not.<sup>146</sup> Thus, it weeds out tribal leaders who have not adopted best practices or nation-building approaches.

Another beneficial element of the Promise Zone application process that facilitates self-determination is that applicants are divided into urban, rural, and tribal categories.<sup>147</sup> Thus, tribes will be scored and compared against other tribes instead of urban and rural areas.<sup>148</sup> Given the stark differences between tribal and non-tribal applicants, this aspect of the Promise Zone application promotes fairness and recognizes that tribes may have different goals and cultural aspects that differentiate them from non-tribal applicants. Allowing tribes a carve out for inclusion in the larger Promise Zone initiative promotes sovereignty and self-determination because tribes are

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143. *Id.*

144. *Id.*

145. *Id.*

146. *See* Cornell & Kalt, *supra* note 16, at 19-20.

147. *See Second Round Promise Zone Application Guide, supra* note 91, at 3.

148. *Id.* at 4.

more free to pursue economic development projects that might be unique to tribal needs. Guaranteeing proven tribes a place in the Promise Zone initiative goes a long way in achieving equity and can provide an example for future programs. Nonetheless, while the application process promotes tribes who have already begun to address long-term goals consistent with nation-building, it remains to be seen whether Promise Zones will continue to promote high levels of self-determination in all aspects of the initiative.

*C. The Choctaw Nation and Pine Ridge Reservation Promise Zones*

The Promise Zone initiative comes close to nation-building in that it allows designees the discretion to set their own priorities. The Choctaw Nation and Pine Ridge Reservation chose their own objectives based on their peoples' needs. Additionally, since their Promise Zone designation, both tribes have received funds from the federal government toward achieving their stated objectives. Nevertheless, while the initiative comes closer to nation-building, it does not achieve true nation-building or self-determination principles. Tribes are chosen based on whether their objectives match that of the overall Promise Zone initiative. Additionally, the source of funds comes predominantly in the form of program specific grants instead of more open-ended funding mechanisms like block grants.

The Choctaw Nation itself was designated as the lead organization for its Promise Zone while the lead organization in the Pine Ridge Reservation Promise Zones is a non-profit organization called the Thunder Valley Community Development Corporation. Both tribes have developed several ambitious goals that cover a wide array of policy areas and are aligned with the nation-building approach.<sup>149</sup> If the tribes succeed in meeting their objectives, they will make a significant impact on their respective economies, thus improving the quality of life for tribal members. The Choctaw Nation's primary areas of focus are improving the quality of education, infrastructure, diversifying its economy, and increasing access to public health in the Nation.<sup>150</sup> In contrast, the Pine Ridge Reservation Promise Zone hopes to improve public safety and access to financial assistance in addition to education and infrastructure.<sup>151</sup>

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149. See Press Release, Office of the Press Sec'y, White House, Fact Sheet: President Obama's Promise Zones Initiative (Jan. 8, 2014).

150. *Id.*

151. *Second Round Rural and Tribal Designees*, HUD EXCHANGE (Apr. 28, 2015), <https://www.hudexchange.info/programs/promise-zones/second-round-rural-and-tribal-designees/#pine-ridge-indian-reservation>.

The Choctaw Nation's focus begins with education. The Nation hopes to improve educational outcomes by raising literacy rates and parent involvement throughout the eighty-five school districts in the region.<sup>152</sup> The Nation also hopes to bolster higher education opportunities by “[l]everaging its role as the largest employer in southeastern Oklahoma to create a strong base for economic revitalization by working with” colleges and universities in the region.<sup>153</sup> Education goals outside of the formal classroom setting include “workforce training for skilled trades and professionals and more rigorous summer and after-school programs.”<sup>154</sup> The Choctaw Nation has also placed great emphasis on overcoming infrastructure challenges that “have been identified as impediments to investment in an area with otherwise strong growth potential.”<sup>155</sup> The Promise Zone initiative for the Choctaws will focus on “[i]nvesting in infrastructure that lays the foundation for economic growth, including water and sewer infrastructure.”<sup>156</sup>

