

United States Senate

WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

March 1, 2024

The Honorable Alejandro Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
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The Honorable Anne Milgram
DEA Administrator
U.S. Drug Enforcement Administration
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The Honorable Deb Haaland
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The Honorable Andrea Gacki
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Dear Colleagues:

In recent months, we have heard directly from North Carolinians who have communicated their concerns about the Eastern Band of Cherokee Indians (EBCI) and *Qualla Enterprise LLC* establishing an operation to produce, cultivate, and sell marijuana. As our nation is facing an unprecedented drug crisis that is harming our communities, it is vital to learn what measures your departments and agencies are taking to uphold current federal and state laws.

As you may know, on July 8, 2021, the EBCI formed the Cannabis Control Board (CCB), which is responsible for issuing licenses for medical marijuana businesses, agent cards for employees of medical marijuana businesses, and patient cards for individuals to have access to medical marijuana.¹ On July 28, 2022, the EBCI registered the *Qualla Enterprises LLC* with the

¹ Scott Mckie B.P., Council approves \$64 million for medical cannabis business, Cherokee One Feather, (April 10, 2023), <https://theonefeather.com/2023/04/10/council-approves-64-million-for-medical-cannabis-business/>

North Carolina Secretary of State, which was created to manage their marijuana operations.² On September 7 2023, the members of the EBCI voted in favor of a referendum to legalize possession and use of marijuana by people twenty-one or older.³ In October 2023, the CCB began issuing licenses, agent cards, and patient cards.⁴

Recent public reporting indicates that the EBCI and *Qualla Enterprises LLC* are cultivating the marijuana on a farm located on Cooper's Creek, which is off the Qualla Boundary (reservation).⁵ To sell the marijuana, the EBCI and *Qualla Enterprise LLC* must transport the product from the farm to the reservation, which is separated by a state road in Swain County, North Carolina. In addition, public reports state that *Qualla Enterprise LLC* and CCB do not have a testing lab in place to conduct potency and safety assessments of their products.⁶ Marijuana products are expected to be sold to tribal members and non-tribal citizens.

This matter raises multiple questions on how North Carolina communities will be kept safe. Under the Controlled Substance Act (CSA) (21 U.S.C. §801 et seq.) marijuana is classified as a Schedule I substance. The CSA prohibits the manufacture, distribution, dispensation, and possession of marijuana.⁷ Federal anti-money laundering (AML) laws criminalize the handling of proceeds derived from various unlawful activities, including marijuana sales in violation of the CSA.

From the financial side, the Bank Secrecy Act (BSA) (31 USC 5311)) requires financial institutions to have policies, record keeping, and processes in place both to ensure that their clients are not engaging in unlawful behavior, such as selling products under CSA.⁸ The BSA also ensures that financial institutions aid law enforcement by reporting potentially illegal or otherwise suspicious activities. BSA and AML violations can result in severe civil or criminal penalties, as well as asset forfeiture and administrative enforcement actions initiated by federal financial regulators.⁹

Under North Carolina General Statutes (G.S. 90-95, G.S. 90-113.22A, and G.S. 90-94), the possession of marijuana (including medical marijuana) and marijuana drug paraphernalia is

² Holly Kays, *Cherokee cannabis company receives \$63 million from Council*, Smoky Mountain News, (December 14, 2022), <https://smokymountainnews.com/archives/item/34824-cherokee-cannabis-company-receives-63-million-from-council>

³ Dave Faherty, *Western NC reservation votes to legalize possession of marijuana*, WSOC TV 9, (September 7, 2023), <https://www.wsoc.com/news/local/polls-open-referendum-that-legalizes-marijuana-western-nc-reservation/JUURDSAVFRCZRJ3OVJFMI2YCN4/>

⁴ Ben Adlin, *Indian Tribe Issues First Medical Marijuana Cards In North Carolina As Statewide Legalization Bill Stalls*, Marijuana Moment, (October 16, 2023), <https://www.marijuanamoment.net/indian-tribe-issues-first-medical-marijuana-cards-in-north-carolina-as-statewide-legalization-bill-stalls/>

⁵ Jennifer Emert, *Seeing green: EBCI advances medical cannabis program amid challenges in North Carolina*, ABC 13 News, (July 5, 2023), <https://wlos.com/news/local/seeing-green-eastern-band-of-cherokee-indians-advances-medical-cannabis-program-amid-challenges-in-north-carolina>

⁶ Jennifer Emert, *Seeing green: EBCI advances medical cannabis program amid challenges in North Carolina*, ABC 13 News, (July 5, 2023), <https://wlos.com/news/local/seeing-green-eastern-band-of-cherokee-indians-advances-medical-cannabis-program-amid-challenges-in-north-carolina>

