H.R. 992, H.R. 2345 and H.R. 5155

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

September 25, 2002

Serial No. 107-153

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

81-889 PS WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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C O N T E N T S

LEGISLATIVE HEARING ON H.R. 992, TO PROVIDE GRANTS TO LOCAL GOVERNMENTS TO ASSIST SUCH LOCAL GOVERNMENTS IN PARTICIPATING IN CERTAIN DECISIONS RELATED TO CERTAIN INDIAN GROUPS AND INDIAN TRIBES; H.R. 2345, TO EXTEND FEDERAL RECOGNITION TO THE CHICKAHOMINY TRIBE, THE CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION, THE UPPER MATTAPONI TRIBE, THE RAPPAHANNOCK TRIBE, INC., THE MONACAN TRIBE, AND THE NANASEMOND TRIBE; AND H.R. 5155, TO PROTECT SACRED NATIVE AMERICAN FEDERAL LANDS FROM SIGNIFICANT DAMAGE.

Wednesday, September 25, 2002
U.S. House of Representatives
Committee on Resources
Washington, DC

The committee met, pursuant to notice, at 10:06 a.m., in room 1334, Longworth House Office Building, Hon. J.D. Hayworth presiding.

STATEMENT OF THE HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. HAYWORTH. [presiding] The Committee will come to order. The Chair would apologize for some erroneous information that we received, some information from the floor that obviously was in error, so we can go ahead and get started today. We thank all of you for joining us here.

Today, the Committee will receive testimony on three bills of importance to Native Americans. The first is H.R. 5155, a bill to protect sacred Native American Federal lands from significant damage. This legislation was introduced by our ranking member, my friend from West Virginia, Congressman Nick Rahall.

The second bill we will hear is H.R. 992, introduced by Congresswoman Nancy Johnson of Connecticut. H.R. 992 provides grants to local governments to assist them in participating in certain decisions related to Indian groups and Indian tribes.

The final bill before the Committee this morning is H.R. 2345, introduced by Congressman James Moran of Virginia. Mr. Moran's bill extends Federal recognition to six tribes in the Old Dominion.

We appreciate the effort each of our witnesses has made in being here today and look forward to your testimony.

[The prepared statement of Mr. Hansen follows:]

Statement of the Hon. James V. Hansen, a Representative in Congress from the State of Utah

Today the Committee will receive testimony on three Indian bills.

The first is H.R. 5155, a bill to protect sacred Native American federal lands from significant damage. This legislation was introduced by our Ranking Member, Congressman Nick Rahall. The second bill we will hear is H.R. 992, introduced by Congresswoman Nancy Johnson of Connecticut. H.R. 992 provides grants to local governments to assist them in participating in certain decisions related to Indian groups and Indian tribes. The last bill before the Committee this morning is H.R. 2345, introduced by Congressman James Moran. Mr. Moran's bill extends federal recognition to six Virginia tribes.

We appreciate the effort each of our witnesses has made in being here today and look forward to hearing your testimony.

Mr. HAYWORTH. I turn to the ranking member for comments, mindful of the fact that we will be scriptural this morning in terms of the legislation. The last shall be first. We see our friends from Virginia at the dais. We turn first to the ranking member from West Virginia.

STATEMENT OF THE HON. NICK J. RAHALL II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Mr. Chairman, why don't we just allow the two colleagues there with us to give their testimony and I ask unanimous consent my testimony be made part of the record at this point.

Mr. HAYWORTH. Without objection, we will do so.

[The prepared statement of Mr. Rahall follows:]

Statement of Hon. Nick J. Rahall, a Representative in Congress from the State of West Virginia

The CHAIRMAN. This morning we will hear testimony on HR 5155 which I introduced to protect Native American sacred lands located on federal property. I believe it is imperative that Congress act to put in place a comprehensive process to protect these lands from desecration.

My legislation would permit Indian tribes to petition the Department of Interior to prohibit certain kinds of activities from occurring on federal lands if it is shown that the activity would cause significant damage to the sacred site.

Long before my ancestors arrived on these shores, American Indians were the first stewards of this great land. They respected the earth, water, and air. They understood that you take only what you need and leave the rest. They demonstrated you do not desecrate that which is sacred.

Most Americans understand a reverence for the great Sistine Chapel or a whitewashed building with a steeple and a bell. Even if these "sacred sites" do not house our particular religion, we feel respect for these buildings and what they represent.

Many of us, however, seem to have difficulty giving that same reverence to a mountain, valley, stream, or rock formation. Yet that is exactly where we are likely to find Native American sacred sites. Across the country many of these sacred lands are in danger of being destroyed by oil rigs and mining pits.

My own beloved West Virginia Appalachian home has deep cultural roots, is rich with natural resources, and beautiful landscapes. We are true to our belief in our traditions, our distinct culture, our food, our music, our medicine, and our spirituality.

Like Indian country, Appalachia has a bloody history of battling powerful forces coming in promising jobs and a better life, only to strip us of our most profitable minerals and leave behind even more poverty and broken promises.

Coal may be a blessing - we need this energy source and it provides jobs- but it has left a cruel legacy and often a tortured landscape.

In response to public indignation over desecrated lands throughout coal country, Congress enacted the Surface Mining Act of 1977. Today the cry of generations of American Indians implores us to put the full legal weight and strength of the federal government behind protecting Native American sacred lands.

I also want to take this opportunity to welcome all our witnesses here today and in particular my friends and colleagues - Jim Moran and Jim Maloney.

Mr. Moran is here today to bring our attention to the plight of six Indian tribes from Virginia. His bill, HR 2345 would extend federal recognition to these tribes and I support him in his efforts.

Jim Moran has been a tireless advocate for the Virginia tribes to right the wrongs committed against them. The history of abuse, targeted racism, and coordinated efforts to disband the tribes make it all the more amazing that they remain intact today.

The telling of this story is long overdue and I welcome the tribal leaders and members with us here today.

I look forward also to hearing from Mr. Maloney who has come to testify in support of his constituents' effort to gain more input into the tribal recognition process. Let me say that we are in complete agreement that the federal acknowledgment process within the Bureau of Indian Affairs is broken.

While we may not agree on exactly how to fix the problem, I commend you for your work on this difficult issue and appreciate your counsel on the matter. I look forward to working with you as this process unfolds.

Mr. Chairman, we do indeed have a diverse set of issues before us today and look forward to hearing from each of the witnesses.

Mr. HAYWORTH. Now to testify on H.R. 2345, our friends and colleagues Jim Moran and Jo Ann Davis of Virginia. Gentleman and gentlelady, you may open your testimony.

Mr. MORAN. Thank you, Mr. Chairman. We are known for our chivalry in Virginia, so I think I should defer to Ms. Davis to speak first and then I can speak after her.H.R. 2345

STATEMENT OF THE HON. JO ANN DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Ms. DAVIS. Thank you, Jim. Thank you, Mr. Chairman. Mr. Chairman, I appreciate the opportunity to testify on behalf of H.R. 2345, legislation that would grant Federal recognition to Virginia Indian tribes, many of whom are located in my district. As a former member of the Virginia Council on Indians, this is an issue close to my heart and I commend Mr. Moran for taking the initiative to help the Commonwealth's Native American population achieve their long overdue recognition as tribes.

As we approach the 400th anniversary of the founding of Jamestown in 2007, it is only appropriate that Congress also honor those Native Americans that resided in Virginia when the settlers came, and we can most effectively accomplish this by passing H.R. 2345 into law.

All of the six tribes seeking Federal recognition have obtained State recognition, and I am proud to say that two of them are located within my Congressional district. They are the Rappahannock and the Upper Mattaponi, and many of the Chickahominy live

in my district, as well. They seek this designation in order to gain the same rights and recognition that have already been obtained by 558 tribes in 35 States.

Some may question why, if the Virginia Indians are indeed historical tribes, that they have only recently attempted to seek Federal recognition. The answer lies in the turmoil of the early 20th century that found Virginia Indians working to merely preserve their identity. In what will forever be a black mark on Virginia's history, the Registrar of the Bureau of Vital Statistics, Dr. Walter Plecker, despite the overwhelming evidence and the historical accounts, believed that there were no real native-born Indians and worked to remove the designation from birth records and other vital records.

Plecker was a white supremacist, and one of his tools of racial purity was to label all non-whites as colored and to block any interracial marriages with Caucasians, enforcing a 1924 State law. Indian midwives were threatened with imprisonment for putting the term "Indian" on birth records, and many Indians suppressed their heritage rather than risk retaliation or controversy with State government. Generations of Virginia Indians suffered through this State-sponsored discrimination.

But Plecker did not destroy the heritage or the spirit of these Native Americans, and in fact, the adversity that they faced gave them a stronger bond and increased their resolve to preserve their identity as a people. In spite of this effort to deny their existence as a distinct race of people, substantial, indeed, overwhelming proof of their lineage endures. The Virginia Indians have the support of anthropologists and historians that have studied and documented their history in Virginia.

In the 1980's, Virginia Indians succeeded in gaining State recognition, and in 1999, the Virginia General Assembly passed a resolution in support of Federal recognition, passing unanimously in the Senate and by a vote of 89 to two in the House.

I think that it is important that I broach the issue of Indian gaming in the course of my testimony. Personally, I believe that gambling has reached epidemic levels in our country and continues to exact a heavy toll of economic destruction and despair in thousands of American homes. And if I believed that this Federal recognition bill was about gaming, rest assured that I would not be cosponsoring the legislation or testifying on behalf of it. It is indeed regrettable that the gaming issue has tainted this effort.

According to State law, the Virginia Indians currently could operate bingo games, but they do not. I have also been told casino gambling interests have offered to finance their Federal recognition efforts, but they have rightly refused such assistance. Several of the Virginia tribal leaders are personal friends of mine, and I know they do not seek recognition in order to begin gambling enterprises. In fact, many of the Indians are devout Christians and have strong moral objections against gambling. If future generations of Virginia Indians would seek Class III gaming operations, they would, of course, be subject to the constraints of IGRA, which would require approval by the Governor and a negotiated compact.

Virginia Indians seek Federal recognition to obtain the rights and statutory benefits that accompany the designation, but most of

all, to validate what is true, that these tribes are indigenous to the Commonwealth of Virginia and have resided here for hundreds of years and should be afforded the respect and honor that has been granted to hundreds of other similarly situated tribes.

Mr. Chairman, the administrative route for obtaining tribal recognition is broken and it needs to be fixed. Recognition obtained through the Bureau of Indian Affairs can take 20 years or longer to achieve. I hope Congress acts to reform this system, but in the interim, it is unfair to deny Virginia Native Americans the Federal recognition that they are due. And again, I believe it is symbolically important that we get this accomplished before the quadricentennial celebration of Jamestown in 2007.

I appreciate you holding this hearing today and I urge you to take the next step by scheduling consideration of H.R. 2345 by the House Resources Committee in the immediate future. I thank you, Mr. Chairman, and I thank my colleague for allowing me to go first.

Mr. HAYWORTH. I thank the gentlelady for her testimony.

[The prepared statement of Ms. Davis follows:]

Statement of Hon. Jo Ann Davis, a Representative in Congress from the State of Virginia

Mr. Chairman, I appreciate the opportunity to testify on behalf of H.R 2345, legislation that would grant federal recognition to Virginia Indian tribes, many of whom are located in my district. As a former member of the Virginia Council on the Indians, this is an issue close to my heart, and I commend Mr. Moran for taking the initiative to help the Commonwealth's Native American population achieve their long overdue recognition as tribes. As we approach the four hundredth anniversary of the founding of Jamestown in 2007, it is only appropriate that Congress also honor those Native Americans that resided in Virginia when the settlers came, and we can most effectively accomplish this by passing H.R. 2345 into law.

All of the six tribes seeking federal recognition have obtained state recognition, and I am proud to say that three of them are located within my congressional district. They are the Rappahannock, the Mattaponi, and the Upper Mattaponi. They seek this designation in order to gain the same rights and recognition that have already been obtained by 558 tribes in 35 states.

Some may question why, if the Virginia Indians are indeed historical tribes, they have only recently attempted to seek federal recognition. The answer lies in the turmoil of the early twentieth century that found Virginia Indians working to merely preserve their identity. In what will forever be a black mark on Virginia's history, the registrar of the Bureau of Vital Statistics, Dr. Walter Plecker, despite the overwhelming evidence and the historical accounts, believed there were no real native-born Indians and worked to remove the designation from birth records and other vital records.

Plecker was a white supremacist, and one of his tools of racial purity was to label all non-whites as "colored" and to block any interracial marriages with Caucasians, enforcing a 1924 state law. Indian midwives were threatened with imprisonment for putting the term "Indian" on birth records, and many Indians suppressed their heritage rather than risk retaliation or controversy with state government. Generations of Virginia Indians suffered through this state-sponsored discrimination.

But Plecker did not destroy the heritage or spirit of these native Virginians, and in fact the adversity they faced gave them a stronger bond and increased their resolve to preserve their identity as a people. In spite of this effort to deny their existence as a distinct race of people, substantial, indeed, overwhelming proof of their lineage endures. The Virginia Indians have the support of anthropologists and historians testifying today that have studied and documented their history in Virginia.

In the 1980s, Virginia Indians succeeded in gaining state recognition, and in 1999 the Virginia General Assembly passed a resolution in support of federal recognition, passing unanimously in the Senate and by a vote of 89–2 in the House.

I think it is important that I broach the issue of Indian gaming in the course of my testimony. Personally, I believe that gambling has reached epidemic levels in our country, and continues to exact a heavy toll of economic destruction and despair

in thousands of American homes. And if I believed that this federal recognition bill was about gaming, rest assured I would not be cosponsoring the legislation or testifying on behalf of it. It is indeed regrettable that the gaming issue has tainted this effort.

According to state law, the Virginia Indians currently could operate bingo games, but they do not. I have also been told casino gambling interests have offered to finance their federal recognition efforts, but they have rightly refused such assistance. Several of the Virginia tribal leaders are personal friends of mine, and I know they do not seek recognition in order to begin gambling enterprises. In fact, many of the Indians are devout Christians, and have strong moral objections against gambling.

If future generations of Virginia Indians would seek class III gaming operations, they would of course be subject to the constraints of IGRA, which would require approval by the Governor, and a negotiated compact. Moreover, H.R. 2345 includes a provision closing any possible loophole that would allow the Virginia tribes to engage in class III gaming without the consent of the Governor.

Virginia Indians seek federal recognition to obtain the rights and statutory benefits that accompany the designation, but most of all to validate what is true" that these tribes are indigenous to the Commonwealth of Virginia and have resided here for hundreds of years, and should be afforded the respect and honor that has been granted to hundreds of other similarly situated tribes.

Mr. Chairman, the administrative route for obtaining tribal recognition is broken, and needs to be fixed. Recognition obtained through the Bureau of Indian Affairs can take 20 years or longer to achieve. I hope Congress acts to reform this system, but in the interim, it is unfair to deny Virginia Native Americans the federal recognition they are due. And, again, I believe it is symbolically important that we get this accomplished before the quadricentennial celebration of Jamestown in 2007.

I appreciate you holding this hearing today and urge you to take the next step by scheduling consideration of H.R. 2345 by the House Resources Committee in the immediate future.

Mr. HAYWORTH. I thank the gentleman from Virginia for his chivalry and now we are prepared to hear from you, Mr. Moran.H.R. 2345

STATEMENT OF THE HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. MORAN. Thank you very much, Chairman Hayworth and Ranking Member Rahall, Mr. Kildee, Mr. Otter, Mr. Flake. We very much appreciate your willingness to hold this hearing and provide us with an opportunity to tell the story of six of Virginia's Native American tribes. I thank Ms. Davis for all of her hard work on this.

Both of us have a story which we know is compelling, but we want more than your sympathetic ear on this. We need for you to grant these tribes Federal recognition. So we ask that the Federal Government, starting with this distinguished Resources Committee, recognize the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Rappahannock, and the Upper Mattaponi Tribes. These tribes exist. They have existed on a substantially continuous basis since before the first Western European settlers stepped foot in America, and they are here with us today.

We know there is a great deal of resistance from Congress to grant any Native American tribe Federal recognition, and we can appreciate how the issue of gambling and its economic and moral dimensions have influenced many members' perspectives on tribal recognition issues. But we know that the circumstances and the situation that these tribes have endured and the legacy that they still confront today outweigh these concerns. Congress has the power to

recognize these tribes. It has exercised this power in the past, and it should exercise this power again with respect to these six tribes.

Like much of our early history as a nation, the Virginia tribes were subdued. They were pushed off their land, and up through much of the 20th century, they were denied full rights as U.S. citizens. But despite their devastating loss of land and population, the Virginia Indians successfully overcame years of racial discrimination that denied them equal opportunities to pursue their education and preserve their cultural identity. That story of survival does not encompass decades, it spans centuries of racial hostility and coercive State and State-sanctioned actions.

Unlike most tribes that resisted encroachment and obtained Federal recognition when they signed peace treaties with the Federal Government, Virginia's six tribes signed their peace treaties with the kings of England. Most notable among these was the Treaty of 1677 between these tribes and Charles II, which is still valid and which the Supreme Court recognized for its validity.

In more recent times, this racial hostility culminated with the enactment and brutal enforcement of Virginia's Racial Integrity Act of 1924. That was the title of the Act, Racial Integrity Act of 1924, that Ms. Davis has alluded to. This Act empowered zealots like Walter Plecker, who was a State official, to destroy records and reclassify in Orwellian fashion all non-whites as colored. To call yourself a Native American in Virginia was to risk a jail sentence of up to 1 year. They did not use the term Native American, they used the term Indian then, but if you used the term Indian, you would be put in jail for a year.

Imagine a married couple, unable to obtain the release of their newborn child from the hospital until they changed their child's ethnicity on the medical record to read colored, not Indian. Or imagine being told that you have no right to reclaim and bury your ancestors once you learn they were being stored in a museum vault; or, imagine the Indian mission school that your grandparents and your parents attended receiving Federal recognition as a historic landmark, but yet you and your daughters and sons are not recognized by the Federal Government as Native Americans. Or imagine your frustration upon finding your legal efforts to appeal a local water issue in Federal Court are frustrated because you are told your suit has no standing since your tribe does not exist.

Mr. Chairman, these are just a few of the examples of the indignities visited upon the members of the six tribes that are present here today. I mention these because they are a part of a shameful legacy experienced in our lifetime. Some of them are still visited upon the members of the tribe today.

More to the point, this legacy has also complicated their tribe's quest for Federal recognition, making it difficult to furnish corroborating State and official documents. It was not until 1997 when then-Governor George Allen, now Senator Allen, signed legislation directing State agencies to correct State records that had been deliberately altered to list Virginia Indians on official State documents as colored. And as you know, they were then denied employment and denied any educational opportunities as a result.

In recent years, the Virginia tribes have filed their petitions with the Bureau of Indian Affairs. They have no deep pockets and they lack the financial means to rigorously pursue the lengthy and resource-intensive petition process. I know you are all very much aware of that process. Even more discouraging, they have been told by Bureau of Indian Affairs officials not to expect any action on their petitions within their lifetime. The GAO study this Committee reviewed earlier this year confirms this backlog.

Asking them to wait another 10 years or more is not what these tribes deserve. Many of the members are elderly and they are very much in need of medical care and assistance. They lack health insurance. They have no pensions because past discrimination denied them opportunities for education and employment. Federal recognition would entitle them to receive some health and housing assistance.