Diversifying its economy is another primary goal for the Choctaw Nation. Including a focus on diversification while maintaining a sense of traditional culture will hopefully create synergies that promote long-term growth by including more members of the Tribe in commerce while preserving and passing important traditions on to the next generation. The Nation is “[p]ursuing economic diversification by utilizing natural, historic, and cultural resources to support growth.”<sup>157</sup> Agriculture is a large component of the diversification efforts. The Tribe plans to facilitate local farmers’ markets “as well as implementation of technology-enhanced ‘traditional’ farming and ranching, and large-scale greenhouses.”<sup>158</sup> The Nation also has plans to bolster gender equality through “specialized training in business plan development, marketing, and financing to support the development of women-owned businesses in the Promise Zone.”<sup>159</sup>

The Pine Ridge Reservations is undergoing a similar process with its Promise Zone. When the Pine Ridge Reservation received its Promise Zone designation, the area was suffering from a “22 percent unemployment and a

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152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

49 percent poverty rate.”<sup>160</sup> In describing Pine Ridge Reservation’s need for Promise Zone designation, U.S. Secretary of Agriculture Tom Vilsack said, “There is probably no other place in America that needs the focus, the coordinated effort, the additional points and the personnel more than the Pine Ridge area.”<sup>161</sup> Like the Choctaw Nation, the Pine Ridge Reservation is also focused on improving “educational opportunities from primary school through post-secondary school by offering native language (Lakota) immersion and charter school options, and partnering with tribal colleges.”<sup>162</sup> The Pine Ridge Reservation is addressing public safety by “addressing substance abuse issues and strengthening various components of the justice system.”<sup>163</sup> Public infrastructure is addressed through “improving the capacity to operate, maintain and replace current water, sewer and other service infrastructure and facilitate future development.”<sup>164</sup>

The Pine Ridge Reservation is also attempting to improve the financial outlook for its people by increasing “the capital base through financial partnerships, expansion of banking options and access to credit . . . [and] access to affordable, energy-efficient housing.”<sup>165</sup> Like the Choctaw Nation, the Pine Ridge Reservation is taking advantage of many of the positive aspects of nation-building and a long-term strategic focus on the future.

Since designation, the Choctaw Nation has made strides toward some of its Promise Zone objectives, especially those related to education. The Promise Zone initiative is intended to give designees preference in receiving federal grants, which the Choctaw Nation appears to be benefiting from. For instance, the Nation has “widened early learning opportunities in its region with the award by HHS of a multi-year Early Head Start-Childcare Partnership Grant with Promise Zone preference.”<sup>166</sup> Additionally, “thirteen schools and communities in southeastern Oklahoma

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160. Seth Tupper, *Pine Ridge Selected as Federal 'Promise Zone'*, RAPID CITY J., (Apr. 29, 2015), [http://rapidcityjournal.com/news/local/pine-ridge-selected-as-federal-promise-zone/article\\_30103942-2f46-5f60-b4d5-87d2dee41a91.html](http://rapidcityjournal.com/news/local/pine-ridge-selected-as-federal-promise-zone/article_30103942-2f46-5f60-b4d5-87d2dee41a91.html).

161. *Id.*

162. *See* Press Release, U.S. Dep't of Hous. & Urban Dev., *supra* note 116.

163. *Id.*

164. *Id.*

165. *Id.*

166. *President Obama to Highlight the Success of Choctaw Nation's Promise Zone Designation at Choctaw Nation of Oklahoma Today*, NATIVE NEWS ONLINE.NET (July 15, 2015), <http://nativenewsonline.net/currents/president-obama-to-highlight-the-success-of-choctaw-nation-s-promise-zone-designation-at-choctaw-nation-of-oklahoma-today/> [hereinafter *President Obama to Highlight*].

received Community Facilities Grants from USDA Rural Development with Promise Zone preference for school gardens, fitness equipment, and facility upgrades.”<sup>167</sup> The Choctaw Nation’s goal of improving public health within its community was addressed through the opening of a new clinic outside the Nation’s capital of Durant in Boswell, Oklahoma.<sup>168</sup> Clayton, Oklahoma, another underserved town farther away from Durant, also received improved access to public health care facilities since the Promise Zone designation.<sup>169</sup>

So far, since the Choctaw Nation was designated as a Promise Zone, recipients affiliated with the Nation have received over \$58 million in federal funds from various agencies including Departments of Justice, Education, Agriculture, Housing and Urban Development, and Treasury.<sup>170</sup> Additionally, one of the Choctaw Nation’s Promise Zone partners, Rural Enterprise of Oklahoma, Inc., received a \$35 million New Market Tax Credit<sup>171</sup> from the Community Development Financial Institutions fund at the Department of Treasury.<sup>172</sup>