⁷ Congressional Research Services (CRS), *Financial Services for Marijuana Businesses*, (CRS), (November 27, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF11373>

⁸ Office of the Comptroller of the Currency (OCC), *Bank Secrecy Act*, OCC, (n.d.) <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>

⁹ Congressional Research Services (CRS), *Financial Services for Marijuana Businesses*, (CRS), (November 27, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF11373>

still illegal under state law.¹⁰ Tennessee, another state neighboring both North Carolina and the reservation, also has statutes (Tenn. Codes Ann. § 39-17-415, and §39-17-417) in place that continue to make marijuana illegal.¹¹ With unclear guidance, it makes it difficult for state and local officials to uphold the rule of law in our communities. In particular, we have the responsibility to ensure our youth are shielded from untested marijuana products being produced and sold by *Qualla Enterprise LLC*.

To help better understand the efforts by your agency or department to uphold the law and keep our communities safe, we ask that you provide answers to the following questions to the best of your ability and jurisdiction:

1. What is the U.S. Department of Justice (DOJ), U.S. Department of Interior (DOI), and U.S. Drug Enforcement Administration (DEA) doing to enforce federal law when it comes to production, cultivation, and sale of marijuana in and around the reservation? Are federally recognized tribes immune from the Controlled Substance Act?
2. What action can DOJ take if an individual(s) is harmed using the marijuana from a tribal reservation? Would *Qualla Enterprise LLC* as seller be held liable?
3. Does DOJ, DOI, and DEA have concerns that an operation like *Qualla Enterprise LLC* will attract transnational criminal organizations to the reservation and surrounding towns?
4. What state and federal implications do medical doctors face if they authorize medical forms for individuals to obtain medicinal marijuana cards from a tribe or business?
5. Does a federally recognized tribe have the ability to take land into trust for the purpose of opening and operating a marijuana business?
6. Public reports state that the Cooper's Creek Property land into trust process took place around 2018. Was DOI notified of that the *Qualla Enterprise LLC* would be operating on this land? If not, what penalties are in place for falsifying an application?
7. Are federally recognized tribes able to take land into trust for the purposes of marijuana businesses?
8. If the *Qualla Enterprise LLC* or EBCI is determined to have transported marijuana on a state road to the reservation, will you enforce the law?
9. As District Attorney of the county, are you working with the county sheriff to enforce North Carolina's marijuana statutes?
10. At what point is the transportation of marijuana considered trafficking? Are federally recognized tribes immune from state and federal enforcement?

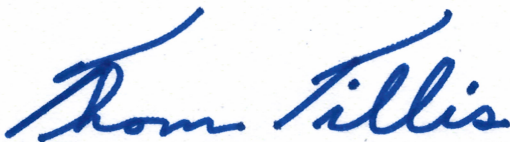
¹⁰ NORML, *North Carolina Laws and Penalties*, NORML (n.d.), <https://norml.org/laws/north-carolina-penalties-2/>

¹¹ NORML, *Tennessee Laws and Penalties*, NORML (n.d.), <https://norml.org/laws/tennessee-penalties-2/>

11. Are federally recognized tribes immune from transporting marijuana across state lines?
12. Under the National Indian Game Commission (NIGC)—does the NIGC allow for gaming profits to be used for tribal marijuana ventures?
13. What penalties do federally recognized tribes who operate casino or gaming operations face if they are found in violation of using gaming funds for marijuana ventures?
14. Does the NIGC have the authority to terminate the gaming license agreement if a federally recognized tribe is found in violation of CSA?
15. How often does the NIGC conduct audits to ensure that federally recognized tribes that run marijuana businesses and gaming operations do not co-mingle net profits?
16. Does NIGC conduct audits to ensure that federally recognized tribes that operate out-of-state gaming like the Danville, Virginia Casino, which is in partnership with the EBCI prevent co-mingling of gaming and marijuana profits?
17. Do financial institutions have the ability to provide loans or credit to businesses or federally recognized tribes who seek assistance to open and operate a marijuana operation? What state or federal law is taken into consideration for enforcement?
18. What guidance does FinCEN provide local financial and banking institutions when dealing with profits from CSA operations? What is the process to reporting violations to the DOJ?
19. Attorney General Garland and Director Gacki, do you conduct audits to ensure net-profits from marijuana sales are not co-mingled through net-profits of out-of-state ventures? If so, are there any concerns about *Qualla Enterprise LLC* co-mingling net-profits from a controlled substance earning with projects the EBCI are undertaking, like the 407: Gateway to Adventure in Sevier County Tennessee?

Thank you for your prompt attention to this serious matter. We look forward to your response.

Sincerely,



Thom Tillis
United States Senator



Ted Budd
United States Senator