It would be one of the greatest of ironies and a further injustice to these tribes if in our efforts to recognize the 400th anniversary, which we are doing this year, we are recognizing the 400th anniversary of the first permanent European settlement in North America at Jamestown, if we fail to recognize the very direct descendants of those Native Americans who met those settlers. That is the irony that we are confronted with this year.

Before closing, let me touch upon one issue, the issue of gambling that may be at the forefront of many members' minds. In response to such concerns, we have worked, Jo Ann and I have worked with Frank Wolf and others to close any potential loopholes in this legislation so that we can ensure that the Commonwealth of Virginia can prevent casino-type gaming by the tribes. Having maintained a close relationship with many of the members of these tribes, I can tell you, I absolutely know without a doubt they are absolutely sincere in their claims that gaming is wholly inconsistent with their values.

The only people that would educate them were Christian missionaries. They became very devout Christians as a result. They denounced gambling as a sin. They will not participate in it. They live in rural areas with very conservative family and religious beliefs. All six tribes have established nonprofit organizations, so they are permitted under Virginia law to operate bingo games today.

They can go out today and make money that would substantially improve their lives, and they have tremendous financial needs. But they believe that bingo revenues are wrong and they refuse to engage in bingo gambling. Even though a number of other organizations in the area are taking in bingo revenue and they are eligible to, they refuse to do it because they believe that it is wrong, and that is one of the ironies of their being denied on that basis, because I know that they have no interest in engaging in gambling. They want recognition and their case is so compelling that they have been denied that rightful recognition for too long.

Mr. Chairman, the real issue for the tribes is one of acknowledgment and the long-overdue need for the Federal Government to affirm their identity as Native Americans, and that is why we so strongly urge you to proceed on this proposal.

We thank you for arranging the hearing and for your indulgence on this issue and for your attention to this matter. Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank our colleagues from Virginia for their testimony and we look forward to hearing more on H.R. 2345 later in our hearing this morning.

[The prepared statement of Mr. Moran follows:]

Statement of Hon. James P. Moran, a Representative in Congress form the State of Virginia

Good morning and thank you, Mr. Chairman.

I appreciate your willingness to hold this hearing and providing us with an opportunity to help tell the story of six of Virginia's Native American tribes. The story of these tribes is compelling, but I ask for more than your sympathetic ear. I also ask for action on legislation that I, along with my colleague Jo Ann Davis, have introduced to grant these tribes federal recognition.

I ask that the federal government, starting with this distinguished Resources Committee, recognize the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemod, the Rappahannock and the Upper Mattaponi tribes. These tribes exist, they have existed on a substantially continuous basis since before the first western European settlers stepped foot in America; and, they are here with us today.

I know there is great resistance from Congress to grant any Native American tribe federal recognition. And, I can appreciate how the issue of gambling and its economic and moral dimensions have influenced many Members' perspectives on tribal recognition issues.

I think the circumstances and situation these tribes have endured and the legacy they still confront today, however, outweigh these concerns. Congress has the power to recognize these tribes. It has exercised this power in the past, and it should exercise this power again with respect to these six tribes.

Like much of our early history as a nation, the Virginia tribes were subdued, pushed off their land, and, up through much of the 20th Century, denied full rights as U.S. citizens. Despite their devastating loss of land and population, the Virginia Indians successfully overcame years of racial discrimination that denied them equal opportunities to pursue their education and preserve their cultural identity. That story of survival doesn't encompass decades, it spans centuries of racial hostility and coercive state and state-sanctioned actions. Unlike most tribes that resisted encroachment and obtained federal recognition when they signed peace treaties with the federal government, Virginia's six tribes signed their peace treaties with the Kings of England. Most notable among these was the Treaty of 1677 between these tribes and Charles the II.

In more recent times, this racial hostility culminated with the enactment and brutal enforcement of Virginia's Racial Integrity Act of 1924. This act empowered zealots, like Walter Plecker, a state official, to destroy records and reclassify in Orwellian fashion all non-whites as "colored." To call yourself a "Native American" in Virginia was to risk a jail sentence of up to one year.

Imagine a married couple unable to obtain the release of their newborn child from the hospital until they change their child's ethnicity on the medical record to read "colored," not "Native American.

Or, imagine being told that you have no right to reclaim and bury your ancestors once you learn they were being stored in a museum vault.

Or, imagine the Indian mission school that your grandparents and your parents attended receiving federal recognition as a historic landmark, but yet you and your daughters and sons not recognized by the federal government as Native Americans.

Or, imagine your frustration upon finding your legal efforts to appeal a local water issue in federal court because you're told your suit has no standing since your tribe doesn't exist.

Mr. Chairman, these are just a few of the examples of the indignities visited upon the members of the six tribes present here today.

I mention these indignities because the are part of a shameful legacy experienced in our lifetime. Some are indignities that are still visited upon members of the tribes today.

More to the point, this legacy has also complicated these tribes' quest for federal recognition, making it difficult to furnish corroborating state and official documents. It wasn't until 1997 when then Governor George Allen signed legislation directing

state agencies to correct state records that had deliberately been altered to list Virginia Indians on official state documents as "colored."

In recent years, the Virginia tribes have filed their petitions with the Bureau of Indian Affairs. They have no deep pockets and lack the financial means to rigorously pursue the lengthy and resource intensive petition process. Even more discouraging, they have been told by bureau officials not to expect to see any action on their petitions within their lifetime. The GAO study this committee reviewed earlier this year confirms this backlog.

Asking them to wait another 10 years or more is not what these tribes deserve. Many of the members are elderly and in need of medical care and assistance. They lack health insurance and pensions because past discrimination denied them opportunities for an advanced education and a steady job. Federal recognition would entitle them to receive health and housing assistance.

It would be one of the greatest of ironies and a further injustice to these tribes if in our efforts to recognize the 400th anniversary of the first permanent European settlement in North America, we had failed to recognize the direct descendants of the Native Americans who met these settlers.

Before closing, let me touch upon one issue, the issue of gambling, that may be at the forefront of some Members' concerns. In response to such concerns, I have worked with Rep. Jo Ann Davis, Frank Wolf and others to close any potential legal loopholes in this legislation to ensure that the Commonwealth of Virginia could prevent casino-type gaming by the tribes. Having maintained a close relationship with many of the members of these tribes, I believe they are sincere in their claims that gambling is inconsistent with their values. Many of the tribes live in rural areas with conservative family and religious beliefs. All six tribes have established nonprofit organizations and are permitted under Virginia law to operate bingo games. Despite compelling financial needs that bingo revenues could help address, none of the tribes are engaged in bingo gambling.

Mr. Chairman, the real issue for the tribes is one of acknowledgment and the long overdue need for the federal government to affirm their identity as Native Americans. I urge you to proceed with action on this proposal.

Thank you again for arranging this hearing and for your indulgence on this issue.

Mr. HAYWORTH. If there are no questions for our colleagues, again, we thank you and you are dismissed.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. HAYWORTH. Returning to H.R. 992, we have a trio from Connecticut who join us. Our colleagues Nancy Johnson, Rob Simmons, and Jim Maloney are here to speak on H.R. 992. To our colleagues from Connecticut, we extend the same courtesies as we have with our friends from Virginia. We welcome you to the Resources Committee and welcome your testimony, and we will begin with Mrs. Johnson.

STATEMENT OF THE HON. NANCY JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. Thank you very much, Mr. Chairman. I thank the Committee for holding a hearing on this bill and hope that we will be able to move it forward in these waning days of this session.

I would also like to thank my colleague, Rob Simmons, for testifying in support of my bill and for incorporating my legislation in his broader bill of reforming the tribal recognition process, a bill that is badly needed, and to my colleague, Jim Maloney, for supporting us today.

Also here to testify are Mark Boughton, the Mayor of Danbury, Connecticut, who faces the possibility of having a casino built in his city, and Dolores Schiesel, the First Selectwoman of Kent, Connecticut, who faces losing a large portion of her town's tax base should the Schaghticoke Tribe, which is based in Kent, receive Fed-

eral recognition. I thank them for their leadership on this issue and for joining me before the Committee today.

Across Connecticut and the nation, tribal recognition and land claims cases are undermining the social and economic fabric of our towns and particularly of our small towns. With every tribe that petitions the Federal Government, questions arise regarding the tribe's lineage and land claims. Towns, who face a possible loss of their tax base and a multitude of environmental and congestion issues due to casinos, inevitably are concerned with whether a tribe's claims are legitimate. In order to properly analyze a tribe's claims, towns are having to spend hundreds of thousands of dollars, stretching their resources to the limit. On the other hand, those seeking recognition are often being bankrolled by casino interests.

The town of Kent in my district is a perfect example of a small town embroiled in tribal recognition and land claims issues. The Schaghticoke Tribe, which currently has a 400-acre reservation in Kent, filed a 15,000-page lawsuit claiming nearly 2,000 acres in Kent and seeking to bypass the tribal acknowledgment process by having a judge decide the recognition question. In response to the legal claim, the small rural town of 2,858 people voted in October to spend $200,000 to finance their defense.

This is an extreme financial commitment for such a small town, and I firmly believe that Kent and other cities and towns should be spending their money on infrastructure and education for their children, not lawyers and genealogists. That is why I have introduced my legislation, H.R. 992, to help offset just some of the costs incurred by towns as part of the tribal recognition and land claims cases. Towns should be able to investigate and respond to tribal claims without undermining their financial stability.

Often, the impact of tribal acknowledgment and land claims cases goes beyond the town's legal costs. When a tribe receives official recognition, it becomes, in effect, a sovereign nation. As sovereign nations, tribes are not required to pay property taxes on land they hold, and this means that if a tribe adds land to its reservation that was previously privately held within the town, the town loses that portion of its tax base. Depending on the size of the land claims, the cost to towns can be enormous.

With my legislation, towns will be able to cover their expenses incurred in land claims and tribal acknowledgment cases. With $8 million allocated annually under the bill, towns eligible could receive up to $500,000. It would have a significant impact on residents of Connecticut and the rest of the nation. It would ensure that towns have at least the initial resources needed to deal with tribal issues.

When it comes to tribal recognition and land claims, towns need to be able to fully participate in the process. These grants would allow full participation and ensure that the Bureau of Indian Affairs or the courts see all sides of the case before them. It is crucial to ensure that we get it right the first time, because when it comes to land and recognition, there is no going back.

My legislation is not designed to stop tribes from receiving fair treatment under the tribal recognition process, although I strongly support the reform of that process embodied in Congressman Sim-

mons' bill. But it is designed to assure that small towns with very limited resources can hire genealogists, can get the legal help that they must compete with in the information world as this process moves forward in Washington or in the courts. When you are up against sort of unlimited open pockets for these resources, as some of these small towns are, indeed, the burden is very great and the truth will not drive the process if we do not provide some resources to the small towns for their assistance.

I thank the Committee for allowing me to testify.

Mr. HAYWORTH. And we thank you, Mrs. Johnson.

[The prepared statement of Mrs. Johnson follows:]

Statement of Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut

Mr. Chairman, members of the Committee, thank you for holding this hearing today, and for your interest in this issue.

I would also like to thank my colleague Congressman Rob Simmons for testifying in support of my bill and for incorporating my legislation into his broader bill reforming the tribal recognition process. Also here to testify today are Mark Boughton, the mayor of Danbury, Connecticut, who faces the possibility of having a casino built in his city, and Dolores Schiesel, the first selectwoman of Kent, Connecticut, who faces losing a large portion of her town's tax base should the Schaghticoke tribe, which is based in Kent, receive federal recognition. I thank them for their leadership on this issue and for joining me before the committee today.

Across Connecticut, and the nation, tribal recognition and land claims cases are undermining the economic stability of our towns. With every tribe that petitions the federal government, questions arise regarding the tribe's lineage and land claims. Towns, who face a possible loss of their tax base and a multitude of environmental and congestion issues due to casinos, inevitably are concerned with whether a tribe's claims are legitimate. In order to properly analyze a tribe's claims, towns are having to spend hundreds of thousands of dollars, stretching their resources to the limit. On the other hand, those seeking recognition are often being bankrolled by casino interests.

The town of Kent in my district is the perfect example of a small town embroiled in tribal recognition and land claim issues. The Schaghticoke tribe, which currently has a 400-acre reservation in Kent, filed a lawsuit claiming nearly 2000 acres in Kent and seeking to bypass the tribal acknowledgment process by having a judge decide the recognition question. In response to

the legal claim, the small, rural town of 2,858 people voted in October to spend $200,000 to finance their defense.

This is an extreme financial commitment for such a small town. I firmly believe Kent, and any other city or town, should be spending their money on infrastructure, and the education of their children, not lawyers and genealogists. That is why I have introduced my legislation, H.R. 992, to help offset just some of the costs incurred by towns as part of tribal recognition and land claims cases. Towns should be able to investigate and respond to tribal claims without undermining their financial stability.

Often the impact of tribal acknowledgment and land claims cases goes beyond the town's legal costs. When a tribe receives official recognition, it becomes, in effect, a sovereign nation. As sovereign nations, tribes are not required to pay property taxes on land they hold. This means that if a tribe adds land to its reservation that was previously privately held within the town, the town loses that portion of its tax base. Depending on the size of the land claims, the cost to towns could be enormous.

With my legislation towns will be able to cover their expenses incurred in land claims or the tribal acknowledgment cases. With $8 million allocated annually under the bill, and towns eligible to receive up to $500,000, it would have a significant impact on residents of Connecticut and the rest of the nation. It would ensure that towns have at least the initial resources needed for dealing with these tribal issues.

When it comes to tribal recognition and land claims, towns need to be able to fully participate in the process. These grants would allow full participation and ensure that the Bureau of Indian Affairs or the courts see all sides of the cases before them. It is crucial to ensure that we get it right the first time because, when it comes to land and recognition, there is no going back.

My legislation is not designed to stop tribes from receiving fair treatment under the tribal recognition process. Tribes with proper ancestry or legitimate land claims would not be affected, but towns would have the resources to fully participate in the process. I believe that towns and tribes need to be on equal footing.

Thank you for your consideration of this important legislation.

Mr. HAYWORTH. Now, Mr. Simmons, your testimony, please, sir.

STATEMENT OF THE HON. ROBERT SIMMONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SIMMONS. Thank you, Mr. Chairman. I think that that vote that you were talking about may have just appeared on the board, and that being the case, I would ask that my complete statement be inserted into the record, but I would like to summarize that statement.

Mr. HAYWORTH. Without objection, it is so ordered. Please proceed.

Mr. SIMMONS. Thank you, Mr. Chairman. Congresswoman Johnson has been a great leader on this issue and has explained in some detail why this is important, and I just will simply bring to the attention of the members of the Subcommittee that Connecticut is a State with 169 small towns, 169 little municipalities, and no county government. There is no county government in Connecticut, which makes it very different from other States around the country. If a tribe seeking recognition originates from one of these 169 small towns, it is incumbent upon that municipality, that town, to respond and participate in the process.

You have heard about Kent, which has a couple of thousand people. Throughout Eastern Connecticut, where nine different groups are petitioning, two have already been recognized and a third recognized with administrative appeals pending. These little towns do not have the resources to participate in this process, and that is what her bill does and that is why her bill is so important.

This is an issue that is narrowly drawn. All this bill does is provide grants to those local governments to assist them in participating in this very expensive and very complicated Federal process, essentially funding an unfunded Federal mandate. It is an issue that is supported by the Governor of the State of Connecticut, and I ask that his letter be inserted into the record.

[The letter follows:]

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

JOHN G. ROWLAND
GOVERNOR

September 19, 2002

The Honorable Nick J. Rahall
Ranking Member, House Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Congressman Rahall:

I write today to ask you to raise H.R. 992 for a public hearing in your committee. This bill was introduced by Congresswoman Johnson on March 13, 2001.

The issue of tribal recognition is of great concern to the state of Connecticut. The success of the two tribal casinos located within our state has encouraged many groups to file letters of intent with the Bureau of Indian Affairs. As you know, the filing of a letter of intent is the first step towards achieving federal recognition. To date, there are twelve tribes located in the state of Connecticut who are at various stages of the federal recognition process.

As I am sure you are aware, adequate and effective participation in the federal recognition process is exceedingly costly to all parties - the local communities, the state, and the tribes. In several cases, however, the tribes have significant financial backing by those who have interests in the casino industry. The local communities, however, are left to pass on the costs of their participation to taxpayers.

Passage of H.R. 992 will help alleviate some of the financial disparities that exist among participants in the federal recognition process. Specifically, it provides grants of up to $500,000 to local governments upon a finding by the Secretary of the Interior that pending administrative action (relating to recognition, trust lands, land claims, or any other action relating to an Indian group) is likely to significantly affect the people represented by the local governments. This bill is an important step in leveling the playing field between tribes with financial backing and local communities. Therefore, I urge you to raise Congresswoman Johnson's bill for a public hearing.

I thank you for your time and consideration.

Sincerely,

John G. Rowland

JOHN G. ROWLAND
Governor

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Mr. SIMMONS. It is supported by many local municipal leaders, one of of which is Nick Mullane, who is the First Selectman in North Stonington. He has been working on these issues since the early 1990's with no assistance from the Federal Government, and I would ask that his statement also be inserted into the record.

[The prepared statement of Mr. Mullane follows:]

Statement of Nicholas H. Mullane, II, First Selectman, Town of North Stonington, Connecticut

Introduction

Mr. Chairman and Members of the Committee, I am pleased to submit this testimony on S.1392 & S.1393, bills to reform the Federal tribal acknowledgment process. I am Nicholas Mullane, First Selectman of North Stonington, Connecticut. I testify today also on behalf of Wesley Johnson, Mayor of Ledyard, and Robert Congdon, First Selectman of Preston. These gentlemen are with me today.

As the First Selectman of North Stonington, a small town in Connecticut with a population of less than 5,000, I have experienced first-hand the problems (See Attachment 1) presented by Federal Indian policy for local governments and communities. Although these problems arise under various issues, including trust land acquisition and Indian gaming, this testimony addresses only the tribal acknowledgment process.

Reform of the federal acknowledgment process (See Attachment 2) must occur if valid decisions are to be made. Acknowledgment decisions that are not the result of an objective and respected process will not have the credibility required for tribal and community interests to interact without conflict. The legislation that is being reviewed today is a start, and I want to commend Senators Dodd and Lieberman for calling for these reforms. I also want to thank other elected officials in Connecticut who have fought for reforms to this process, including Congressman Simmons, Congressman Shays, Congresswoman Johnson, and our Attorney General, Richard Blumenthal. In particular, we want to commend Attorney General Blumenthal for his longstanding defense of the interests of the State in these matters. Recently, Governor Rowland has joined in expressing strong concern over tribal acknowledgment and the spread of Indian gaming, and we commend him for this action. As the bipartisan nature of this political response demonstrates, the problems inherent in tribal acknowledgment and Indian gaming are serious and transcend political interests. Problems of this magnitude need to be addressed by Congress, and I ask for your Committee to support the efforts of our elected leaders to bring fairness, objectivity, and balance to the acknowledgment process.

Acknowledgment and Indian Gaming

Federal tribal acknowledgment, in too many cases, has become merely a front for wealthy financial backers (See Attachment 3) motivated by the desire to build massive casino resorts or undertake other development in a way that would not be possible under State and local law. Our Town is dealing with precisely this problem. Both of the petitioning groups in North Stonington—the Eastern Pequots and the Paucatuck Eastern Pequots—have backers who are interested in resort gaming. One of the backers is Donald Trump (See Attachment 4). These financiers have invested millions, actually tens of millions, of dollars in the effort to get these groups acknowledged so casinos can be opened, and they will stop at nothing to succeed (See Attachment 5).