This influx of federal funds could provide tremendous benefits to the Tribe, but it is not entirely clear whether the Promise Zone designation itself, with the preference it gives the Tribe in grant applications, is the primary reason the Nation received the funds. The discrepancies across federal agencies when it comes to grant allocations make it difficult to determine whether any particular program or priority, such as Promise

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167. *Id.*

168. *Id.* (“The Tribe’s partner, Pushmataha Family Medical Center, Inc., was awarded a New Access Point grant through HHS to create new jobs and provide health services in Boswell, an underserved area whose 5,700 residents are 25 miles away from medical resources and are mostly uninsured or Medicaid/Medicare eligible.”).

169. Cosgrove, *supra* note 3.

170. *President Obama to Highlight, supra* note 166.

171. *See New Markets Tax Credit (NMTC) Program*, COMMUNITY DEV. FIN. INSTITUTION FUND, <https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/default.aspx> (last visited Oct. 20, 2016). Even though widespread Promise Zone tax credits are not yet available, entities can apply for competitive New Market Tax Credits (NMTC). According to the Community Development Financial Institution Fund,

The NMTC Program attracts private capital into low-income communities by permitting individual and corporate investors to receive a tax credit against their federal income tax in exchange for making equity investments in specialized financial intermediaries called Community Development Entities (CDEs). The credit totals 39 percent of the original investment amount and is claimed over a period of seven years.

*Id.*

172. *President Obama to Highlight, supra* note 166.

Zones, had a dispositive effect in the agency's decision. Given the Choctaw Nation's prior efforts to invest in its economy, it is possible they would have received the same level of funding regardless of Promise Zone designation. Additionally, large portions of the grants are federally developed program specific grants that happen to match the Promise Zone objective of the Choctaw Nation.

#### *D. Early Promise Zone Evaluation*

Program Evaluation is another important component of nation-building because it allows tribes to assess the effects of their decisions and learn from mistakes.<sup>173</sup> Program evaluation provides needed accountability and the means to implement meaningful oversight in order to confirm that the program is working as intended by ensuring scarce resources are used for their intended purposes. It also allows for deviations in order to correct the course of the program when needed.

While the structure of the Promise Zone initiative can be analyzed and its strengths can be duplicated in advocating for future programs, it will take many years to develop a fully formed picture of whether the program is a success and whether it is the true reason for the short-term accomplishments of the Choctaw Nation after designation. Meanwhile, the U.S. Department of Housing and Urban Development has recently chosen to focus place-based initiatives research on the progress of Promise Zones thus far through a case study on how best to evaluate the program.<sup>174</sup> So far, only the basis for models on how best to evaluate the data has been formulated.<sup>175</sup> Nevertheless, valuable insights into the program can be gained just by addressing how to evaluate it in the future.

According to the HUD study on Promise Zones, the evaluation approach for the initiative includes "a timeline for data collection and analysis, an outline of qualitative and quantitative indicators of community change, data sources, methods for obtaining, tracking, and sharing data, a list of methods for selecting comparison sites, and a variety of rigorous evaluation methods."<sup>176</sup> The tools are in place for the initiative to be evaluated when

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173. See Cornell & Kalt, *supra* note 16, at 21.

174. See OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., SYSTEMS EVALUATIONS FOR PLACE-BASED INITIATIVES: PD&R EXPERT CONVENINGS SUMMARY REPORT (Oct. 2015), <https://www.huduser.gov/portal/sites/default/files/pdf/Systems-Evaluations-Place-Based-Initiatives.pdf>.

175. See *id.* at 1.

176. *Id.* at 1.

the time comes, and similar program evaluation metrics should be included in any future economic development programs for tribes.

*E. The Promise Zone Initiative Moves the Needle Away from the Standard Approach, but Falls Short of Achieving True Nation-Building*

In many ways, the Promise Zone initiative follows the principles of self-determination and reflects the movement of federal Indian policy toward the direction of nation-building on the Harvard Project spectrum. The overall application process that incentivizes internal reform, efficiency, and long-term strategic planning by tribes is a positive aspect of the Promise Zone initiative based in nation-building principles. Likewise, the initial program evaluation apparatus will help ensure accountability and oversight. Additionally, the emphasis on federal government and local designee partnerships and cooperation is more aligned with self-determination and nation-building.