The State of Connecticut has become fair game for Indian casinos, and the acknowledgment process has become the vehicle to advance this goal. For example, three other tribal groups (Golden Hill Paugussett, Nipmuc, Schaghticoke) with big financial backers have their eyes on Connecticut. Their petitions are under active acknowledgment review. As many as ten other groups are in line. While it is unfortunate that the acknowledgment process and the understandable desire of these groups to achieve acknowledgment for personal and cultural reasons has been distorted by the pursuit of gaming wealth by non–Indian financiers, the reality remains that tribal recognition now, in many cases, equates with casino development. This development, in turn, has devastating impacts on states and local communities. Thus, the stakes are raised for every one.

North Stonington has first-hand experience with the problems that result. In 1983, the Mashantucket Pequot Tribe achieved recognition through an Act of Congress. This law, combined with the 1988 Indian Gaming Regulatory Act, ultimately produced the largest casino in the world. That casino has, in turn, caused serious negative impacts on our Towns, and the Tribe has not come forward to cooperate

with us to address those problems. Having experienced the many adverse casino impacts, and understanding the debate over the legitimacy of the Mashantucket Pequot Tribe under the acknowledgment criteria, our Town wanted to assure ourselves that the recognition requests on behalf of the Eastern Pequot and Paucatuck Eastern Pequot groups were legitimate. As a result, we decided to conduct our own independent review of the petitions and participate in the acknowledgment process. It is worth noting that at no time has either petitioner come forward to present to Town leaders any constructive proposal on how they will deal with our concerns if acknowledgment is conferred. Thus, the concerns that motivated our participation have been validated.

The Eastern Pequot Acknowledgment Process

The Towns of North Stonington, Ledyard, and Preston obtained interested party status in the BIA acknowledgment process. We participated in good faith to ensure that the Federal requirements are adhered to. Our involvement provides lessons that should inform federal reform initiatives.

The issue of cost for local governments needs to be addressed. Our role cost our small rural towns over $600,000 in total over a five-year period. This is a small fraction of the millions of dollars invested by the backers of these groups, but a large sum for small local governments. The amount would have been much higher if Town citizens, and our consultants and attorneys had not generously donated much of their time. It has been said that the Eastern Pequot group alone has spent millions on their recognition, and that they spent $500,000 (See Attachment 6) on one consultant for one year to provide them knowledge on "how Washington, D.C. operates." This disparity in resources between interested parties and petitioners with gaming backers skews the process and must be addressed.

The fairness of the process is another problem. We discovered that achieving interested party status was only the tip of the iceberg. One of our biggest problems in participating was simply getting the documents. Our Freedom of Information Act requests to BIA for the information necessary to comment on the petitions were not answered for 2 ° years (See Attachment 7). Only through the filing of a federal lawsuit were we able to obtain the basic information from BIA. The other claims in that lawsuit remain pending. Thus, it was necessary for us to spend even more money just to get the Federal government to meet its clear duties. I trust you will agree with me that taxpayers should not have to pay money and go to court simply to participate in a federal process.

We experienced many other problems with the process. A pervasive problem has been the failure of the process to ensure adequate public review of the evidence and BIA's findings.

During the review of the Pequot petitions, the BIA experts initially recommended negative proposed findings on both groups. One of the reasons for the negative finding was that no determination could be made regarding the groups' existence as tribes for the critical period of 1973 through the present. Under past BIA decisions, this deficiency alone should have resulted in negative findings. Despite this lack of evidence, the negative findings were simply overruled (See Attachment 8) by the then BIA Assistant Secretary, Kevin Gover. Because BIA did not rule on the post–1973 period, interested parties never had an opportunity to comment. This was part of a pattern under the last Administration of reversing BIA staff to approve tribal acknowledgment petitions and shortchanging the public and interested parties. Moreover, with no notice to us, or opportunity to respond, BIA arbitrarily set a cutoff date for evidence that excluded 60% of the documents we submitted from ever being considered for the critical proposed finding.

This problem occurred again with the final determination. In the final ruling, BIA concluded, in effect, that neither petitioner qualified under all of the seven criteria. Our independent analysis confirmed this conclusion.

Nevertheless, after combining the two petitioners (over the petitioners' own objections), considering new information submitted by the Eastern Pequot petitioning group, and improperly using State recognition to fill the gaps in the petitioners' political and social continuity, BIA decided to acknowledge a single "Historical Pequot Tribe." The Towns had no opportunity to comment on this "combined petitioner;" we had no opportunity to comment on the additional information provided by the Eastern Pequot petitioners; and we had no opportunity to comment on the critical post–1973 period. Thus, the key assumptions and findings that were the linchpin of the BIA finding never received critical review or comment. These types of calculated actions have left it virtually impossible for the Towns to be constructively involved in these petitions, and they have caused great concern and distrust over the fairness and objectivity of the process.

Another problem is bias and political interference. Throughout the acknowledgment review, we have continually found that politically-motivated judgment was being injected into fact-based decisions, past precedents were being disregarded, and rules were being instituted and retroactively applied, all without the Towns and State being properly notified and without proper opportunity for comment. A perfect example is the so-called "directive" issued by Mr. Gover on February 11, 2000, that fundamentally changed the rules of the acknowledgment process, including the rights of interested parties. BIA never even solicited public input on this important rule; it simply issued it as an edict. Yet another example is Mr. Gover's overruling of BIA staff to issue positive proposed findings. The massive political interference in the acknowledgment process is discussed in the recent Department of the Interior Inspector General's report, which I submit for the record. (See Attachment 9).

With the recent actions of the BIA, it is questionable that this agency can be an advocate for Native Americans and also an impartial judge for recognition petitions. An example is the action by Secretary McCaleb in his recent "private meeting" with representatives of the Eastern Pequot and Paucatuck Eastern Pequot petitioners to discuss the tribal merger BIA forced upon them. This ex parte meeting with the petitioners is highly inappropriate at a time when the 90-day regulatory period to file a request for reconsideration is still in effect. There is a substantial likelihood that such a request will be filed, and that Mr. McCaleb will rule on the appealed issues. Yet, he is actively meeting with the petitioners to assist them in smoothing over their differences and forming a unified government. How can BIA be expected to rule objectively on an appeal that contests the existence of a single tribe when the decisionmaker is actively promoting that very result?

Still another problem is the manner in which BIA addresses evidence and comment from interested parties. Simply put, BIA pays little attention to submissions from third parties. The Eastern Pequot findings are evidence of this. Rather than responding to comments from the State and the Towns, BIA just asserts that it disagrees without explanation.

Another example is the BIA cut-off date for evidence. BIA set this date for the proposed finding arbitrarily and told the petitioners. It never informed the Towns or the State. As a result, we continued to submit evidence and analyses, only to have it ignored because of this unannounced deadline. BIA said it would consider all of this evidence, but it did not. The final determination makes clear that important evidence submitted by the Towns never got considered for this reason.

Thus, rather than our Town's involvement being embraced by the federal government, we were rebuffed. The very fact of our involvement in the process, we feel, may have even prejudiced the final decision against us. The petitioning groups attacked us and sought to intimidate our researchers. The petitioning groups called us anti–Indian, racists, and accused us of committing genocide. The petitioners publicly accused me of "Nazism" (See Attachment 10) just because our Town was playing its legally defined role as an interested party. At various times throughout the process, the tribal groups withheld documents from us or encouraged BIA to do so. Obviously, part of this strategy was that the petitioners just wanted to make it more expensive to participate, to intimidate us, and to drive the Towns out of the process. They took this approach, even though our only purpose for being involved was to ensure a fair and objective review, and to understand how a final decision was to be made (See Attachment 11).

Finally, I would like to address the substance of the BIA finding on the Eastern Pequot petitions. Based upon an incorrect understanding of Connecticut history, BIA allowed the petitioners to fill huge gaps in evidence of tribal community and political authority, prerequisites for acknowledgment, by relying on the fact that Connecticut had set aside land for the Pequots and provided welfare services. These acts by the State of Connecticut, according to BIA, were sufficient to compensate for the major lack of evidence on community and political authority. By this artifice, along with the forced combination of two petitioners, BIA transformed negative findings into positive, with no basis in fact or law.

Clearly, the past actions by Connecticut toward the later residents of the Pequot reservation did nothing to prove the existence of internal tribal community or political authority. These actions simply demonstrated actions by the State in the form of a welfare function. If BIA does not reject this principle now, it will give an unfair advantage not only to the Pequot petitioners but possibly to other Connecticut petitioning groups as well.

Principles for Reform

Based upon years of experience with the acknowledgment process, our Towns now have recommendations to make to Congress.

As an initial matter, it is clear that Congress needs to define BIA's role. Congress has plenary power over Indian affairs. Congress alone has the power to acknowledge tribes. That power has never been granted to BIA. The general authority BIA relies upon for this purpose is insufficient under our constitutional system. In addition, Congress has never articulated standards under which BIA can exercise acknowledgment power. Thus, BIA lacks the power to acknowledge tribes until Congress acts to delegate such authority properly and fully. Up until now, no party has had the need to challenge the constitutional underpinnings of BIA's acknowledgment process, but we may be forced to do so because of the Eastern Pequot decisions.

Second, the acknowledgment procedures are defective. They do not allow for an adequate role for interested parties, nor do they do ensure objective results. The process is inherently biased in favor of petitioners, especially those with financial backers.

Third, the acknowledgment criteria are not rigorous enough. If the Eastern Pequot petitioner groups qualify for acknowledgment, then the criteria need to be strengthened. The bar has been set too low.

Fourth, acknowledgment decisions cannot be entrusted to BIA. The agency's actions are subject to political manipulation, as demonstrated by the report of the Department's Inspector General detailing the abuses of the last Administration. Also, BAR itself will, in close cases, lean to favor the petitioner. The result-oriented Eastern Pequot final determination is proof of this fact. For years we supported BAR and had faith in its integrity. Now that we have studied the Eastern Pequot decision, we have come to see the bias inherent in having an agency charged with advancing the interests of Indian tribes make acknowledgment decisions. Similar problems are likely to arise under an independent commission created for this purpose unless checks and balances are imposed that ensure objectivity, fairness, full participation by interested parties, and the absence of political manipulation.

Finally, because of all of these problems, it is clear that a moratorium on the review of acknowledgment petitions is needed. It makes no sense to allow such a defective procedure to continue to operate while major reform is underway. This is the principle underlying the amendment introduced on the floor of the Senate last week by Senators Dodd and Lieberman. This concept of that amendment is sound and needs to be enacted. No petitions should be processed during this moratorium. Although we approve of the moratorium concept while other problems of the acknowledgment process are being addressed, the Towns do not support this specific proposal because it does not go far enough, and it ratifies elements of the system that need to be more carefully reviewed and substantially reformed.

If a process must exist whereby legitimate Indian tribes can be acknowledged. S. 1392 is a good place to start with reform. It contains excellent ideas for public debate and Congressional review, but ultimately more drastic reform is called for.

S.1393 also contains essential elements of a reformed system, by helping to level the playing field and providing assistance for local governments to participate in the acknowledgment process. We urge Congress to address promptly the problems that are the subject of S.1393.

Conclusion

Our Towns respectfully request that this Committee make solving the problems with the acknowledgment process one of its top priorities. A moratorium on processing petitions should be imposed while you do so. In taking this action, we urge you to solicit the views of interested parties, such as our Towns and State, and to incorporate our concerns into your reform efforts. Tribal acknowledgment affects all citizens of this country; it is not just an issue for Indian interests.

We are confident that such a dialogue ultimately will result in a constitutionally valid, procedurally fair, objective, and substantively sound system for acknowledging the existence of Indian tribes under federal. With the stakes so high for petitioners, existing tribes, state and local governments, and non–Indian residents of surrounding communities, it is necessary for all parties with an interest in Indian policy to pursue this end result constructively. Ledyard, North Stonington, and Preston look forward to the opportunity to participate in such a process.

Thank you for considering this testimony.

Note: Attachments have been retained in the Committee's official files.]

Mr. SIMMONS. And then finally, Mr. Chairman, just so you get a sense of this, on recognition issues alone in North Stonington, a small town in my district, since 1996, $463,826.73, to be precise, has been spent by this small town of under 5,000 people in popu-

lation to participate in recognition procedures. Some of the folks on the other side include Donald Trump, who has deep pockets, and these folks do not have a fair shake in this process. Since 1993, on annexation or taking land into trust issues, the same town has spent $421,000. Almost $1 million has been expended on these issues with not one nickel of Federal assistance.

I think that if we want this process to be fair, and we all do, we want it to be fair on all sides, then some accommodation has to be given to these small towns. That is what Congresswoman Johnson's bill does. That is why I support it enthusiastically, and I thank the Chair.

Mr. HAYWORTH. And the Chair would thank our friend, Mr. Simmons. Of course, without objection, the statements that you articulated from other elected representatives and concerned parties will be made part of the record.

[The prepared statement of Mr. Simmons follows:]

Statement of Hon. Rob Simmons, a Representative on Congress from the State of Connecticut

Mr. Chairman and members of the Committee,

Thank you for allowing me to testify in support of reforming the federal Indian recognition process. And I would like to thank the dean of the Connecticut delegation, Nancy Johnson, for being such a leader on the issue. She has worked tirelessly on this issue and I appreciate her bringing this issue to the forefront.

Mr. Chairman, my home state of Connecticut has been and continues to be affected by our federal Indian recognition process. We are home to three federally recognized tribes. About ten more groups are petitioning for federal status. Once federally acknowledged, tribes in Connecticut can negotiate gaming compacts with the state and open casinos.

Connecticut has seen both the benefits and the adverse effects of tribal recognition. One benefit is that Indian gaming has produced jobs at a time when defense contracting and manufacturing have been on the decline. Casinos purchase goods and services, and pay upwards of $300 million a year into the state budget. Tribal members have also been personally generous with their new wealth, and support numerous community projects and charities.

But there are also negative impacts. In Connecticut, recognition means the right to operate a casino and that places pressure on local municipalities who have no right to tax, zone or plan for these facilities. Small rural roads are overburdened with traffic, and volunteer fire and ambulance services are overwhelmed with emergency calls.

No region has been more impacted by tribal recognition decisions than eastern Connecticut, and no town has fought harder to preserve the rights on municipalities than the town of North Stonington, Connecticut, where my friend, Nick Mullane, serves as First Selectman [or Mayor]. For more than a decade Nick and I have been working on the issues of tribal recognition and taking "land into trust" because of the burdens they place on Nick and the people he serves.

North Stonington, and towns like Ledyard and Preston, has spent several years in the courts struggling against the expansion of Mashantucket Pequot trust lands. As well, they are engaged in the lonely and expensive process of challenging the flawed BIA decision in June that merged two bands of Eastern Pequots—the Paucatuck Eastern Pequots and the Eastern Pequots—as one tribe. This struggle has had profound political, economic, social and environmental impacts on these towns.

Even more troublesome is the "land into trust" issue associated with recognition. The very real fear and uncertainty of reservation expansion has both delayed and increased municipal planning, caused property values to fall, increased the tax burden for uncompensated services and created friction within the local communities. What was once a relatively predictable situation in eastern Connecticut is now very unpredictable because of a failed federal recognition process and fear of taking "land into trust." Add this to road construction, infrastructure needs, police, and fire and emergency services and you can see the profound affect federal tribal recognition decisions have on small towns and municipalities.

This is why leaders like Nick Mullane, Connecticut's State Attorney General Richard Blumenthal, Bob Congdon, Wes Johnson and others have dedicated so much time to the federal recognition issue—they want to bring clarity and certainty back into the process.

On this basis, Mr. Chairman, I respectfully request that you insert into the committee record materials provided by First Selectman Mullane. I believe you will find this information compelling.

I fully support Congresswoman Johnson's legislation to provide $8 million in grants to local governments to assist in participating in decisions related to certain Indian groups and Indian tribes. In fact, I have introduced a broader tribal recognition reform bill that includes Mrs. Johnson legislative language. And my bill goes one step further—it makes these grants retroactive so that any local government that has spent money on decisions related to certain Indian groups and/or tribes can be eligible for the program.

Federal recognition policies are turning the "Constitution State" into the "casino state," and we are concerned about it. We want more control over the process. We want to close the loopholes. We want relief to what can be a very expensive battle on a very uneven playing field. This bill does that and I urge this committee to join Nancy Johnson and me in support of H.R. 992.

I thank the committee for an opportunity to testify and I will be happy to take any questions you may have.

Mr. HAYWORTH. At this juncture, I might also seek unanimous consent to have the statement of Robert Chicks, President of the Stockridge Muncie community of Wisconsin, included in the record on that same legislation.

[The prepared statement of Mr. Chicks follows:]

Statement of Robert Chicks, President, Stockbridge–Munsee Community

Good morning. My name is Robert Chicks. I am the President of the Tribal Council for the Stockbridge–Munsee Community Band of Mohican Indians. The Stockbridge–Munsee Tribe is located in northeastern Wisconsin. I am also the Minneapolis Area Vice President of the National Congress of American Indians, Co-chairman of the National Tribal Leaders Task Force on Land Recovery and Secretary for the Midwest Alliance of Sovereign Tribes.

I am here today to provide testimony on H.R. 992, a bill to provide grants to local governments to assist such local governments in participating in certain decisions related to certain Indian groups and Indian tribes.

This bill should not be enacted because its intent and effect are irreconcilable with the federal government's historic legal and moral responsibilities to Indian tribes. I will briefly address three main points: 1) the bill's proposals would undermine the long standing trust relationship between the federal government and Indian tribes; 2) providing money to local governments for their "participation" would foster negative relationships between local governments and Indian tribes; and, 3) there are other alternatives available that could achieve positive results while preserving the integrity of the trust relationship.

1. The bill's proposals would undermine the long-established Trust Relationship between the federal government and Indian tribes.

H.R. 992's proposal to provide federal money to local governments for their participation in certain decisions relating to Indian tribes is completely at odds with the United States' historic legal and moral obligations to Indian tribes.

Following this Nation's independence from Great Britain, control over Indian affairs was at first divided between the 13 states and the central government. This arrangement under the Articles of Confederation proved unworkable and with the adoption of the Constitution, exclusive control over Indian affairs was purposefully placed with the Federal Government. By the choice of the Federal Government, this exclusive control has in practice been intrusive and far-reaching, inserting the federal government into nearly aspect of tribal and individual Indian affairs. But, as the courts have consistently recognized, with this power has come the heightened duty of the United

States to protect tribal governments and resources from the pressures of local and state governments. Federal policy toward Indian tribes thus continues to this day to be one of protection and guardianship. This relationship has been characterized as a trust, or fiduciary relationship which, in many cases, is legally enforceable in

the courts. Certainly one of the cornerstones of any trust relationship is the trustee's duty of loyalty to his beneficiary, and therein lies the major problem with H.R. 992.

It is well documented that the centuries since the Federal Government seized control of Indian lives and property have witnessed many attempts by state and local interests to undermine the federal obligations to preserve and protect Indian resources and assist Indian people to become economically and culturally self-sufficient. Many of these attempts have been successful. Time and again, Congress has succumbed to political pressure applied by aggressive elements of the dominant society. As a result, significant Indian resources have been transferred to non–Indians and important powers of tribal self-government have been lost or diminished.