The Promise Zone initiative allows for wide discretion at the local level when it comes to policy decisions. But designees are not totally free to choose their own goals. While designees can choose up to three of their own defined goals, they must choose to focus on three of the five stated Promise Zone goals.<sup>177</sup> The Promise Zone goals are very broad and largely encompass similar goals to local designees, but the discretion delegated to local officials is by no means open-ended.<sup>178</sup> This requirement of matching federal objectives appears benign, but could indicate the potential for more federal control over Promise Zones than appears at the surface of the program's description, thus trending unintentionally closer to the standard approach. This might not be a large concern at the broad, overarching initial level, but could be more worrisome when tribes must apply for federally developed grants.

The biggest concern for the Promise Zone initiative is the funding structure—specifically, the reliance on project categorical federal grants. For example, while the grants received by the Choctaw Nation are undoubtedly helpful, their source as project categorical grants calls into question whether the federal government has really granted the Choctaw Nation full sovereignty in pursuing its Promise Zone objectives, or whether the federal government is merely allowing the Nation to pursue its own objectives only when they match federal programs. The program specific

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177. *Id.* at 1.

178. *See id.* The five Promise Zone goals include "creating jobs, increasing economic opportunity, improving educational opportunities, reducing serious or violent crime, and leveraging private capital." *Id.*

type of grant funding may be awarded with costly strings attached in the form of federal mandates that may ultimately prove quite burdensome for tribes to follow. Ultimately, this funding structure is more in line with the standard approach than it is with nation-building.

#### *IV. The Future of Tribal Promise Zones*

##### *A. Grant Funding Analysis Under a Nation-Building Approach*

In order to achieve nation-building, the Harvard Project advocates for a transition away from program specific grants and toward grants that allow more discretion in how recipients use the resources they receive. Program specific grants, also known as project categorical grants, which Promise Zones primarily use, impose more restraint on recipients than other forms like block grants.<sup>179</sup> Although the Promise Zone initiative expresses a partnership between the federal government and local stakeholders, project categorical grants do not appear to have much in common with a partnership. This type of grant structure commonly includes “[f]ederal administrators [who] have a high degree of control over” recipients,<sup>180</sup> which adds a layer of inefficiency for tribes who have already gone through a rigorous process to receive designation. Control by federal administrators also calls into question whether the whole idea surrounding delegation of policy making in Promise Zones is just an illusion, disguising attempts by the federal government to actually promote already formulated federal initiatives at the local level.

Additionally, project categorical grant “recipients have relatively little discretion concerning aided activities . . . and there is a relatively high degree of federal administrative conditions attached to the grant.”<sup>181</sup> Promise Zone designees must live within extremely distressed areas and have already shown their capacity for success and proven themselves worthy of inclusion in the program. Many of the strings attached to project categorical grants are designed to promote accountability and provide for oversight. But additional regulation and hurdles, as well as costly mandates, are not the ideal paths to reach the stated objectives of Promise Zone designees. The reliance on project categorical grants along with a lack of tax credits or any other stable, direct sources of funding, places too much uncertainty when attempting to

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179. ROBERT JAY DILGER & EUGENE BOYD, CONG. RESEARCH SERV., R40486, BLOCK GRANTS: PERSPECTIVES AND CONTROVERSIES 2 (2014).

180. *Id.* (“[R]ecipients must apply to the appropriate federal agency for funding and compete against other potential recipients who also meet the program’s specified eligibility criteria . . .”).

181. *Id.*

craft long-term agendas. While the Promise Zone initiative appears to include many nation-building principles, it has clearly chosen a funding structure that fits squarely within the realm of the standard approach.