H.R. 992 seeks to turn back the clock to an earlier era, one where politicians were willing to abandon this great nation's solemn duties of protection and loyalty to Indians to further the interests of non–Indian commercial and governmental interests. This Congress should not add H.R. 992 to the litany of shameful actions that, in the final analysis, have served only to bring dishonor to our country.

I will address each of the federal decision-making processes targeted by H.R. 992.

Acknowledgment and recognition. The Federal acknowledgment and recognition process carefully examines an applicant Indian group's history and other attributes in order to determine whether, under applicable federal guidelines, the group can be considered a recognized Indian tribe by the federal government. This process is conducted by experienced staff, including historians and anthropologists, and its outcome is largely based on historical and scientific criteria. Indian groups seeking federal acknowledgment generally must fund their own federal acknowledgment applications. H.R. 992 would not fund tribal applications, but would permit the Secretary to divert funds from other- established Indian programs to fund non–Indian opposition to small, unrecognized tribes which may have few resources. Undoubtedly, this process has recently become more politicized because of Indian Gaming; but enactment of H.R. 992 would only further politicize the process.

The politicization of the acknowledgment and recognition process has undermined its effectiveness and integrity. It should not be further- politicized by providing federal money to local governments to challenge the process. Rather, responsible congressional leaders, who have a general trust responsibility to Indian people and a need at the same time to be responsive to their electorate, should be considering ways to increase the integrity of the process by insulating it from political influences. Certainly local governments have no expertise in questions of tribal existence, an area long recognized to lies within the exclusive province of federal law and policy. Congress should retain the current recognition process as is, a process based on criteria rooted in history and science, and refrain from funding an attack on the system that the federal government has a trust obligation to protect. Instead, there should be focus on ensuring that the current process is implemented with professionalism and integrity, free from the influences of local and state politicians.

Trust land.[1] Similar to the recognition process, the land-to-trust process is another key aspect of the solemn trust relationship between the federal government and Indian tribes. The well-settled federal policy of restoring tribal land lost during the Allotment Era remains intact. The land-to-trust process is a federal process which currently addresses the position of local governments and provides ample notice and opportunity for local governments to be heard prior to a land to trust decision being made. What the policy does not currently provide, and what the policy should not provide is federal funding for local governments to launch challenges to the process based on their own beliefs that the system should not exist in the first place. If lawmakers wish to debate the wisdom of the policy issues behind land to trust, then that debate should be named as such and must be out in the open. Providing money to local governments to fight against land going into trust is a back door method for turning back government policy, a method I might add that provides further incentive for the break-down of tribal - local government relations.

The bill's proposals confuse two issues: 1) the fact that land is going into bust and 2) its consequences on local governments. Land-to-trust as a policy should not be up for debate. However, for those local governments that are concerned about the consequences of land going into trust, providing them with reimbursement for participation essentially encourages them to undermine the policy to the point that it becomes ineffective. The more sound approach is to provide funding for the con-

[1] The fee-to-trust process is provided for under section 5 of the Indian Reorganization Act ("IRA"). The IRA is designed to help Indian tribes regain the 90 million acres of land lost due to the failed Allotment Era policy of breaking up tribal communal lands. To date, less than 10% of lost lands have been recovered.

sequences (if they truly exist) of the federal government's policy rather than funding an ongoing fight over what the policy should be.

Land claims. Perhaps more than any other category within this bill, land claim issues are the most glaring example of H.R. 992's irreconcilable nature. Land claims involve making tribes whole when lands have been taken from them in violation of federal law. Here, the trust relationship is operating at its highest level: the federal government is working to assist tribes with settling some of the most egregious wrongs committed against them. The federal government has a legal obligation to protect tribal land and valid claims tribes have to land. This duty is well established in case law and cannot be shrugged off as a vague, philosophical responsibility.

It is impossible to reconcile the federal government's trust responsibility to Indian tribes with H.R. 992's proposal to give money to local governments to fight the federal government and tribes who are trying to remedy violations of federal law. There is an untenable conflict of interest created in the logical results of H.R. 992, where the federal government is on the one hand funding opposition to land claims and on the other intervening on tribes' behalf to successfully prosecute the same claims.

Other actions. The most troubling aspect of the catch-all (4) "other actions" is its lack of specificity. Again, the relationship between Indian tribes and the federal government, to the greatest extent possible, must rise above politics. The grants that could be made by the Secretary under (4) are limited only by one's imagination. For example, the word "action" does not appear to be limited to federal processes. The bill conceivably would allow the Secretary to make a grant to a local government to participate in internal tribal affairs such as elections. Imagine two candidates for tribal council, one viewed as favorable by locals and the other not. H.R. 992 would allow the Secretary to fund a local government's support of one candidate if the election of one candidate could "significantly affect "the people represented by that local government.

2. Providing money to local governments for their "participation" fosters negative relationships between local governments and Indian tribes.

The bill incorrectly assumes that negative relationships exist between local governments and tribes. In addition, rather than seeking to encourage dialogue and positive solutions, H.R. 992 fosters conflict and the perpetuation of conflict by making $8,000,000 of federal money available to challenge federally established aspects of the tribal-federal relationship. Although the bill uses the neutral language of "participation," the only plausible inference that can be drawn from the amounts of money mentioned in the bill is that participation in fact means participation in an adversarial setting. I might ask the federal government, since it seems so willing with this legislation to fund "participation" of non–Indians against Indians, where was the federal government funding to assist Tribes who could not afford to pursue their land claims? Who could not afford to put together a land-to-trust application? Who could not afford to put together a federal recognition application?

The fact is that many tribes and local governments reach agreements and understandings with respect to challenging issues that they may be facing on the issues in the bill. H.R. 992 undermines positive dialogue by skewing incentives for local governments.

Money is a powerful motivator. What message does this bill send to local governments? The federal government is making money available for those who elect to "participate" in a decision-making process. There is no definition of the term "participation" but as stated earlier, the only logical conclusion is that the participation will be in an adversarial manner, legal challenges leading to litigation in court. Local governments who work with tribes to find constructive solutions and are able to avoid expensive decision making processes do not receive any money. The message for local government officials is clear: there is money in opposing tribes and the federal government in Indian-related decision-making actions. This is not the message that the tribes' trustee should be sending to U.S. citizens, particularly when those funds might be diverted from other moneys that the federal trustee should use to help Indian people.

3. Viable alternatives.

A. Promote legislation that creates incentives for tribes and local governments to work through their issues related to the areas addressed in the proposed legislation. Do not support legislation that clearly, from the outset, on its face, encourages opposition.

B. If the federal government is willing to spend the money envisioned by H.R. 992, perhaps it should consider spending that money to address the real issue: local governments' loss of jurisdiction and tax money through the land-to-trust process.

Consider a grant to local governments who lose revenue associated with land through the federal processes set up to correct wrongs between the federal governments and tribes.

CONCLUSION

The long-standing trust relationship between the federal government and Indian tribes is a relationship weighted with history, law and morality. It is true that non–Indians and local governments on or near Indian reservations have legitimate concerns over a range of issues. The federal government must find creative solutions that address the concerns of all parties, while preserving its solemn duties of trust and loyalty to tribes. Unfortunately, H.R. 992 does not strike that balance. The result of the bill's proposals would be to thwart some of the most important aspects of federal Indian policy and the trust responsibility. 1 urge you not to endorse such legislation. Thank you.

Mr. HAYWORTH. We have one of our other colleagues there seated at the table. Our friend, Jim Maloney, has some thoughts on this. Welcome, Congressman Maloney, and you are recognized for your testimony.

STATEMENT OF THE HON. JAMES H. MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. MALONEY. Thank you, Chairman Hayworth and Ranking Member Rahall, members of the Committee. Thank you for the opportunity to come before you to testify in regard to H.R. 992. I support H.R. 992 and I want to thank First Selectwoman Schiesel from Kent for being here and I want to thank my mayor, Mayor Mark Boughton of my hometown of Danbury, for being here with us today, and I know you are going to hear from him later on in your testimony.

I also note, however, that H.R. 992 is very narrow in its effect. The legislation comprises, as Congressman Simmons mentioned, just Section 8 of more comprehensive legislation, H.R. 3548, introduced by Congressman Simmons, myself, and Mrs. Johnson, and cosponsored by additional Members of Congress. H.R. 3548 has also been referred to this Committee and I also support its passage.

H.R. 992 and H.R. 3548 both provide grants to ensure the input of local communities affected by the impact of Federal recognition of Native American tribes. In addition to providing assistance to local communities so that they can better provide information to the Bureau of Indian Affairs, the more comprehensive H.R. 3548 would reform the Bureau of Indian Affairs process itself. Legislation such as this highlights the struggles faced by local communities in opposing well-financed gambling interests.

It also highlights something else I would hope we can all agree on, that the Federal tribal recognition process is seriously broken. The most recent Bureau of Indian Affairs decision on tribal recognition in Connecticut, which affected primarily areas in Congressman Simmons' area, exemplifies the problem with this process and the need to aid local governments so they may fully participate in the decisionmaking process.

The BIA, without notice to anyone and without input from the State of Connecticut or any of the local communities, unilaterally combined two separate petitions, from the Eastern Pequot and the Paucatuck Eastern Pequot petitioner groups, and determined the existence of a single, unified tribe. The Bureau of Indian Affairs took this action even though both petitioners sought acknowledg-

ment separately and were, in fact, strong rivals of each other. The groups have been divided for many decades and actively opposed each others' petitions.

The Bureau of Indian Affairs combined the petitions and created a new, never heard of before, tribe. This unprecedented Bureau of Indian Affairs decision would have clearly benefitted from greater input from the local communities affected by the decision. That is why I recently joined with my colleagues in asking the General Accounting Office to formally investigate this outrageous decision.

Connecticut has two other petitions now pending before the BIA, each of which points in the direction of casino development. Casinos can place an unacceptable economic burden on the services of the local community. In addition to the economic dislocation of casino development, we all know that detrimental social implications are inextricably bound to the culture of gambling. Public infrastructure, emergency services, and social services provided by local governments are put under immense pressure by the demands associated with gambling. At the same time, local governments are not provided the resources to adequately offset those impacts. Most of the responsibility for addressing those needs is, unfortunately, borne by the State and local communities.

The Bureau of Indian Affairs should not be allowed to place the burden of a casino, brought about by Federal recognition, on local communities that have been effectively shut out of the recognition process because they could not afford to have their views considered.

In conclusion, when the Committee meets to mark up this legislation, it should consider a number of strengthening measures. First, it should make clear that the financial assistance provided to local communities to participate in a Federal recognition case would not come at the expense of Native American human service programs. Those programs are under-funded as it is.

Second, it should adopt the comprehensive reforms of the Bureau of Indian Affairs recognition process as contained in H.R. 3548. Providing money, although a good idea, without fixing the broken BIA process is like offering to bail the ocean with a spoon. It will not do any harm, but it also will not solve the problem unless coupled with much more sweeping action.

Today, the Connecticut delegation comes before this Committee on a bipartisan basis, united, in urging that this issue be forcefully addressed. Thank you for considering my testimony, and I would be pleased to answer any questions that the Committee may have.

Mr. HAYWORTH. And we thank you, Mr. Maloney, and all three of our friends from Connecticut.

[The prepared statement of Mr. Maloney follows:]

Statement of Hon. James H. Maloney, a Representative in Congress from the State of Connecticut

Chairman Hansen, Ranking Member Rahall, and members of the Committee, thank you for the opportunity to testify in regard to H.R. 992. Let me also acknowledge the participation of First Selectman Dolores Schiesel of Kent and the Mayor of my hometown, Danbury, Mayor Mark Boughton. I am delighted that these two local officials are here to share their special perspective on this issue.

I support H.R. 992. I also note, however, that it is very narrow in its effect. The legislation comprises just section 8 of more comprehensive legislation, H.R. 3548. Introduced by Congressman Simmons, myself, Mrs. Johnson and cosponsored by addi-

tional members of Congress, H.R. 3548, has also been referred to this Committee and I also strongly support its passage.

H.R. 992 and H.R. 3548 both provide grants to ensure the input of local communities affected by the impact of federal recognition of a Native American tribe. In addition to providing assistance to local communities so that they can better provide information to the Bureau of Indian Affairs, the more comprehensive H.R. 3548 would reform the Bureau of Indian Affairs process itself. Legislation such as this highlights the struggles faced by local communities in opposing well-financed gambling interests.

It also highlights something else that I would hope we can all agree on, that the federal tribal recognition process is seriously broken. The most recent Bureau of Indian Affairs decision on tribal recognition in Connecticut exemplifies the problem with this process, and the need to aid local governments so they may fully participate in the decision making process. The BIA, without notice to anyone, and without input from the State of Connecticut or the local communities, unilaterally combined two separate petitions, from the Eastern Pequot and the Paucatuck Eastern Pequot petitioner groups, and determined the existence of a single, unified tribe. The Bureau of Indian Affairs took this action even though both petitioners sought acknowledgment separately and were, in fact, strong rivals of each other. The groups have been divided for many decades and actively opposed each other's petitions. This unprecedented Bureau of Indian Affairs decision would have clearly benefitted from greater input from the local communities affected by the decision. That is why I recently joined with my colleagues in asking the GAO to formally investigate this decision.

Connecticut has two other petitions now pending before the BIA, each of which points in the direction of casino development. Casinos can place an unacceptable economic burden on the services of the local community. In addition to the economic dislocation of casino development, we all know that detrimental social implications are inextricably bound to the culture of gambling. Public infrastructure, emergency services and social services provided by local governments are put under immense pressure by the demands associated with gambling. At the same time, local governments are not provided the resources to adequately offset those impacts. Most of the responsibility for addressing those needs is unfortunately born by the state and local communities.

The Bureau of Indian Affairs should not be allowed to place the burden of a casino, brought about by federal recognition, on local communities that have been effectively shut out of the recognition process because they could not afford to have their views considered.

When the Committee meets to mark up this legislation it should consider a number of strengthening measures. First, it should make clear that the financial assistance provided to local communities to participate in a federal recognition case would not come at the expense of Native American human services programs. These programs are under-funded as it is. Second, it should adopt the comprehensive reforms of the Bureau of Indian Affairs contained in H.R. 3548. Providing money, without fixing the broken BIA process, is like offering to bail the ocean with a spoon. It won't do any harm, but it also won't solve the problem unless coupled with much more sweeping action.

Today, the Connecticut delegation comes before the Committee united in urging that this issue be addressed. Thank you for considering my testimony. I would be pleased to answer any questions the Committee may have.

Mr. HAYWORTH. As the vote clock clicks down on the floor, we will be heading out in just a second.

At this juncture, however, I ask unanimous consent that following the testimony we heard, the gentlewoman from Connecticut, Mrs. Johnson, the gentlemen from Connecticut, Mr. Simmons and Mr. Maloney, the gentleman from Virginia, Mr. Moran, and the gentlewoman from Virginia, Ms. Davis, be allowed to sit on the dais and participate in the hearing. Is there objection?

[No response.]

Mr. HAYWORTH. Hearing none, so ordered. At this junction, the Committee will recess, complete our voting on the floor, and return as quickly as possible. The Committee stands in recess.

[Recess.]

Mr. HAYWORTH. The Committee come to order. We thank our guests for joining us and for keeping it down to a dull roar, and we thank members of the Committee for being here.

We proceed now to panel three, and the Chair would welcome Mr. Chris Kearney, Deputy Assistant Secretary for Policy and International Affairs, Department of the Interior, to testify on H.R. 5155; and Mr. Michael Smith, Director, Office of Tribal Services of the Bureau of Indian Affairs, to offer remarks on H.R. 992 and H.R. 2345.

Welcome, witnesses, and Mr. Kearney, we will begin with your testimony, please, sir.

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR

Mr. KEARNEY. Thank you, Mr. Chairman. Good morning, members of the Committee. I am pleased to be here to testify on the important issue of sacred sites and land protection. The Department of Interior is working to implement a policy on Indian sacred sites and we believe imposing statutory requirements at this time would be counterproductive to that process. Therefore, we view that moving forward with H.R. 5155 is premature.

Executive Order 13007, the Indian Sacred Sites, was issued in 1996. It requires Federal land management agencies, to the extent practical and permitted by law, and not clearly inconsistent with the central agency functions, to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting physical integrity of such sites. The order required each respective branch agency to implement procedures, where practical and appropriate, to ensure reasonable notice is provided of proposed actions or policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of the sites.

The order also requires Federal agencies to consult with tribes on a government-to-government basis whenever plans, activities, decisions, or proposed actions affect the integrity of or access to the sites. Each relevant cabinet agency was required to send an implementation report to the President within 1 year of the order's issuance.

The Office of American Indian Trust coordinated the Department's implementation plan and OAIT is responsible for ensuring Department-wide compliance and overall consistency of the sacred sites executive order. An interagency working group on implementation of the order was created at the Department, comprising representatives of each Departmental bureau, appropriate Departmental offices, and the Office of the Solicitor.

The working group has actively sought input from tribal representatives on all aspects of the Department's implementation process. We have asked for tribal input on the structure, location, and content for consultations, and we have also hosted three formal discussion meetings between the tribe and Federal representatives focusing on implementation of both the procedural and substantive point of view.

The Departmental manual chapter was created as a result of that consultation and the chapter serves as a permanent means to integrate protection, preservation, accommodation of access, and use practices and policies in Departmental processes. It contains specific provisions requiring bureaus and offices to ensure that planning and decisions document several things: One, a rationale for the recommended decision; two, an explanation of how the decision is consistent with the Departmental manual chapter; and three, when there is a determination that compliance with the general requirements executive order would be clearly inconsistent with agency function, the agency rationale must be fully explained in the report.

To facilitate the development of working relationships, the manual chapter directed bureaus, where appropriate, to establish formal procedures for interaction with tribes on matters concerning the sacred sites, and the OAIT serves as coordinator for the Department, but all bureaus and offices are responsible for identifying senior-level members as designated points of contact.

I move to the current status. In October of 2001, the Department attended the Sacred Lands Forum in Boulder, Colorado. Through considerable internal review and dialog with interested participants at the forum, it became clear that we needed to move forward on establishing policies and procedures for addressing protection of sacred sites. At the "Overcoming the Challenges" symposium held on March 20 of this year, which was held as part of the Sacred Lands Forum, we announced our intent to convene the Department's—reconvene, rather, the Sacred Sites Working Group.

In June of this year, each Interior office and bureau involved with sacred sites issues was asked to assign a representative to the working group and the first meeting was held on July 2, 2002, in the office of the Assistant Secretary for Indian Affairs. The group has been in the process of identifying the status of sacred site management across the Bureau, and at future meetings, the working group will develop management guidance and tools to ensure full compliance with the executive order.

On August 14, the working group and the Advisory Council on Historic Preservation sponsored an interagency meeting on sacred lands and cultural resources. This meeting was conducted under the auspices of the Working Group on Environmental Justice with the idea that broader collaboration was needed to bring awareness of sites to other agencies. Several important issues were discussed at that meeting, including the issue of confidentiality. The Department is exploring ways to address the desire of tribes to keep information about the nature and location of sites confidential while still ensuring that appropriate public processes and input are maintained.

In summary, Mr. Chairman, the Department plans to continue working closely with American Indians and Alaska Natives through a government-to-government process, ensuring access to and protection of sacred sites. A substantial amount of effort has already gone into consultation with the tribes to establish a sacred sites protection policy that works for Native Americans and for all parties.