The National Congress of American Indians has addressed similar concerns with grant funding through the BIA. NCAI believes BIA grant funding is inconsistent with Indian self-determination, because in their view such funding allocations marginalize and impede the intent of tribal self-determination.<sup>182</sup> Instead, NCAI proposes that the BIA should consult with tribes to develop formulas for the distribution of new BIA funding.<sup>183</sup> NCAI has identified concerns about grant funding that are related to the standard approach of economic development. For instance, NCAI fears forcing tribes to apply for funding through grant opportunities at BIA ultimately results in federal employees in Washington, DC retaining program authority instead of tribal leaders.<sup>184</sup> Additionally, NCAI believes grants inhibit the purpose of the Indian Self-Determination Act by limiting flexibility and authority available to tribes.<sup>185</sup> NCAI advocates for a funding vehicle chosen by tribes in order to resolve concerns regarding inconsistencies between the imposition of traditional grant mechanisms and the ISDEAA.<sup>186</sup>

For those wary of grant funding like NCAI, the ideal type of funding that comes closest to achieving true nation-building is general revenue sharing. Grant funding can be described on a spectrum with general revenue sharing on one side and project categorical grant funding on the opposite. General revenue sharing comes closest to achieving the goals of nation-building because it is the least restrictive on recipients.<sup>187</sup> As opposed to project categorical grants, general revenue sharing gives federal administrators less discretion over funding allocations, since funding is allocated automatically through preapproved formulas authorized by legislation with input from recipients.<sup>188</sup> Additionally, oversight in the form of “periodic reporting criteria and the application of standard government accounting procedures” results in fewer conditions attached to grants and recipients enjoying broader discretion over aided activities.<sup>189</sup> Although accountability and oversight are limited, they still exist in the form of reporting and compliance with

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182. NCAI FY 2017 BUDGET REQUEST, *supra* note 108, at 28.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. DILGER & BOYD, *supra* note 179, at 3.

188. *Id.*

189. *Id.*

accounting principles. Unfortunately, the federal government no longer makes use of a general revenue sharing program, and it is unlikely future economic development projects can expect to include this generous funding option. Nevertheless, it is a powerful funding tool that should not be forgotten, especially its principles that delegate more authority at the local and tribal levels.

Fortunately, two realistic and better alternatives to project categorical grants do exist: enactment of the Promise Zone tax credits, or a focus on block grants. Both options would directly benefit Promise Zone designees and remove a layer of bureaucratic inefficiency because of the lesser role federal administrators play in managing such programs and the higher degree of authority recipients possess. An ideal world would provide block grant funding as part of Promise Zone designation because it strikes a natural compromise between the most open-ended funding form-general revenue sharing-and the most restrictive form-project categorical grants. At the very least, tribal Promise Zone designees should lobby for tax incentives for businesses that invest within the Promise Zone boundaries and provide much needed jobs. It is probably too late to include block grant funding in the present form of Promise Zones, but a greater emphasis on such funding should be near the top of legislative proposals in crafting future economic development projects for Native Americans. For current Promise Zone designees, efforts should be devoted to enacting the proposed Promise Zone tax credits.

Moving forward, a balance should be obtained between project categorical grant funding and pure nation building. Block grants are a reasonable agreement because they are “at the midpoint in the continuum of recipient discretion.”<sup>190</sup> In block grant funding, “[f]ederal administrators have a low degree of discretion over who receives block grants.”<sup>191</sup> Instead of complying with federally designed projects, tribes would receive a set amount of funds to achieve their own set of goals. But tribes would not receive a completely blank check because “recipients have some discretion concerning aided activities (typically, funds can be used for a specified range of activities within a single functional area).”<sup>192</sup> Additionally, accountability and oversight are not totally lost because “there is a moderate degree of federal

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190. *Id.*; see ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, A-52, CATEGORICAL GRANTS: THEIR ROLE AND DESIGN 7 fig. 1 (1978).

191. DILGER & BOYD, *supra* note 179, at 3 (“[A]fter setting aside funding for administration and other specified activities, the remaining funds are typically allocated automatically to recipients by a formula or formulas specified in legislation . . .”).

192. *Id.*

administrative conditions attached to the grant, typically involving more than periodic reporting criteria and the application of standard government accounting procedures, but with fewer conditions attached to the grant than project categorical grants.”<sup>193</sup>

*B. A Focus on Block Grant Funding*

Block grants, one of the major tenets of nation-building,<sup>194</sup> have become popular because of their potential for more efficient outcomes. Proponents argue that because recipients have “more freedom to design programs,” administration of funds is simplified, thus improving access to social services for consumers.<sup>195</sup> The Advisory Commission on Intergovernmental Relations (ACIR) described block grants as programs “by which funds are provided chiefly to general purpose governmental units in accordance with a statutory formula for use in a broad functional area, largely at the recipient’s discretion.”<sup>196</sup> The Promise Zone initiative largely makes use of project categorical grants, which are “generally limited to narrowly defined purposes and targeted populations, and typically come[] with reporting obligations designed to ensure accountability to the federal agency charged with oversight of the program.”<sup>197</sup> Accountability to and oversight of the federal government from which funds are appropriated is by no means a bad thing, but when such virtues are used to push a federal agenda instead of tribal interests, the disconnect that leads to the standard approach arises.<sup>198</sup> Instead of pushing the needle more toward nation building, project categorical grants could be used to revert progress more toward the standard approach. In fact, some proponents of block grants suggest that some congressmen might prefer project categorical grants because of the greater opportunity to receive political credit than they would by delegating authority and recognition to local officials through block grants.<sup>199</sup> If so, this seems to suggest that

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193. *Id.*

194. *See supra* Part I.

195. MARGY WALLER, BLOCK GRANTS: FLEXIBILITY VS. STABILITY IN SOCIAL SERVICES 1 (Brookings Inst. Policy Brief, Ctr. on Children & Families #34, Dec. 2005), <http://www.brookings.edu/~media/research/files/papers/2005/12/welfare-waller/pb34.pdf>.

196. *Id.* at 1-2.

197. *Id.* at 2.

198. *See supra* Section I.B (discussing the standard approach to Native American economic development that typically results in failed outcomes because of a lack of allowing tribes to pursue self-determination policies).

199. DILGER & BOYD, *supra* note 179, at 6-7 (citing Carl W. Stenberg, *Block Grants and Devolution: A Future Tool?*, in INTERGOVERNMENTAL MANAGEMENT FOR THE 21ST CENTURY 263, 267, 271-74 (Timothy J. Conlan & Paul L. Posner eds., 2008)).

categorical grants could be a mechanism used by the federal government to control outcomes and dictate policy decisions, as opposed to delegating authority to tribal officials.<sup>200</sup>

Block grants have long been advocated as a source of funding by state and local government officials because “shifting from federal management to block grants administered at the state or local level reduces federal responsibility for priority setting and oversight by giving states or localities more flexibility in the use of the funds while reducing reporting and administrative requirements.”<sup>201</sup> Block grants provide a direct benefit to local constituencies as “[m]any officials argue that local decision-making about priorities and resource allocation is more responsive to local needs and makes services simpler for consumers to access.”<sup>202</sup> Use of block grants may even yield incidental benefits to the federal government, as proponents have “argued that block grants would promote efficiency and coordination, sometimes noting that they could yield administrative savings by reducing the need for federal program managers.”<sup>203</sup> Additionally, “consolidating funding for related programs could yield efficiency gains resulting from reduction of federal program staff and reporting requirements,”<sup>204</sup> providing the federal government further benefits through the use of block grants.

These efficiency gains from consolidation of project categorical grants may even be used as a source of financing for the block grants themselves. Although this idea has not been widely enacted for economic development, it has recently been proposed. In the FY 2006 federal budget proposal, President Bush proposed the Strengthening America’s Communities initiative, a grant consolidation program that “would have combined 18 existing community and economic development programs (including the Community Development Block Grant program) into a two-part block grant.”<sup>205</sup> The plan would have centralized administration of the eighteen programs

from five federal agencies (the Department of Housing and Urban Development, the Economic Development Administration in the Department of Commerce, the Department of the Treasury, the

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200. See *infra* Section 4.A; see also Cornell & Kalt, *supra* note 16, at 14-15 (discussing how including tribes to participate in program-specific grants could support the federal agenda at the expense of tribal objectives and sovereignty).