The Department appreciates the efforts of Congressman Rahall to address this issue through legislation. However, we believe that the new mandates contained in the bill would create an unreasonable and imbalanced statutory process. The administration, we believe, should be afforded the opportunity to complete the implementation strategies for the executive order before pursuing any new legislative mandates.

This concludes my statement. I would be happy to answer any questions you might have.

Mr. HAYWORTH. And we thank you very much, Mr. Kearney.

[The prepared statement of Mr. Kearney follows:]

Statement of Christopher Kearney, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of the Interior

I am pleased to be here today to testify before this Committee on the important issue of Sacred Sites and lands protection. The Department of the Interior is working to implement a policy on Indian Sacred Sites and we believe imposing statutory requirements at this time would be counterproductive to that process. We therefore view that moving forward with H.R. 5155 is premature.

Background

Executive Order No. 13007, 61 Fed. Reg. 26,771, Indian Sacred Sites, was issued in 1996. The Order requires federal land management agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, accommodate access to and ceremonial use of Indian sacred sties by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. The order required each respective branch agency to implement procedures, where practicable and appropriate, to ensure reasonable notice is provided of proposed actions or policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of these sites. The Order also requires federal agencies to consult with tribes on a government-to-government basis whenever plans, activities, decisions, or proposed actions affect the integrity of, or access to, the sites. Each relevant Cabinet agency was required to send an implementation report to the President within one year of the Order's issuance.

The Office of American Indian Trust (OAIT) coordinated the Department of the Interior's implementation plan. The OAIT is responsible for ensuring department-wide compliance and overall consistency of the Sacred Sites Executive Order. An interagency Working Group on the Implementation of the Sacred Sites Executive Order was created at the Department, comprising representatives of each departmental bureau, appropriate departmental offices and the Office of the Solicitor.

The Working Group has actively sought input from Tribal representatives on all aspects of the Department's implementation process. The Department asked for Tribal input on the structure, location and content for consultations and hosted three formal discussion meetings between tribal and federal representatives focusing on implementation from both a procedural and substantive perspective. The meetings were held in Portland, Oregon; Denver, Colorado; and Reston, Virginia in March and early April of 1997. Topics at the meetings included: how to conduct meaningful consultation; how and when consultation processes are triggered; how to protect the physical integrity of sacred sites; how to protect the confidentiality of culturally sensitive information; how to accommodate access and use; and dispute resolution.

Departmental Manual Chapter (512 DM 3) was created as a result of the consultation. The Chapter serves as a permanent means to integrate protection, preservation, accommodation of access and use practices and policies into departmental processes. It contains specific provisions requiring bureaus and offices to ensure that planning and decision documents contain: 1) a rationale for the recommended decision; 2) an explanation of how the decision is consistent with the Departmental Manual Chapter; and 3) when there is a determination that compliance with the general requirements of the Executive Order would be clearly inconsistent with essential agency function, the agency's rationale must be fully explained in the report.

To facilitate the development of working relationships, the Departmental Manual Chapter directed bureaus, where appropriate, to establish formal procedures for interaction with tribes on matters concerning Indian sacred sites. The OAIT serves as coordinator for the Department but all bureaus and offices are responsible for identifying senior level staff members as designated points of contact. Bureau rep-

resentatives are responsible for contacting tribes to address the terms and conditions for interaction and to enter into formal arrangements as appropriate. These formal arrangements should include provisions: 1) to ensure the protection, accommodation, access and use of Indian sacred sites; 2) to ensure the confidentiality of Indian sacred sites; 3) to develop mutually acceptable notification process; and 4) to develop specific dispute resolution procedures.

Current Status

In October, 2001, the Department attended the Sacred Lands Forum in Boulder, Colorado. Through considerable internal review and dialogue with interested participants at the forum, it became clear that we needed to move forward on establishing policies and procedures for addressing protection of sacred sites. At the "Overcoming the Challenges" symposium held on March 20, 2002, which was held as part of the DC Sacred Lands Forum, we announced our intent to reconvene the Department's Sacred Sites Working Group.

In June, 2002, each Interior office and bureau involved with sacred sites issues was asked to assign a representative to the Working Group and the first meeting occurred on July 2, 2002, in the office of the Assistant Secretary for Indian Affairs. The Group has been in the process of identifying the the status of sacred site management across the bureaus. At future meetings, the Working Group will develop management guidance and tools to ensure full compliance with the Executive Order.

On August 14, the Interior Working Group and the Advisory Council on Historic Preservation sponsored an interagency meeting on sacred lands and cultural resources. This meeting was conducted under the auspices of the Interagency Working Group on Environmental Justice with the idea that broader collaboration was needed to bring awareness of sacred site issues to other agencies. Several important issues were discussed at that meeting including the issue of confidentiality. The Department is exploring ways to address the desire of tribes to keep information about the nature and location of Indian sacred sites confidential, while still ensuring that appropriate public processes and input are maintained.

The next meeting of the Working Group will be held on Wednesday, October 23, 2002, from 10:00 - 12:00 where it is expected that the Department will move to finalize the Bureau policies and draft Departmental directives for implementing Sacred Sites policy.

Summary

The Department plans to continue working closely with American Indians and Alaska Natives, through the government-to-government process, in ensuring access to and protection of sacred sites. A substantial amount of effort has already gone into consultation with the Tribes to establish a sacred sites protection policy that works for Native Americans and for all parties. The Department appreciates the efforts of Congressman Rahall to address this issue through legislation, however, we believe the new mandates contained in H.R. 5155 would create an unreasonable and imbalanced statutory process. This Administration should be afforded the opportunity to complete implementation strategies for the Executive Order before pursuing any new legislative mandates.

That concludes my statement. I would be glad to answer any questions you might have.

Mr. HAYWORTH. Now, we are happy to hear the testimony of Mr. Smith. Welcome.

STATEMENT OF MICHAEL R. SMITH, DIRECTOR, OFFICE OF TRIBAL SERVICES, BUREAU OF INDIAN AFFAIRS ON H.R. 2345

Mr. SMITH. My name is Mike Smith, Michael R. Smith. I am the Director of the Office of Tribal Services within the Bureau of Indian Affairs. I thank you for the opportunity to testify today before this Committee, Mr. Chairman. I grew up in Winslow, Arizona, and I hope you will not hold that against me.

Mr. HAYWORTH. If the gentleman would yield, no. Actually, that proves very favorable in the eyes of the Chair and the gentleman from Oklahoma, who was born in Winslow. So you have curried favor with the opening remarks. Please resume.

[Laughter.]

Mr. HAYWORTH. Oh, and our dear friend from New Mexico wants to weigh in. So we have good bipartisan consensus. We are all for Winslow, and that includes those folks from Winslow. You may continue.

Mr. SMITH. Thank you, Mr. Chairman. I am an enrolled member of the Laguna Pueblo Tribe in New Mexico.

With me today is Mr. Lee Fleming, the Branch Chief of the Branch of Acknowledgement and Research for the Bureau of Indian Affairs.

I am here today to provide the administration's position of opposition to H.R. 2345, a bill to extend Federal recognition to the Chickahominy Tribe, the Chickahominy Indian Tribe Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe.

Under 25 Code of Federal Regulations Part 83, groups seeking Federal recognition or Federal acknowledgment as Indian tribes are reviewed in a thorough and objective manner. Each petitioning group must demonstrate that they meet all the seven mandatory criteria established in these Federal regulations. The seven mandatory criteria are that a petitioner, one, demonstrates that it has been identified as an American Indian entity on a substantially continuous basis since 1900; two, demonstrates that a predominant portion of that petitioning group comprises a distinct community and has existed as a community from historical times until the present; three, demonstrates that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present; four, provides a copy of the group's present governing document, including its membership criteria; in the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing criteria; five, demonstrates that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity; six, demonstrates that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and seven, demonstrates that neither the petitioner nor its members are the subject of Congressional legislation that has expressly terminated or forbidden the Federal relationship. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for tribal existence to be acknowledged.

All six of these groups who would benefit from enactment of H.R. 2345 have submitted letters of intent and partial documentation to petition for Federal acknowledgment. However, none of these petitioning groups have submitted completed, documented petitions demonstrating their ability to meet all seven mandatory criteria.

The Federal acknowledgment regulations provide a uniform mechanism to review and consider groups seeking Indian tribal status. This legislation, however, allows these groups to bypass these standards, allowing them to avoid the scrutiny to which other groups have been subjected.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Mr. HAYWORTH. And we thank you, Mr. Smith.

[The prepared statement of Mr. Smith on H.R. 2345 follows:]

Statement of Michael R. Smith, Director, Office of Tribal Services, Bureau of Indian Affairs, U.S. Department of the Interior on H.R. 2345

Good morning, Mr. Chairman and Members of the Committee. My name is Mike Smith and I am the Director for the Office of Tribal Services within the Bureau of Indian Affairs at the Department of the Interior. I am here today to provide the Administration's position of opposition to H.R. 2345, a bill to "extend Federal recognition to the Chickahominy Tribe, the Chickahominy Indian Tribe, Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe.

Under 25 CFR Part 83, groups seeking Federal acknowledgment as Indian tribes are reviewed in a thorough and objective manner. Each petitioning group must demonstrate that they meet all the seven mandatory criteria established in these Federal regulations. The seven mandatory criteria are that a petitioner: (1) demonstrates that it has been identified as an American Indian entity on a substantially continuous basis since 1900; (2) demonstrates that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; (3) demonstrates that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present; (4) provides a copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures; (5) demonstrates that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity; (6) demonstrates that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe, and (7) demonstrates that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for tribal existence to be acknowledged.

All six of these groups who would benefit from enactment of H.R. 2345, have submitted letters of intent and partial documentation to petition for Federal acknowledgment. However, none of these petitioning groups have submitted completed documented petitions demonstrating their ability to meet all seven mandatory criteria.

The Federal acknowledgment regulations provide a uniform mechanism to review and consider groups seeking Indian tribal status. This legislation, however, allows these groups to bypass these standards—allowing them to avoid the scrutiny to which other groups have been subjected.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Mr. HAYWORTH. Let me turn first to Mr. Kearney. In your testimony, you mentioned the Department of Interior generated a working group to develop management guidance and tools for sacred site management across the Bureau. Does the working group intend to address the issue of confidentiality, and if so, does the group anticipate moving forward without establishing an administrative mind veto?

Mr. KEARNEY. Yes, sir. As I mentioned in my statement, the issue of confidentiality is a very important one and it is one we are examining very carefully and taking full consultation and input from all parties on that. And certainly, our next steps in this process will, and our guidance to the bureaus, will reflect the issue of confidentiality.

Mr. HAYWORTH. Thank you, sir.

To Mr. Smith, is there ever a situation where a tribe should be able to circumvent the recognition process and obtain federally recognized status through legislation?

Mr. SMITH. We do not think so. We have a process in place and we believe that, under our regulations, this should happen, although we do recognize that Congress does have the ability to recognize tribes.

Mr. HAYWORTH. Have the six Virginia tribes seeking Federal recognition through H.R. 2345 been able to meet any of the Department's seven mandatory criteria for acknowledgment?

Mr. SMITH. I do not believe we are in a position to evaluate those petitions because they are incomplete at this time.

Mr. HAYWORTH. All right, sir. I thank you.

Let me turn to other members of the Committee, beginning with my friend from Michigan.

Mr. KILDEE. Thank you, Mr. Chairman. I carry with me at all times the Constitution of the United States, which all of us here at the dais have taken an oath to uphold. It says, this Constitution, the laws of the United States, which shall be made in pursuance thereof and all treaties made or that shall be made under the authority of the United States shall be the supreme law of the land and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

One of the most ancient treaties is the treaty signed by the Indians of Virginia with the sovereign of Great Britain, and that is the tribe which John Marshall refers to in his famous decision of Worcester v. Georgia. The Indian nations had always been considered a distinct, independent political communities retaining the original natural rights as the undisputed possessors of the soil from time immemorial. The very term "nations" are generally applied to them, means a people distinct from others. We have applied the words "treaty" and "nation" to Indians as we have applied them to the other nations of the earth. They apply to all in the same sense.

Now, a treaty generally cannot be broken unilaterally. It would seem to me that the U.S. Government, as trustee for the Indians, who clearly—and certainly Indians of Virginia are one of the earliest Indian groups that ever signed these treaties—it seems to me that the U.S. Government, as trustee for Indian rights, should be defending their rights as signators of that treaty.

To what degree do you tuck that historical fact and the Constitution and John Marshall's decision into your findings when you look at the Virginia tribes?

Mr. SMITH. I do not believe that we have the right perspective as far as these petitions because we are not sure exactly who is being recognized under this proposed bill. We have problems in identifying exactly who the members are of these petitioning groups because we have not received that documentation at this time, and I do not believe we have an objection to people who are Indians being recognized. The question is whether or not they are tribes under our regulations, and the evaluation of the documentation that would prove that they are tribes, not necessarily groups of Indian people.

Mr. KILDEE. Do you recognize that the role of trustee by the U.S. Government, the trust responsibility came into being primarily to protect Indians from State government?

Mr. SMITH. Yes.

Mr. KILDEE. This is what John Marshall's decision was all about, right? I am sure you are familiar with that.

Mr. SMITH. Yes, sir.

Mr. KILDEE. Yet, we find a record in Virginia that is deplorable, a record of trying to—you know, in some countries during World War II, they tried to purge people and they did purge people. But in Virginia, they tried to purge the identity. How much do you consider that in looking at their application for recognition?

Mr. SMITH. Again, I would remind you that there has been a GAO report issued last year that encouraged a fair and equitable and impartial process for acknowledgment, and I believe that is what we want and that is why we are asking that all of the petitioners go through the process.

Mr. KILDEE. Let me give you a little bit more recent history. About five, 6 years ago, my friend, and he is my friend, the co-chair of the Native American Caucus, at about three o'clock in the morning turned to the Chairman of the Ways and Means Committee, who had been quoting a GAO report for weeks and all evening long. My friend said, you know, you keep quoting a GAO report, but I have something that I think has a little more strength than the GAO report. I have the Constitution of the United States.

And I think from time to time in your role you should read, first of all, Article I, Section 8, the Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes. The writers of this Constitution recognized there were three types of sovereignties, foreign nations—France, England—the sovereign States that created the Federal Government, and equated their sovereignty with that of the Indian tribes. When my friend raised this, we won. We hardly ever beat the Chairman of the Ways and Means Committee in Committee, but we did.

And I think that just a cursory reading of eighth grade history talks about the Indians helping the Europeans, and their continuity, to my mind, is unquestioned. Now, the fact that the Virginia government tried to purge their identity should, first of all, upset you and give you a certain zeal to try to undo that purging. This was a deliberate attempt of the State to try to eradicate any identity as Indian tribes, and I think that that should be—

I really believe, certainly, you do not want to recognize people who are not Indians. A bunch of my cousins from Ireland coming in and calling themselves Indians would not be Indians. But when you really have in Virginia a continuing history, a history of identity and a history of purging that identity, I think that should give you a certain zeal in trying to undo that attempt to purge the identity.

Mr. SMITH. Yes, sir, I understand exactly what you are saying. I came to Washington over 2 years ago from a State that has a very dark history in its treatment of Indian people, and that is California. I spent over 20 years in California and watched and

participated in the development of many tribes in that State. I know exactly what you are saying, sir.

But I believe, also, under our trust obligation to Indian people and Indian tribes, that we have a responsibility to verify all claims of groups who are petitioning to be tribes, and that is under the Federal regulation that we are operating under.

Mr. KILDEE. Under the BAR process which is taking place right now, how long would you anticipate it would be before you would arrive at a conclusion as to their sovereignty, their retained sovereignty?

Mr. SMITH. Under our normal process, the general rule of thumb would be that upon the competition of a petition, there is approximately a two- to 4-year process. That is an ideal situation. Now, we know that that has not been followed because of our resources and our limitation and the number of petitions that we are having to deal with. Therefore, the process has taken quite longer.

But I do disagree with an earlier statement today that a Bureau of Indian Affairs official or an employee told anyone that this would not take place in their lifetime, because I do not believe that is a true statement.

Mr. KILDEE. I think my time is expired. Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank my friend from Michigan.

Are there other questions for the panel? The Chair would note and inquire of Mr. Smith, do you have further comments about H.R. 992 that we did not get to?

Mr. SMITH. Yes, Mr. Chairman.

Mr. HAYWORTH. The Chair apologizes if he was quick on the gavel, and if you would like to just proceed with H.R. 992, I am sure that my fellow members of the Committee would be willing to question the panel on all those issues. So if you would proceed with the H.R. 992 comments, that would be great, and then we will resume questioning.

STATEMENT OF MICHAEL R. SMITH ON H.R. 992

Mr. SMITH. Thank you, Mr. Chairman. I have a very brief statement on H.R. 992. The administration's position regarding H.R. 992, a bill to provide grants to local governments to assist such local governments in participating in certain decisions related to certain Indian groups and Indian tribes, the administration opposes H.R. 992.

H.R. 992 would provide the Secretary of the Interior authority to award grants on the basis of need to eligible local governments on issues concerning groups seeking Federal acknowledgment as Indian tribes, taking land into trust, land claims, and any action or proposed action relating to or by that local government. We oppose H.R. 992 because it would require the Secretary to make decisions about which groups receive grants from a limited source of funds based on the Department's view of how profoundly certain decisions might impact the community.

First, the Department should not be the final arbiter of how to divide money amongst communities based on the level of perceived impacts certain decisions might have. Second, the bill would create an inherent conflict of interest where the grant-making agency is

disbursing money that may be used, in turn, to attempt to influence important decisions being made by that agency. In addition, H.R. 992 does not preclude the use of grants to litigate in court, to lobby Congress, or to participate in actions against the Department. This would further conflict with the Department's statutory requirements of making objective decisions relating to Federal acknowledgment, and land into trust.

This concludes my prepared statement on H.R. 992.

Mr. HAYWORTH. And we thank you, Mr. Smith.

[The prepared statement of Mr. Smith on H.R. 992 follows:]

Statement of Michael R. Smith, Director, Office of Tribal Services Bureau of Indian Affairs, U.S. Department of the Interior on H.R. 992

Good morning, Mr. Chairman and Members of the Committee. My name is Michael Smith and I am the Director for the Office of Tribal Services within the Bureau of Indian Affairs at the Department of the Interior. I appreciate the opportunity to appear before you today on behalf of the Administration regarding H.R. 992, a bill to provide grants to local governments to assist such local governments in participating in certain decisions related to certain Indian groups and Indian tribes. The Administration opposes H.R. 992.

H.R. 992 would provide the Secretary of the Interior authority to award grants, on the basis of need, to eligible local governments on issues concerning groups seeking Federal acknowledgment as Indian tribes, taking land into trust, land claims, and any action or proposed action relating to a Indian group or acknowledged Indian tribe that is likely to significantly affect the people represented by that local government. We oppose H.R. 992 because it would require the Secretary to make decisions about which groups receive grants from a limited source of funds based on the Department's view of how profoundly certain decisions might impact the community. First, the Department should not be the final arbiter of how to divide money amongst communities based on the level of perceived impacts certain decisions might have. Secondly, the bill would create an inherent conflict of interest where the grant-making agency is disbursing money that may be used, in turn, to attempt to influence important decisions being made by that agency. In addition, H.R. 992 does not preclude the use of grants to litigate in court, to lobby Congress, or to participate in actions against the Department. This would further conflict with the Department's statutory requirements of making objective decisions relating to Federal acknowledgment, and land into trust.