201. WALLER, *supra* note 195, at 3.

202. *Id.*

203. *Id.*

204. *Id.*

205. DILGER & BOYD, *supra* note 179, at 13.

Department of Health and Human Services, and the Department of Agriculture) to the Department of Commerce, which administers the programs of the Economic Development Administration.<sup>206</sup>

Through the U.S. Economic Development Administration,<sup>207</sup> “[t]he bonus program would have awarded additional funds to communities that demonstrated efforts to improve economic conditions.”<sup>208</sup> The eighteen original programs administered by five different agencies would have cost \$5.6 billion, but President Bush’s consolidation plan would have reduced spending to \$3.7 billion, resulting in a savings of \$1.9 billion.<sup>209</sup> Ultimately, Congress rejected the proposal, and the eighteen different project categorical grants remained with the various federal agencies at nearly the same funding levels.<sup>210</sup>

A major obstacle preventing wide-scale implementation of block grants are concerns regarding “accountability for spending and outcomes.”<sup>211</sup> Any time a large sum of funds is transferred without much oversight, these legitimate concerns arise. Proponents of block grants argue that local officials who receive block grant funding “are more ‘visible’ to the public than federal administrators and, as a result, are more likely to be held accountable for their actions.”<sup>212</sup> Instead of relying on federal regulators, “this heightened level of visibility and accountability encourages state and local government officials to seek the most efficient and cost-effective means to deliver program services” resulting in “added flexibility . . . produc[ing] . . . better programmatic outcomes . . . at a lower cost.”<sup>213</sup> Additionally, oversight and accountability has been exercised over states receiving block grant funding

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206. *Id.* at 13-14 (citing EUGENE BOYD ET AL., CONG. RESEARCH SERV., RL32823, AN OVERVIEW OF THE ADMINISTRATION’S STRENGTHENING AMERICA’S COMMUNITIES INITIATIVE (2006)).

207. *Overview*, U.S. ECON. DEV. ADMIN., <https://www.eda.gov/about/> (last visited Mar. 26, 2016) (“As the only federal government agency focused exclusively on economic development, the U.S. Department of Commerce’s Economic Development Administration (EDA) plays a critical role in fostering regional economic development efforts in communities across the nation.”).

208. DILGER & BOYD, *supra* note 179, at 14.

209. *Id.*

210. *Id.*

WALLER, *supra* note 195, at 1.

212. DILGER & BOYD, *supra* note 179, at 7; *see also* ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, A-60, BLOCK GRANTS: A COMPARATIVE ANALYSIS 11 (1977).

213. DILGER & BOYD, *supra* note 179, at 7.

through “reporting requirements to some block grants and performance incentives that reward states for documented improvements.”<sup>214</sup> This same approach could be attached to Native American tribes who receive block grants.

Block grants themselves are one of the major tenets of nation-building, but they address many other aspects as well. Proponents of block grants often “assert that block grants promote long-term planning,”<sup>215</sup> a central pillar in achieving nation-building for tribes. Long-term planning is facilitated in the way block grants are funded, both in terms of certainty for future funding and in terms of preventing waste of valuable resources via competitions for various project categorical grants. According to proponents, like the National Governors Association, “[u]nlike project categorical grants that require state and local government officials to compete for funding, block grants use formulas to distribute funds.”<sup>216</sup> Additionally, block grant proponents “argue that the use of formulas provides recipients greater assurance that funding will be continued, which makes it easier for them to predict the amount of their grant and to create long-range plans for the funds’ use.”<sup>217</sup> Allowing tribal officials a source of funding that allows them to focus on long-term planning will provide them the ability to promote a “programmatic focus on institutional capacity-building”<sup>218</sup> needed to achieve nation-building.

### *C. Takeaways from the Promise Zone Experience So Far*

The Promise Zone initiative is a step in the right direction toward long-term sustainable economic growth for Indian Country—especially for the tribes fortunate enough to receive designation. The federal government’s inclination to include Native American organizations in a comprehensive economic development project of this nature, and its specific carve-out to ensure Native Americans are included in the project signify a strong commitment to Native people. The application process is stringent, but it provides a needed incentive for tribes to make internal reforms that will ensure their competitiveness in today’s economy. The most important aspect that moves the Promise Zone initiative from the standard approach to nation-building is its apparent willingness to delegate major policy decisions to tribes. In the new Self-Determination Era of Native American policy,

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214. *Id.* at 9.

215. *Id.* at 8.

216. *Id.*

217. *Id.*

218. *See supra* Part I.

allowing tribes to make decisions for themselves and then remain accountable for those decisions is essential for long-term economic success.

The Promise Zone initiative itself is not the ideal vehicle to achieve true nation-building and raise tribes out of the dismal poverty we see across the country. In fact, its very existence remains in jeopardy as the next presidential administration approaches, since there have yet to be any legislative enactments giving Promise Zones any sense of permanency. The biggest drawback to the current structure of Promise Zones is the program's limited scope. Promise Zones will greatly impact designees, but it is unlikely the project will have a major impact on the United States economy as a whole, let alone the dire straits of Indian Country, since it is merely an Executive action and not a comprehensive legislative achievement. Only twenty jurisdictions across the country will benefit from Promise Zone designations—a number which includes urban, rural, and tribal jurisdictions. The carve-out for tribes is a positive aspect, but considering that there are over 550 federally recognized Indian Nations across the country,<sup>219</sup> one or two tribes per Promise Zone round will make a negligible impact on Native American economies. Solely focusing on the Choctaw Nation and Pine Ridge Reservation is a starting point, but hopefully will not be the end of the federal government's newfound commitment to Native people.

In addition to the limited size of the Promise Zone initiative, its heavily dependent focus on project categorical grant funding prevents tribes from truly maximizing sovereignty and self-determination in economic development programs. Allowing tribes to decide what projects they want to focus on, but then putting a limit on how to fund those projects by restraining them to federally recognized projects, severely limits tribal ability to fully recognize the benefits of nation building. Moving forward, tribes should pursue efforts to build upon the momentum created by President Obama's commitment to Indian Country. Native American tribal leaders should lobby not only for legislation securing the Promise Zone initiative, but also appropriations designed to formulate a new economic development program specifically for Indian Country. This new program should be crafted and introduced to policymakers so that it takes the strongest aspects of the Promise Zone initiative and then includes needed components of nation-building to finally help make a real impact on alleviating poverty in Indian Country.

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219. NAT'L CONG. OF AM. INDIANS, AN INTRODUCTION TO INDIAN NATIONS IN THE UNITED STATES 2 (n.d.), [http://www.ncai.org/about-tribes/indians\\_101.pdf](http://www.ncai.org/about-tribes/indians_101.pdf).

The stringent application process of the Promise Zone initiative that rewards tribes who have proven their capacity for success, like the Choctaw Nation, should be included in this future program. This provides tribes a reason to make internal reforms and do their part to implement organizational structures that are equipped to build long-term economic stability. Tribes that have proven the ability to build long-term success should be granted designation after the stringent application process, but should instead be rewarded with real tools to make an impact and achieve their goals. A stringent application process will also address accountability and oversight concerns by ensuring limited federal appropriations are only going to those well-equipped to put the money to good use, and to those who truly care about using the money for its proper, intended purpose.

To achieve an economic development initiative for tribes based on self-determination principles, designation should be followed by block grants instead of just preferential points to receive project categorical grants for federally approved projects and a meaningful type of tax credit to help incentivize business investment. Tribes who have demonstrated that they have worthy plans through the application process should not be forced to file additional applications for federally designed grants. They should be granted the necessary funds up front to achieve the goals they have developed themselves, possibly through consolidation of program specific grants into a new type of block grant specifically authorized for tribes. Tribes should not be forced to rely on funding that requires them to try to match their ambitions with programs that meet federal objectives. Such a transition to more open-ended, discretionary funding options will promote sovereignty for tribes and efficiency for both the federal government and recipients.

### *Conclusion*

Overall, despite its limited scope, questionable legislative authority, and uncertain future, the Promise Zone initiative moves Native American economic development toward nation-building more than ever before. The fact that the Pine Ridge Reservation and Choctaw Nation of Oklahoma are receiving the same attention as the cities of Philadelphia, Pennsylvania, and Los Angeles, California, when it comes to addressing economic development is a major step forward for tribes. The emphasis on block grants with wider discretion on policy decisions over project categorical grants may seem to some as inconsequential given the potential for major gains in Promise Zone areas. The legal and policy history of federal relations with tribes highlights the need to maximize sovereignty in the Self-Determination Era and take the

next steps to build upon the Promise Zone Initiative. In order for the Native American community at large to finally lift itself out of poverty, it must take the lead by demanding more self-determination authority when it comes to economic development, not simply continuing as a ward of the federal government. The Promise Zone initiative is likely to go a long way in helping the Choctaw Nation and Pine Ridge Reservation, but it only provides guidance and the first steps forward toward a brighter future for Native American communities across the country.