This concludes my prepared statement. Thank you for the opportunity to testify on this issue. I will be happy to answer any questions the Committee may have.

Mr. HAYWORTH. We resume the questioning and turn to the gentleman from New Mexico.

Mr. UDALL OF NEW MEXICO. I would like to defer to the gentleman. He was here first.

Mr. HAYWORTH. I am happy to see my friend from Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. I appreciate that. Mr. Chairman, I was here after our good friend from the Virgin Islands, and I would defer to her if she has any questions. But I do have some questions.

Mrs. CHRISTENSEN. Mr. Chairman, I do not have any questions. I just returned back from an errand, so I will pass.

Mr. HAYWORTH. We thank you, and we return to our friend from Samoa.

Mr. FALEOMAVAEGA. Thank you very much, Mr. Chairman, and I want to thank the members of our panel for their testimony.

I wanted to ask Mr. Kearney, in his opinion, do you think—and I am an original cosponsor of H.R. 5155, by the way—I have always admired the ability of the administration through Federal regulations to complete a process and I just wanted to ask you, do

you think H.R. 5155, you said it is counterproductive. Do you think that perhaps by putting it in the statute, it gives more teeth to the process?

Mr. KEARNEY. Not necessarily, sir, no. I think we have done a tremendous amount of work to get to this point. I think we have a number of more steps to take, and I think at the completion of that process, we will have a full picture of how we are going to approach this and if there is perhaps some other legislative approach that may be considered or thought, but that perhaps would be the time to consider it. But at this stage, no, sir.

Mr. FALEOMAVAEGA. You said that this has been in implementation since 1996.

Mr. KEARNEY. That is when the executive order was promulgated.

Mr. FALEOMAVAEGA. Right, and it is—

Mr. KEARNEY. The process began in 1996.

Mr. FALEOMAVAEGA. Six years later, we are still having the process?

Mr. KEARNEY. We are actively working to bring the process to a conclusion as swiftly as we can, sir. We understand the time that has gone by. While a lot of work has been done, it has, indeed, been a lengthy process.

Mr. FALEOMAVAEGA. Give us a guideline as to when is it going to become effective—six years ago?

Mr. KEARNEY. I apologize, sir. I understand that that is an issue of importance to you and to others in the Committee and to us, as well. I am not able—I am not in a position to give you a specific timeframe now, but we are actively working to bring the process to a conclusion as quickly as we can, but we also want to do it right. From our part, from the administration's standpoint, we have reconvened the working group and we are actively trying to bring it to a close, but we have a number of issues to work through and so we are committed to doing that.

Mr. FALEOMAVAEGA. But this is taking 6 years, Mr. Kearney. I mean, we in the Congress can only exist for 2 years and we would like to do this on a statutory basis. If the administration is taking 6 years, what makes you to have us believe that it is not going to take another 6 years for the process?

Mr. KEARNEY. I can commit to you, it will be a much faster process than that. There were a number of activities that were undertaken to get us to this point. Departmental manual chapters, for example, I can tell you, take many months for a variety of reasons in terms of consultation, public process to complete. That has been completed. So there are a number of steps that have brought us to this point that were lengthy that I think it is fair to say do not lay in front of us.

Mr. FALEOMAVAEGA. Can you give us some assurance that it is going to be a year or 2 years?

Mr. KEARNEY. I can give you an assurance that it is a priority for the Department and we are moving to get it finished as quickly as we possibly can and that it will be not another 6 years.

Mr. FALEOMAVAEGA. Mr. Smith, I have been listening to your testimony very closely as to your opposition to H.R. 2345, the recogni-

tion of the tribes. I noted also that you have been now in place for 2 years now.

Mr. SMITH. Yes, sir.

Mr. FALEOMAVAEGA. I believe there are about 550 Indian tribes that have been federally recognized?

Mr. SMITH. Five-hundred-and-sixty-two, sir.

Mr. FALEOMAVAEGA. Five-hundred-and-sixty-two recognized, and there are over 100 tribes alone in California that have not been recognized?

Mr. SMITH. We have 61 petitions from California.

Mr. FALEOMAVAEGA. I just wanted to share with you a little historical perspective before you came on board, so please do not take this personally. This is just my little objective observation.

The recognition process as it now stands is not only a travesty but an absolute farce, and I say this with all sincerity. For the 10 years that I have been sitting on this Committee, hearings that we have conducted and in the process, it has been almost 10 years now, Mr. Chairman, that we have been trying to do a recognition bill to give a little sense of equity and fairness in the process.

You have indicated, Mr. Smith, and again, you are just simply saying this is because the policy is, is there any Federal law that prohibits the Congress from giving Federal recognition to any tribe like the process that Congressman Moran and Congressman Davis now suggest, that we just do it directly without going through the recognition process? I mean, is there anywhere that prevents the Congress from enacting legislation to recognize a tribe in any given period?

Mr. SMITH. No, sir.

Mr. FALEOMAVAEGA. OK.

Mr. SMITH. We have had many tribes recognized in that fashion.

Mr. FALEOMAVAEGA. I do not know if you are aware, but of the hearings that I have been involved personally in the recognition process, the gentleman who drafted the regulation giving rise to these seven criteria, right before this Committee, even not only recognized but confessed that even he could have never been able to go through the process in really giving Federal recognition to any tribe that makes application.

We have got a tribe that over 100 years, and I am making specific reference to the Lumbee Nation in North Carolina, over 100 years and this tribe has still not been recognized. There are about 50,000 Lumbee Indians in North Carolina, duly recognized by the State of North Carolina, and they are just as Indian as I could ever perceive them to be, and the fact that the bureaucratic maze that they have had to go through and the expenditure, the money that—some of these tribes have no monetary means whatsoever even to make an application.

I just wanted to share with you my concern that we are still trying to pursue through statutory means. The recognition process is an absolute farce as far as I am concerned. It has not given any credence and service of what has happened to the Indian people. I wanted to share this concern with you.

You mentioned about the GAO report that my good friend from Michigan has noted on this thing, and the fact is that even the GAO report says we have to do a better job. We are not doing a

very good job. These seven criteria that you have indicated, I mean, it just—I do not know. It is just a crying shame that this is how we have been treating the Native Indians, first to say, well, you are not Indians. We are going to annihilate them, then assimilate them, terminate them, and now we are trying to recognize them. I just really am saddened at the fact that I just wish that perhaps the administration could be helpful in a better way.

And again, I am not knocking you, Mr. Smith. You are just following the administrative rule as far as the regulations are concerned. But would the administration not be willing to work with us to set up a statutory provision, because right now, the recognition process is not by statute. It is by regulation. And as I said earlier, the person who wrote the regulation right there before us in this Committee said even he would not have been able—never been able to meet those criteria because of the way that this process has been going on.

And always the excuse, Mr. Chairman, limited resources, and that is the reason why some of these tribes are taking years and years for recognition. By the time they have expended all their funds in paying the attorneys, getting the anthropologists and whatever it is it takes for them to be recognized, they are out of money, and that is the sad situation that we find ourselves in.

Again, Mr. Smith, there is nothing personal against you. I just want to let you know that this member is very, very upset and I just wish that there could be a better way that we could do this process.

Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman.

The Chair recognizes the gentleman from New Mexico.

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman, and I appreciate the administration witnesses being here.

On H.R. 2345, you all are aware that the State of Virginia took very specific actions to destroy records and to deprive these tribes of their identity. I mean, I assume that the Department's position on that kind of action is that you oppose that and you think that is deplorable, is that correct?

Mr. SMITH. I would say yes, sir.

Mr. UDALL OF NEW MEXICO. And so with that action having taken place, I mean, how does this, in your mind, how do you take into consideration this effort by State government to destroy the identity of the tribes in an application process for recognition?

Mr. SMITH. Again, as I said before, within the bill, it is difficult for us to understand exactly who we are recognizing because we do not have the proper information to evaluate and analyze. Once a petition is complete, then we would have that opportunity.

Mr. UDALL OF NEW MEXICO. But as you know, the petition process requires extensive paperwork, which much of it is going to be missing because of the destruction of the records. You are always going to be able to say the petition is not complete.

Mr. SMITH. I do not necessarily agree. I think what we are most interested in finding out is who the people are and, under their membership criteria, how they have maintained their relationship over time.

Mr. UDALL OF NEW MEXICO. And are you going to give consideration to the fact that the State made efforts to destroy the identity of these tribes?

Mr. SMITH. Yes. I would say yes.

Mr. UDALL OF NEW MEXICO. I hope so. I hope so.

Shifting to H.R. 5155, you testified that because the Department established an interagency working group to develop policy for complying with Executive Order 13007, it would be premature for Congress to enact H.R. 5155. Does this mean that thus far, the Department has not been able to comply with Executive Order 13007?

Mr. KEARNEY. No, sir. We are in the process of complying with it through a variety of actions that we are engaged in, the departmental manual chapter, as I indicated, and other activities. So we are moving forward in that regard. There are just a variety of issues that we are working through as the working group completes its work and we think we have done good work, we have gone that road, and at this stage, it is premature to try to address it legislatively.

Mr. UDALL OF NEW MEXICO. What standards have you used to go through this process?

Mr. KEARNEY. What standards have we used?

Mr. UDALL OF NEW MEXICO. Yes.

Mr. KEARNEY. I am not sure I understand. What do you mean?

Mr. UDALL OF NEW MEXICO. Well, you say you are in the process of complying with this executive order, correct?

Mr. KEARNEY. Yes.

Mr. UDALL OF NEW MEXICO. What standards have you used in that process in order to make judgments as to whether or not you are in compliance or not?

Mr. KEARNEY. Well, for example, if various actions and requirements of the order, such as what the Federal—that consultation must occur with respect to the tribes and communication with them is one example of where we have done that.

Mr. UDALL OF NEW MEXICO. While H.R. 5155 is meant to protect Native American sacred lands across the U.S., the limited witness list we are permitted has caused us to focus on the protection of the sacred lands of the Quechan Tribe and the plans of the Glamis Gold, Limited, to mine the area. Of interest to me is Secretary Norton's decision to rescind Secretary Babbitt's decision to not permit mining in this area. Please explain to the Committee the consultation process the Department entered into with the tribe or other Colorado River tribes prior to the rescission.

Mr. KEARNEY. Mr. Udall, while I did not come today prepared to discuss any specific project or issue with regard to this, I would be delighted to provide a response to you in writing to that question.

Mr. UDALL OF NEW MEXICO. Did the Department meet with any representatives of the gold company prior to the rescission?

Mr. KEARNEY. As I said, I would be delighted to provide a written response to that.

Mr. UDALL OF NEW MEXICO. OK. Well, I would be happy to have that. Are you able to say today whether the Department met with tribes prior to this decision to issue the rescission?

Mr. KEARNEY. Well, we have a—as I said, with respect to a specific project, I certainly will get you an answer in writing. But we

certainly have a consultation process that is in place, an executive order that guides the consultation process. We certainly have consultation with respect to our activities and projects. We have a commitment to protecting and addressing issues associated with sacred sites that is certainly reflected in the Secretary's, the administration's decision to reconvene the working group.

So certainly this is an issue, and the potential ramifications of matters related to sacred sites are of importance to the Department and we are taking—we are taking the steps under our procedures, regulations, guidelines, and other actions to ensure that we take those issues into account.

Mr. UDALL OF NEW MEXICO. OK. I hope that you will provide us with the information on the consultations you made prior to the rescission on the Quechan Tribe and the other Colorado River tribes. Thank you very much. I appreciate you being here.

Mr. HAYWORTH. I thank the gentleman from New Mexico.

Are there other questions for the panel?

[No response.]

Mr. HAYWORTH. Hearing none, the Chair would simply request, not mindful of your schedules today, and typically, we have had a good relationship where people have stayed around to listen to the other testimony, if it might be possible to accommodate your schedule, my friend from Michigan asked me to inquire, would it be possible for you gentlemen to stay and listen to testimony this afternoon as it continues?

Mr. KEARNEY. I can certainly stay for a portion of the time, yes, sir, perhaps not the entire time, but I certainly can for a portion of it.

Mr. SMITH. I could also stay, Mr. Chairman.

Mr. HAYWORTH. We thank you very much for your cooperation in that regard, and also as questions develop, as you said, on various other questions there might be an opportunity to communicate in writing later on, and certainly if you can stay for the duration, we would contact you in writing on some of the concerns that may arise.

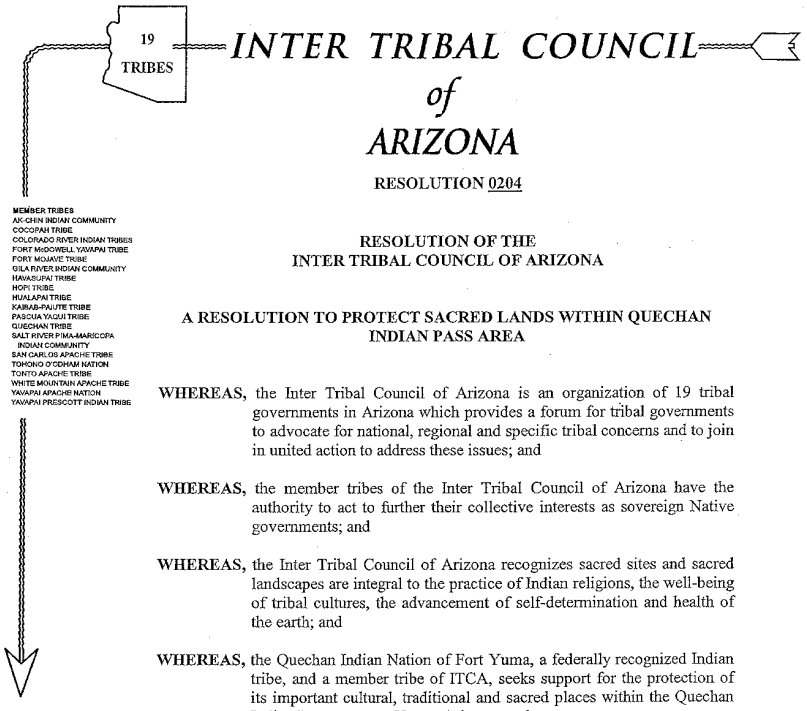
With that, we thank you for your testimony on panel three and we would excuse you. We thank you again for amending your schedules to stay with us as long as possible.

Mr. HAYWORTH. The Chair would now call forth panel four to talk about H.R. 5155. Included there as panelists, the President of the Quechan Indian Nation, Mr. Mike Jackson, Senior; Mr. Jefferson Keel, Vice President, the National Congress of American Indians; Mr. Tim McCrum of Crowell and Moring; and Mr. Mike Hardiman of the American Land Rights Association.

We welcome you to the table, gentlemen. As we are taking care of our housekeeping to put you front and center at the table and in front of the microphones, the Chair would advise my friend from the Quechan Indian Nation, Mr. Mike Jackson, Senior, that he will lead off the testimony.

The Chair would also take this opportunity to request unanimous consent that my friends from the Inter-Tribal Council of Arizona, their resolution to protect sacred lands within Quechan Indian Pass area, that this resolution be included in the record. Hearing no objection, it is so ordered.

[The information referred to follows:]



RESOLUTION 0204

RESOLUTION OF THE
INTER TRIBAL COUNCIL OF ARIZONA

A RESOLUTION TO PROTECT SACRED LANDS WITHIN QUECHAN INDIAN PASS AREA

WHEREAS, the Inter Tribal Council of Arizona is an organization of 19 tribal governments in Arizona which provides a forum for tribal governments to advocate for national, regional and specific tribal concerns and to join in united action to address these issues; and

WHEREAS, the member tribes of the Inter Tribal Council of Arizona have the authority to act to further their collective interests as sovereign Native governments; and

WHEREAS, the Inter Tribal Council of Arizona recognizes sacred sites and sacred landscapes are integral to the practice of Indian religions, the well-being of tribal cultures, the advancement of self-determination and health of the earth; and

WHEREAS, the Quechan Indian Nation of Fort Yuma, a federally recognized Indian tribe, and a member tribe of ITCA, seeks support for the protection of its important cultural, traditional and sacred places within the Quechan Indian Pass area near Yuma, Arizona; and

WHEREAS, descendants today, as did their ancestors, still hold spiritual reverence and respect for this spiritual area, and the religion and culture of the Quechan is deeply rooted in these lands and landscapes; and

WHEREAS, Glamis Gold, Ltd., a Canadian company, has proposed a massive, open-pit, cyanide heap-leach gold mine on 1,600 acres of off-reservation federal public land located in the heart of the Quechan Indian Pass area, an area now withdrawn from future mining claims by the Bureau of Land Management to protect Native American religious and cultural values; and

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WHEREAS, the ore is of such low grade that it would require that approximately 422 tons of rock be mined, moved, processed and stored for each ounce of gold produced; the mine's deepest pit, at roughly 85 stories deep, would never be backfilled, and would remain a public nuisance in perpetuity on otherwise protected public federal lands; and new mountains of wasterock, up to 30 stories high would forever alter the landscape and visual quality of the valley; and

WHEREAS, the operation would consume up to 389 million gallons of water per year from the pristine desert groundwater aquifer; and the Environmental Protection Agency says that mining has polluted 40 percent of Western Watersheds; and

WHEREAS, the mining operations will violate the Quechan tribal members' Constitutional rights to practice its traditional cultural and religious beliefs by destroying the Quechan people's cultural property and sacred grounds, eliminating and disrupting access for traditional religious pilgrimage; and rendering meaningless the Tribe's right to self determination and thus bringing great harm to the Quechan people.

NOW THEREFORE BE IT RESOLVED, the Inter Tribal Council of Arizona unconditionally supports the Quechan Indian Tribe in adamantly opposing any permitting and any land development including the proposed Glamis Imperial Gold Mine on the aforementioned tribal sacred grounds based on social, cultural, spiritual and environmental impacts; and requests that the Quechan Indian Tribe be invited as a full consulting party during project environmental review and consideration; and strongly urges all permitting and review agencies, including but not limited to, the Bureau of Land Management, County of Imperial, Army Corp of Engineers, United States Environmental Protection Agency and United States Fish & Wildlife Service to deny any and all permits and approval for this destructive and inappropriate proposed mine.

BE IT FURTHER RESOLVED, that this resolution be immediately forwarded to the Quechan Indian Tribe to be used as the Tribe deems appropriate.

CERTIFICATION

The foregoing resolution was presented and duly adopted at a meeting of the Inter Tribal Council of Arizona, where a quorum was present on Friday, September 20, 2002.

Nora Helton, President
Inter Tribal Council of Arizona

Mr. HAYWORTH. Now, we turn to Mr. Jackson, President of the Quechan Indian Nation, for his testimony. Good morning, Mr. Jackson. We thank you for coming. I would instruct all of the witnesses, we will, of course, put your complete testimony in the record, but we appreciate a summation in the 5 minutes we allot for each of you.

Thank you, President Jackson. You may begin.H.R. 5155

STATEMENT OF MIKE JACKSON, SR., PRESIDENT, QUECHAN INDIAN NATION

Mr. JACKSON. Thank you, Chairman Hayworth, members of the Committee. As Mr. Hayworth stated, my name is Mike Jackson, Senior. I am President of the Quechan Nation, located at Fort Yuma, California.

Thank you for asking Mr. Kearney to stick around so he could listen to my testimony because I have a lot to say to what he just said. I have opposing views to what he just mentioned. I appreciate it.

It is an honor and my privilege to testify today on behalf of our tribal nation. I bring word from the hearts of my people to tell the story of Indian Pass.

The religious and sacred area known as Indian Pass is an integral part to practice our religious beliefs, the well-being of our tribal culture, our tradition, and the well-being of Mother Earth. Today, the Quechan people, as did our ancestors, still hold spiritual reverence and a strong connection to the spiritual area known as Indian Pass.

The Quechan Indian Pass has 55 recorded historic properties, including the Running Man site, prayer circles, ceremonial places, shrines, ceramic artifacts, petroglyphs, and spirit breaks linked by ancient running trails. All these historic properties are eligible for listing on the National Register of Historic Places and the Graves Protection and Repatriation Act. More importantly, the National Trust for Historic Preservation has included the Quechan Indian Pass on their exclusive "Eleven Most Endangered Historic Sites in America for 2002."

Our tribal nation has fought and struggled for six long years to protect our religious and sacred sites at Indian Pass against the Glamis Gold Mining outfit that today still insists on destroying our history. But we are resolved as a people. We simply will not lose this fight. We cannot. We will fight forever to see that our sacred area is left the way our creator made it.

During our struggle, the Quechan Nation has followed the correct legislative process, including government-to-government consultation with the U.S. Government, held numerous public hearings. Finally, with tremendous Congressional support across the nation, the Clinton administration denied the gold mine.

The Glamis Imperial Mine is a massive open pit cyanide leach gold mining operation that will destroy Indian Pass. It will destroy our link to our ancestors. It will destroy our way of life and the history of our people. Our traditional singers will no longer be able to sing about Indian Pass because it will no longer be there. Our younger generation will no longer go there to learn. Our elders,

who are our teachers, will no longer teach and conduct ceremonies at Indian Pass because it will be destroyed. It will be gone forever.

Our nation was grateful to the Clinton administration to listen, to hear, to learn from our people, and finally making the right decision in denying the Glamis gold mining project. Our tribe was preparing to assist the Department of Interior in defense of their decision.

But we enjoyed a very short victory. Secretary Gale Norton stripped away the hard-fought victory and tore the hearts out of our people by reversing the denial of the gold mine. What it amounted to was still another broken process to a Native American tribe. Secretary Norton reversed the decision without consultation with our tribe, without public comment. She declined to follow the correct legislative process that was expected of us.

But yet, through the tribe's Freedom of Information Act, we learned the Department of Interior found time to meet with the Glamis representatives. Shortly thereafter, the Interior released a new solicitor decision to rescind the denial of the gold mine.

The acts of Secretary Norton not even to formally notify us, our tribe of her decision, throws the government process back to the dark ages. As you know, there are many statutes and policies requiring government-to-government consultation before making decisions on enacting policies that will impact Indian nations. She disrespected our people, our tribal government, by not officially notifying us of her decision. It was just merely a matter-of-fact way of letting us know.

As of today, she still refuses to meet with us to discuss why the Quechan Nation and our people must save our history. When Indian Pass is mentioned, it is at the forefront of sacred sites.

In Mr. Kearney's testimony this morning, when he was asked, he said they had brought about new policy. They had worked hard with the executive order on sacred sites. They had done a lot of work. They had done good work, I had written here. But we have not been notified of any such work. They have not contacted our tribe. We have not even gotten a call from them to meet with us.

Like I said, our sacred sites, Indian Pass is in the forefront when it comes to sacred sites. Tribes across the Nation are supporting us. We are fighting not only for our tribe, but for other Indian tribes across the Nation to save their history.

Senator Burton has sponsored a California State bill, S.B. 1828, to help protect Indian Pass. This State bill passed both houses of the legislature by wide margins and bipartisan support. It is now awaiting the Governor's signature.

But the State bill is not a substitute for needed Federal action to protect sacred places. Many sacred and religious sites on Federal lands have been destroyed, picked off one by one, tribe by tribe, project by project. This must stop.

If Mr. Kearney and staff are working diligently and hard and doing good work, the tribes would not be suffering today. The Federal Government must take on—the Department of Interior must taken on the responsibility that they were created for and protect these sites and our history.

Today, we are here to support H.R. 5155, introduced by Representative Rahall. H.R. 5155 will codify and improve Executive Order 13007.

The Quechan people look to this Committee and the House to take actions to protect sacred places. Another mine on our ancestral land is not essential, but the preservation of our culture is.

The Glamis mining officials will say and have always said that our site is not sacred. This breaks the heart of our people, especially our elders. But proving to the mining officials that our area is sacred is not important because they bring deaf ears to the table. What is important to us is saving Indian Pass.

The fundamental principle that the United States has a legal relationship with tribes, with our tribal government as set forth in the Constitution of the United States, the Quechan people are asking you to let us enjoy our religious freedom like any other people in the United States.

Mr. Hayworth, Chairman, members of the Committee, I bring word, like I said, from the hearts of our people. My people, especially our elders, eagerly await my return to the reservation to give them word about this meeting today. I know I had only 5 minutes, but I ask you and the Committee to look into your hearts. We are asking you to save our history. I appreciate it and thank you.

Mr. HAYWORTH. And we thank you, President Jackson.

[The prepared statement of Mr. Jackson follows:]

Statement of Mike Jackson Sr., President, Quechan Indian Nation, Fort Yuma, California and Arizona

Chairman J.D. Hayworth, members of the Committee, my name is Mike Jackson Sr., and I am the President of the Quechan Indian Nation of Ft. Yuma California and Arizona. It is my honor and my privilege to testify today on behalf of our Tribal Nation and especially our people. I will speak from the heart.

Our remote but strong Tribe has been pulled into local, state and national discussions about the destruction of Indian sacred places and the destruction of our identity as Indian people, because of a project proposed on the Tribe's off reservation, aboriginal lands. Our people are united against this mine and will fight forever to see that our sacred area is left the way the Creator made it.

The proposed Glamis Imperial Project is a massive, open pit, cyanide heap leach gold mine. It would have three pits, with the deepest pit at 85 stories deep, never being backfilled. It would leave waste rock piles 30 stories high within our sacred area. It would require 422 tons of waste rock to get at one ounce of gold.

The Glamis mine would destroy 5 recorded sites eligible for listing on the National Register of Historic Places, including the Trail of Dreams. The National Trust for Historic Preservation named the Indian Pass area as one of the 11 Most Endangered Historic Places in 2002. It is a place that is not suitable for a massive open pit mine.

In 1998, the Los Angeles Times wrote that this dispute marked the first significant test of Executive order 13007. The struggle has been long and hard, with many sacrifices along the way. But we are resolved.

Our Tribe worked for six years within the established process to see that our culture be protected and the mine be denied. The federal Advisory Council on Historic Preservation found that the mine would directly destroy our way of life and history and recommended that BLM take all legal means to deny the mine. Interior did just that and denied the mine in early 2001.

But, Secretary Norton stripped that hard fought victory away, with a single stroke of her pen, and reversed the denial of the mine in a one paragraph statement, with no public comment and consultation with us.

A bill like NASLA, may have prevented the train wreck that is the proposed Glamis Imperial Mine. The ability for tribes to initiate a suitability determination means that we would not have to rely upon under funded and understaffed agencies to protect and preserve our irreplaceable cultural patrimony. Without taking away

the agencies" responsibilities in that area, the bill would create a mechanism for us to initiate protection for our sacred areas.

Our struggle at the Indian Pass area has also resulted in California state legislation to protect our sacred places. SB 1828 would help in two ways. First, it would require that when a project is proposed, that the established state environmental review process include consideration impacts to sacred places and early meaningful government to government consultation with any affected tribes. If mitigation cannot be attained, then the lead agency can only approve the project, when overriding environmental, public health or safety needs require it.

Second, the state bill would also require that new open pit mines, in protected areas of the California desert, at or near sacred sites, be completely backfilled. Complete backfill, while not eliminating impacts to spiritual values, would reduce environmental impacts and allow for future public use of the area, versus, exclusive mining use in perpetuity.

This state bill passed both Houses of the Legislature by wide margins and has strong bipartisan support. It is now on the Governor's desk awaiting his signature. Tribal runners in California are making a statement , even today, for him to sign the bill.

But, the state bill is not a substitute for needed federal action to protect sacred places. So many of our sacred places on federal lands have already been destroyed. Many more are posed for destruction. Picked off one-by-one. Tribe-by–Tribe. Project-by–Project. This must stop.

When a site is lost, our hearts break. Our link to our ancestors, and our future is broken. Our traditional singers cannot sing about a place that is lost. Our youth cannot learn about what happens at a location when that location is permanently converted to an industrial use. Our practitioners cannot conduct ceremonies at sites when access to them has been blocked.

The bulldozer or backhoe ripping into the earth, rips into our hearts. Our inability to stop this destruction makes us feel as though we are failing our ancestors and our children. If you destroy the land, you destroy what we believe in, who we are. This too must stop.

HR 5155 will codify and improve upon Executive Order 13007. It requires 1) accommodating access to and ceremonial use of our sacred places, 2) protecting our sacred places from significant damage, 3) and, would add a requirement for meaningful government-to-government consultation prior to federal agencies taking irreversible actions that impact our sacred places.

The bill moves these common-sense protections from an Executive Order that can be revoked by a succeeding administration, into law, and allows us to protect our rights. It also contains a much-needed confidentiality provision to respect all tribes and protect sites.

If there are ways to strengthen the bill to help Indian people, we respectfully encourage the Committee to do so. Specific changes might include:

- Strengthening the attorney's fee provision so that all tribes can participate in protecting their sacred places;
- Eliminating the possibility of an Indian Claims Commission for sacred place destruction because our Tribe, and others, will not accept one penny to allow the destruction of our history and traditions;
- And revisiting the standards of proof to better reflect the nature of the resources at stake.

Also, we cannot forget that the other federal actions, apart from this bill, are still needed in Indian country to protect our history and sacred places. These include:

- Adequate funding for the land management agencies to do the jobs they are already required to do through various statutes, plans and policies such as: timely surveying lands, increasing patrols and improving enforcement;[1]

[1] See, for example, BLM's Strategic Paper on Cultural Resources at Risk, June 2000, which finds that our "Great Outdoor Museum" may soon lack sufficient integrity and representativeness to relate anything more than anecdotal account of western land use, and, BLM's Our Vanishing Past: The Crisis of Cultural and Paleontological Resources on BLM Lands, January 2002, which gives a state-by-state overview of the resource crisis. We are informed that the latter report is now being withheld by Interior. Both of these BLM-produced documents indicate that the Indian resources on our public federal lands are increasingly, and seriously, at risk and at a critical stage. Cited reasons for this crisis include vandalism, sprawl development, illegal off-highway vehicle activity, utility infrastructure, neglect, and certain mining operations. As a general matter, BLM itself states that Indian cultural heritage, including sacred areas, are presently inadequately protected by BLM.

• Filling in gaps in existing laws so that they function as envisioned, to protect the on-the-ground resources and traditional uses.[2]

In closing, my Tribe and I thank you, Chair J.D. Hayworth for holding this hearing, and for the opportunity to tell our story. We thank Mr. Rahall for introducing this bill, and look to this Committee and the House to take actions to protect our irreplaceable places and the unique cultures they support.

Another mine on our ancestral lands is not essential. The preservation of our culture is.

Mr. HAYWORTH. The Chair would now recognize Mr. Jefferson Keel, Vice President of the National Congress of American Indians.

STATEMENT OF JEFFERSON KEEL, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. KEEL. Good morning, Mr. Chairman. Thank you for allowing me this day. I am honored to be here to provide testimony to this Committee.

My name is Jefferson Keel. I am the Lieutenant Governor of the Chickasaw Nation. I am also the Muskogee Area Vice President, which is the Eastern Region of Oklahoma, for the National Congress of American Indians. I am honored to provide testimony.

As you have heard already, we have submitted testimony, written testimony that we request be entered into the official record. I will summarize both of those documents, if I could. I will attempt to be brief.

Imagine holding a worship service in a church that is designated by law to be open at all times to the public, hikers, picnickers, and tourists. Imagine rock climbers scaling the walls of the National Cathedral during religious services. Imagine a place of worship in your hometown being replaced by an open pit mine against the will of the congregation. These are just examples of what Indian people endure today, in spite of Federal laws and mandates and regulations that require consultation on all of these intended actions.

There is not one comprehensive consultation law that requires or compels State governments or local governments to consult with Indian tribes. There are a number of Federal regulations and executive orders that require Federal agencies to consult with Indian tribes, but they are largely ignored by State governments and by construction companies who are concerned with economic development, and while economic development is important to this country and to the economy, it is not in the best interests of any people to ignore the rights and legal aspects that people should enjoy in a country that we fight to defend daily.

The souls of our ancestors cry out to us today for protection and respect. Just as young patriotic Americans answer the call to duty to protect this great land, Indian people have always been the first

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[2] See, for example, the National Research Council's Hardrock Mining on Federal Lands, commissioned by the U.S. Congress in 1999 (National Academy Press, Washington D.C. 1999). As you may be aware, Glamis continuously miscites to this report for the alleged proposition that current laws and authorities adequately protect Indian sacred places. To the contrary, the Report states that there is a need for filling gaps and inadequacies in regulations, for improving implementation of such regulations and for increasing the availability and quality of information to protect historic and cultural resources, including sacred places, It is to the Council's credit that it came to these conclusions despite the fact that tribes were not invited to the hearings or to consult, but entities like Glamis and its attorneys were invited to participate. (Report, Appendix G). The Research Council found that additional work is needed, in many cases, to adequately protect sacred places on federal public lands from destruction.

to step forward to answer that call. We are not only obligated to answer that call, as tribal leaders, we are honored to answer that call to protect our ancestors.

The religious sites, the sacred sites—the term "sacred sites" is often confused among those non-Indians or people who do not understand the cultural value. A sacred site may not be a particular point on the ground. It may be a hilltop, a valley, a pass, or another area or a place where Indian people conduct ceremonies and other sacred actions, places of worship, and that is often foreign and often difficult to grasp and often ignored in the interest of time and in the interest of self-serving State and local governments. So Indian tribes struggle with that concept today.

As you know, many Indian tribes do not now occupy their aboriginal grounds, their aboriginal lands. During the Indian Removal Act, many tribes were forcibly removed from their lands. They left behind sacred ceremonial sites. They left behind the graves of their ancestors. Those graves were robbed and the artifacts and burial goods are stolen and are sold on the black market. There is an increasing amount of that thievery that goes on today.

Today, while we speak right now, there are probably people picking the graves of our ancestors, and while that sounds foreign to some people, imagine that if it was your grandmother or grandfather or aunt or uncle or brother or sister or child, that the grave is being opened and the goods that are contained within that grave being stolen so that they can be sold on the black market.

The Chickasaw Nation considers all of the graves of our ancestors and the burial goods that were associated with that as sacred sites, and so we intend to protect those as much as possible.

As I said before, there is not one comprehensive law that requires all agencies to consult with Indian tribes on any given action that affects the lands or sites of Indian people. I would request that the law include a negotiated rulemaking element that would require all agencies to participate along with practitioners and tribal government officials and tribal leaders to accommodate this bill and to enact legislation that would require and be enforceable to all those involved.

Right now, when an agency chooses to ignore the Federal law, there is no recourse for Indian tribes. Indian tribes, or many Indian tribes, do not have the resources to enter into lengthy and costly litigation with State and Federal Governments or Federal agencies, and so the time goes on and we continue to struggle with these important issues.

As I said, the written comments have been submitted for the record. I appreciate your time, and thank you for allowing me to testify.

Mr. HAYWORTH. Thank you very much, Lieutenant Keel. We are grateful for your testimony here today.

[The prepared statement of Mr. Keel follows:]

Statement of Jefferson Keel, Muskogee Area Vice President, National Congress of American Indians

Good morning Chairman Hansen, Representative Rahall, and distinguished Committee Members. My name is Jefferson Keel, and I serve as the Muskogee Area Vice President of the National Congress of American Indians (NCAI) and the First Lieutenant Governor of the Chickasaw Nation. On behalf of the National Congress of

American Indians (NCAI) and its more than 250 member tribal nations, I am pleased for this opportunity to present testimony on sacred lands protection. This is perhaps one of the most significant challenges our people face in maintaining our religious and cultural roots to share with future generations.

Imagine holding worship service in a church that is designated by law to be open at all times to the public hikers, picnickers, and tourists. Imagine rock climbers scaling the walls of the National Cathedral during religious services. Imagine a place of worship in your hometown being replaced by an open pit mine against the will of the congregation. Imagine plans moving forward to level the Wailing Wall to build a highway through Jerusalem. Most people in the U.S. take for granted the sanctity of worship sites. For many Native Americans, however, protection for their sacred areas is uncertain at best.

As the oldest and largest national organization of American Indian and Alaska Native tribal governments, NCAI is deeply concerned with the respectful treatment and protection of sacred lands. Historically subjected to the devastating, systemic destruction of their religious practices and sites, tribes continue to suffer the heartbreaking loss and destruction of their precious few remaining sacred lands today.

There are many places across America that are holy to native people. These sacred places are critical to the revitalization and continuity of hundreds of living cultures. Individuals and organizations that have been active in the movement to protect sacred lands are as diverse as the sites and the communities who tend them.

Every year sacred sites, integral to the practice of Indian religions, are being destroyed. There is no comprehensive, effective policy to preserve and protect sacred lands and resources. Legal remedies, such as the American Indian Religious Freedom Act, Executive order 13007, and the National Historic Preservation Act (NHPA) are often ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

Through NCAI meetings and conferences, it has become apparent that sacred places continue to be endangered throughout the nation, and comprehensive legislation is still very much needed to protect all Native American sacred places. Tribal leaders have reached a consensus that it is necessary to begin an organized effort to halt private and governmentally-sponsored development that will threaten or destroy sacred places and have passed several resolutions to this effect.

At NCAI's 2002 June Midyear Conference held in Bismarck, North Dakota, tribal representatives from throughout the nation passed a resolution, BIS–02–043, supporting HR 5155, the Native American Sacred Lands Act, legislation that furthers the protection of sacred lands and sacred places and translates into positive law Executive Order 13007.

This resolution specifically calls for strengthening administrative policies and regulations to better protect sacred sites and accommodate the ceremonial use of such sites, and for the federal government to ensure adequate government-to-government consultation with tribes regarding sacred places.

HR 5155 meets those needs outlined in the resolution by requiring departments and agencies that manage Federal lands to accommodate access and use by Indian religious practitioners and consult with Indian tribes prior to taking significant actions or developing policies affecting Native American sacred lands.

HR 5155 also recognizes the importance of prohibiting undertakings likely to cause significant damage to Indian sacred lands by allowing tribes to petition to withdraw sensitive and invaluable lands for sacred and ceremonial use. The ability to petition for withdrawal of lands is most certainly part of the solution to protecting sacred places.

HR 5155 also helps protect our sacred landscapes by seeking to maintain the confidentiality of sensitive information related to traditional cultural practice, religion, or the significance and location of sacred land.

NCAI has passed several resolutions relating to sacred sites protection, and is working to protect specific sacred places that are currently threatened. These places include Zuni Salt lake in New Mexico, the Quechan Indian Pass in California [1], the Black Creek Native American Site in New Jersey [2], the Dzil Nchaa Si" An (Mount Graham) in Arizona [3], and Snoqualmie Falls In Washington State.

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[1] RESOLUTION #SPO-01–162, Sacred Lands Protection, including Zuni Salt Lake and Quechan Pass.

[2] RESOLUTION #SPO-01–111,To Support the Protection of the Black Creek Native American Site.

[3] RESOLUTION #SPO-01–063, Resolution in Support of the Determination of Eligibility of Dzil Nchaa Si" An (Mount Graham, AZ) for Listing in the National Register of Historic Places in the United States as a Western Apache Traditional Cultural Property and Sacred Site, and

Continued

ZUNI SALT LAKE

The Zuni Salt Lake is an important deity revered by many tribes in the Southwest, including the Zuni, Acoma, Hopi, Navajo, and Apache Nations. A proposed coal strip mine may shortly be approved through a Life of Mine Permit by the Department of the Interior, Office of Surface mining and Bureau of Land Management. This 18,000-acre mine will irrevocably impact the Zuni Salt Lake, surrounding traditional cultural properties, burial sites, and the Sanctuary Zone deemed eligible for inclusion in the National Register of Historic Places. The New Mexico mine and Minerals Division has already approved the mine, despite numerous hydrological studies demonstrating that the mine could have a serious effect on the survival of the lake itself.

QUECHAN INDIAN PASS

In the wake of a decision-making process that took many years, and in which the Quechan Tribe and other concerned tribes participated in the environmental impact statement and review process under section 106 of the NHPA, the Bureau of Land Management denied permission to operate a heap leach, open pit gold mine that would have destroyed many sacred places at Quechan Indian Pass but distressingly, the Secretary of the Interior has reversed this decision, paving the way to allow the proposed destruction of Quechan Indian Pass.

BLACK CREEK SITE

The Black Creek Site is an historically and culturally significant Lenape village site, as documented both by previous archaeological studies in the Vernon Township in the State of New Jersey as well as by the studies of current archaeologists and anthropologists working in collaboration with the Nanticoke Lenni–Lenape Indians of New Jersey based on ten years of surface sampling. The Nanticoke Lenni–Lenape Indian have determined that the Black Creek Site is a significant Lenape cultural site and seek site protection through registration as an historic site with the State of New Jersey and the National Register of Historic Places. However, the municipal government of the Vernon Township of New Jersey has initiated activities to destroy or otherwise significantly disturb and damage the Black Creek Site.

DZIL NCHAA SI'AN (MT. GRAHAM)

Dzil Nchaa Si'An (Mt. Graham) is a prime example of a needlessly threatened site, where both science and religious freedom would be best served by selecting an alternative observatory site. The mountain landform Dzil Nchaa Si'An is a traditional cultural property of the Western Apache people, a central source of sacred spiritual guidance, and a unique place on earth through which Apache people's prayers travel to the Creator. Dzil Nchaa Si'An is being desecrated and irreversibly harmed by the cutting of ancient forest, construction digging, road building, electrification, and the installation of telescopes and metal buildings sponsored by the University of Arizona and its astronomers.

SNOQUALMIE FALLS

Snoqualmie Falls, Washington, in the Pacific Northwest of the United States, deemed eligible for listing on the Register of Historic Places as a Traditional Cultural Property, has a rich pre-contact history as a meeting place for the great Indian councils from the east and the west. The Snoqualmie Falls is the centerpiece of the Snoqualmie Creation Story, and retains its spiritual connection and significance to tribes in the area to this day. Yet, for the last 100 years, the sacred cycle has been disturbed. Today the Falls are strangled to a trickle. A private corporation with a license from a federal agency diverts much of the Snoqualmie River a public resource, into electricity producing turbines, interrupting its journey over the vast rock face of the Falls. The corporation currently has plans to divert more water under its application for a new license. Other federal agencies have plans that would further desecrate this site.

While economic development is important, so is the integrity of our constitutional commitment to protecting religious freedom including the traditional religions that are the oldest and longest-standing religions of this land. Tribal governments know firsthand what it is like to live and govern economically depressed areas with few

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Request That No University or Other Entity, Foreign or Domestic, Join the Mt. Graham Observatory Due to the Harms Caused to Western Apache People, Their Culture, and Their Religion.

opportunities for creating a sustainable economy. As tribal leaders, we know and understand the need to create economic opportunities for our people, but not at the unthinkable price of sacrificing our religious beliefs.

I believe many of my colleagues in the business community or in state and local government feel similarly—that their religious beliefs and cultural values are the compass that guides them through their lives, and the choices they make are informed by and not at odds with those values. Just because these traditional religions may be different from more mainstream experience of the Holy does not make them less valuable, less irreplaceable, or less subject to protection under the constitution. We are a creative, innovative nation in each of these cases and in others not mentioned here, I believe that alternative means of economic development, energy generation, and scientific exploration are readily available if we work together and agree on bottom line principles of mutual respect for the religious and cultural freedom of our neighbors.

Recognizing the inadequate solutions available to tribes and traditional practitioners for the protection of sacred lands or places, NCAI has identified several goals that we believe are critical to slowing the devastating tide of destruction and ensuring access to these deeply significant areas. These include the following:

1. Strengthened Administrative Policies

Strengthening administrative policies and regulations that will protect sacred sites and accommodate the ceremonial use of such sites is a priority for tribes and traditional practitioners. Currently, agencies are encouraged to provide accommodations for the use of sacred places by "Native American religious practitioners." For most tribes this would limit protections for and access to only those locations used or approved by a tribe's recognized religious leader. However, many other locations where traditional sacred activities were practiced, but not by the religious leaders who were in most cases men, also should be recognized as sacred, and similar protections offered (e.g., women's places, young adult 'proving grounds', and healing locations used by all tribal people). The users of such sacred places may not have the status of "practitioners" and so wouldn't be represented.

2. Tribal Consultation

NCAI is deeply concerned with the federal government's failure to ensure adequate government-to-government consultation with tribes regarding sacred places. The concerns of tribes must be sought and considered when facilitating the process of protecting sacred places. The United States must adhere to its trust responsibility to tribal governments and Indian people, and work as an ally in efforts to protect and preserve Native culture and tradition. True consultation on a national level must be achieved.

3. Compliance with and Enforcement of Existing Federal Law

NCAI has identified numerous situations in which existing law simply needs to be enforced to secure the protections intended, underscoring the need for enforcement provisions in existing law and future laws that will protect sacred places. Compliance with existing law by federal agencies is one of the many struggles our tribes are dealing with on a daily basis. Our sacred places seem not to be held in high regard by the federal government, an attitude evidenced by the blatant lack of compliance demonstrated by some federal agencies. NCAI requests an inventory of the federal agency sacred lands protection policies, including consultation policies, and an assessment of how the policies and regulations are applied. NCAI, as a member of the Sacred Lands Protection Coalition, recommends implementation of one sacred lands protection policy for all federal agencies to follow, and with the efforts of the Coalition we are willing to help develop this policy.

4. Increased Protection

Increased protection for all sacred places and lands is essential to traditional practitioners and can be achieved through comprehensive and well-thought legislation that provides a cause of action for tribes who are consistently battling with federal agencies who do not take steps to avoid damage to sacred lands.

5. Funding

Tribes need funds to protect and possibly purchase sacred places wherever possible. There are many sacred lands that are owned by private entities

Access to sacred places located on private lands can prove to be difficult and funding for the purposes of protection and access to sacred places should be made available to tribes to ensure that the needs of all parties are met in these situations.

CONCLUSION

HR 5155 represents an important step toward reversing what may be the greatest failure of our nation's historic promise of respect for religious freedoms. In the recent past, this committee has honorably "walked the talk" of religious tolerance and showed compassion for the Church of Latter Day Saints and their need for protecting land sacred and significant to the practice of their religion. As tribal nations who have practiced traditional religions related to sacred places and sacred lands, we ask for the same protection given to religions that are now practiced on our traditional homelands.

NCAI commends the House Resources Committee and Representative Rahall for introducing HR 5155, and for providing the opportunity for tribes to convey their concerns, suggestions, and recommendations aimed at protecting the traditions, cultural, and sacred places of native peoples. We look forward to working with all of you to ensure that the promise of religious freedom and protection is fulfilled for ALL Americans, including the First Americans.

Thank you for your time, and I welcome any questions or concerns you may have.

[An attachment to Mr. Keel's statement follows:]

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SOUTHEAST
Eddie Tullis
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THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #BIS-02-043

Title: Sacred Lands

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people and their way of life, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHERES, NCAI has always been deeply concerned with the respectful treatment and the protection of sacred lands and tribes have been historically subjected to the devastating, systemic destruction of their religious practices and sites and tribes continue today to suffer the heartbreaking loss and destruction of their precious few remaining sacred sites; and

WHEREAS, acknowledging that all Mother Earth is sacred and there are many particular places across America that are holy to native people, sacred places that are critical to the revitalization and continuity of hundreds of living cultures and allowing our native cultures to continue to carry on our traditions at such sites; and

WHEREAS, there is no comprehensive, effective policy to preserve and protect sacred lands and resources; and

WHEREAS, legal remedies, such as the American Indian Religious Freedom Act, Executive order 13007, and the National Historic Preservation Act (NHPA) are often ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes; and

WHEREAS, strengthening the administrative policies and regulations of Federal agencies which deal with historical preservation and administration of Federal lands to better protect sacred sites and accommodate the ceremonial use of such sites is a priority for tribes and traditional practitioners; and

WHEREAS, the federal government has failed to ensure adequate government-to-government consultation with tribes regarding sacred places; and

WHEREAS, compliance with existing law by federal agencies is one of the many struggles our tribes are dealing with on a daily basis and there is an identified need for enforcing provisions in existing law and future laws that will protect sacred places; and

WHEREAS, tribes need money to protect and recover sacred places and when the federal agencies do not fulfill their obligations to protect sacred places, tribes are left to depend on often limited tribal resources; and

WHEREAS, tribes need additional funds to protect sacred lands when federal agencies do not provide adequate protection.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support legislation that furthers the protection of sacred lands and sacred places, including adoption of legislation that turns into positive law Executive Order 13007; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted at the 2002 Mid-Year Session of the National Congress of American Indians, held at the Bismarck Civic Center, in Bismarck, North Dakota on June 16-19, 2002 with a quorum present.

Tex Hall, President

ATTEST:

Colleen Cawston, Recording Secretary

Adopted by the General Assembly during the 2002 Mid-Year Session of the National Congress of American Indians, held at the Bismarck Civic Center, in Bismarck, North Dakota on June 16-19, 2002.

Mr. HAYWORTH. Now, we call on Mr. McCrum. Welcome, sir.

STATEMENT OF R. TIMOTHY McCRUM, CROWELL AND MORING, LLP

Mr. MCCRUM. Thank you, Mr. Chairman. Good afternoon, members of the Committee. My name is Tim McCrum. I am with the law firm of Crowell and Moring here in Washington, D.C. I am counsel to the Glamis Imperial Corporation, a subsidiary of Glamis Gold, which is an intermediate-sized gold producing company headquartered in Reno, Nevada, with operations in the United States and Central America.

I have substantial prepared testimony submitted. I am going to depart from the order on that and go right to the Glamis situation and hopefully come back to broader concerns about the bill, H.R. 5155.

Glamis has no animosity toward the Quechan Tribe. We are not seeking to run roughshod over their values and culture. Glamis is interested in gold mining. That is their business. Gold mining has been recognized as a lawful activity on Federal lands in the West.

In the California desert area, substantial attention has been placed by the Interior Department and the Congress on allocating and designating lands for Native American cultural preservation purposes and recognizing that some lands would be available for multiple use mineral development. I believe that Native American traditional values should be considered and protected in Federal land management and I believe that they have been. And I think, ironically, that the California desert area is an area where intensive efforts have been made by the Interior Department and the Congress over the course of the past two decades to give great attention to Native American cultural values and balance those interests against multiple use interests, such as mineral development.

The Glamis Imperial project is a proposed gold mine on lands near Indian Pass in Imperial County, California. As I understand it, this controversy is a major part of the impetus for this current bill. I believe a careful examination of the Glamis facts reveals that this bill is not warranted and is not appropriate and that, in fact, a substantial amount of attention has been shown to balancing the competing interests here.

In the late 1980's, Glamis discovered the valuable gold deposit now known as the Imperial Project in Imperial County, California. Since that time, the company has invested $15 million in exploration and development of the project. The site is located in a historic gold producing district, and I have a Figure 1 attached to my prepared testimony that shows the proximity of the Glamis mine, lying approximately six miles from Glamis's own Picacho mine, which it operated over the past 20 years, and in the distance, seven miles to the north, is the Mesquite mine, operated by another mining company.

Cultural resource studies were undertaken from the outset of the Glamis project in coordination with the Quechan Tribe. Two cultural resources studies were undertaken, the first in 1991 and then in 1995 with the tribal historian Mr. Lorey Cachora participating in those studies.

Yet, it was not until 1997 that claims were made that this area was sacred. Glamis would not have—Glamis has no interest in destroying areas that would be sacred to any Native American tribe.

The concern that we have as we have dealt with this issue is that the tribe's—we do not question the tribe's sincerity as to their personal views, but the claims that have been made are of a regional nature. The testimony that has been submitted to the Advisory Council on Historic Preservation referred to Indian Pass as being part of a region running from the Indian Pass area east to Los Angeles, on into Mexico, and into Western Arizona, covering a broad region of hundreds of square miles. I believe that the testimony of the tribal historian to the Advisory Council on Historic Preservation in 1999 reflects that, as well as statements by the tribe's legal counsel to the Interior Department. I have quotes of those statements in my prepared testimony.

Those regional claims were considered by Congress, and particularly in the 1994 California Desert Protection Act, where 7.7 million acres were put off-limits to all development, including substantial designated areas for Native American cultural values. In the area of the Imperial Project, two wilderness areas were designated by Congress, one entitled the Indian Pass Wilderness Area, the other the Picacho Peak Wilderness Area, in part for Native American cultural values.

Seven-point-seven million areas is an area roughly the size of the State of Maryland put off-limits to development activities. But when Congress took that landmark Act in 1994, with substantial attention to Native American concerns, it also said that areas outside those boundaries were to be open and available for multiple use, including mineral development, and that is where Glamis's mine is located, outside of the areas designated by Congress in 1994.

Glamis has invested money based upon the rules of the United States and the laws of the United States and opposes a retroactive effort to block its project with new legislation. We believe that the Interior Department's rescission of their prior legal opinion was legally sound and correct and is consistent with past Interior Department administration, and that if this bill is adopted, it will be a mechanism available to block multiple use activities of all types, ranging from oil and gas activities, coal mining, timber harvesting, wireless telecommunication sites, and a broad range of other activities.

Mr. HAYWORTH. Mr. McCrum, we thank you for your testimony.

[The prepared statement of Mr. McCrum follows:]

Statement of R. Timothy McCrum, Crowell & Moring LLP, on behalf of Glamis Imperial Corporation, a subsidiary of Glamis Gold Ltd.

I. INTRODUCTION AND OVERVIEW

My name is Tim McCrum, and I am a partner with the law firm of Crowell & Moring LLP here in Washington, D.C., and counsel to Glamis Imperial Corporation, a subsidiary of Glamis Gold Ltd. Glamis Gold Ltd. is an intermediate-sized gold producer, traded on the New York Stock Exchange, with operating mines in Nevada, California, and Central America. For convenience, I'll refer to these affiliated companies simply as Glamis.

I'll begin my testimony today by stating that Native American traditional cultural values should be considered and protected in the management of federal lands.

Moreover, Native American traditional cultural values have been considered and protected in federal land management decisions by the Executive Branch and the Congress for many years. However, the present bill, H.R. 5155, would radically change the manner in which Native American values are addressed, and it would do so in a manner which would thwart the principles of sound multiple use which have governed federal land management policy for decades.

First, the bill would create new administrative and legal mechanisms for Native American groups and their allies to impede virtually all development activities on federal lands, including mining, oil and gas production, geothermal energy projects, wind farms, and wireless telecommunications, to name just a few. Permitting these activities on federal lands is already a protracted and burdensome process. This bill would add major new obstacles to a wide range of activities which are authorized and encouraged by other federal laws and policies. I note that the judicial review provisions (in § 3(e)) authorizing relief including money damages against federal agencies and potentially federal officers are highly unusual.

Second, the bill would allow Native American groups to declare that any geographical area or feature is "sacred" by virtue of its alleged cultural or religious significance based on evidence which can include nothing more than oral history. Such claims would be highly subjective and virtually unverifiable. Indeed, the Interior Department under Secretary Bruce Babbitt in 2000 recognized the subjective and unverifiable nature of these allegations in the "3809" hardrock mining rulemaking which sought to establish an administrative "mine veto" power. In the final EIS on that rulemaking, dated October 2000, the Bureau of Land Management stated, in part, as follows: "religious significance, substantial irreparable harm, and effective mitigation are determined by those that hold those beliefs, not BLM. Analyzing the . . . impact . . . is further complicated by the fact that most Native American religions are based on . . . the concept that each individual determines what is significant for herself/himself." BLM, FEIS, v.1 at 126–27 (2000). Fortunately, that "mine veto" power was determined to be beyond Interior's legal authority in an Interior Solicitor's Opinion issued by William Myers on October 23, 2001, and in subsequently amended rules, but H.R. 5155 would reopen this divisive issue for potentially all undertakings on federal lands.

As Chief Justice Marshall stated long ago in Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803), the "government of the United States has been emphatically termed a government of laws not of men." Yet, if H.R. 5155 is enacted, groups of individual Native Americans would have the authority to allege that vast portions of federal lands are sacred to their religious beliefs, and federal officials would be hard-pressed to find such subjective allegations without merit, especially where the bill provides that "[o]ral history shall be given no less weight than other evidence" and actions for money damages may be brought for alleged violations.

Third, if this bill is adopted and a new Native American "sacred site" veto power is created, the legislation and the resulting processes would be unconstitutional as an establishment of religion by the United States Government and, alternatively, as a taking of private property. The Government should avoid creating sanctuaries and monuments to particular religions and practices. And, it should avoid destroying private property and investments.

Several laws already in place provide for and reflect careful consideration of Native American values in federal land management. These include the National Historic Preservation Act, 16 U.S.C. § 470, the Native American Graves Repatriation Act, 25 U.S.C. § 300 et seq., the American Indian Religious Freedom Act, 42 U.S.C. § 1996, the Archaeological Resources Protection Act, 16 U.S.C. § 470aa, as well as many other site-specific laws establishing parks and wilderness areas, such as the 1994 California Desert Protection Act (discussed further below), and the land use planning and withdrawal authorities of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq.

II. The Glamis Controversy

The controversy over the "Glamis Imperial Project," a proposed gold mine on federal lands near Indian Pass in Imperial County, California, was apparently the impetus for H.R. 5155, at least in part. Yet, a careful examination of the Glamis Imperial Project facts reveals the ill-advised nature of this legislation. The alleged "sacred site" around the Glamis Imperial Project is a prime example of how this proposed legislation could be used by Native American groups to thwart a wide range of development projects across the western United States.

A. BACKGROUND FACTS

In the late 1980's, Glamis discovered the valuable gold deposit that is now the Imperial Project in rural southeastern California, and has since spent nearly $15 million in exploration, feasibility analysis and permitting efforts to develop an open-pit gold mine that would produce an average of 130,000 ounces of gold per year employing over 100 individuals in high-wage jobs. This site is located in an historic gold-producing district, only seven miles from another operating gold mine and six miles from Glamis' own Picacho gold mine that was operated for over 20 years and successfully closed and reclaimed in 2002. See Figure 1.

After further mineral exploration in 1991, Glamis filed its original mining proposal with the Interior Department in 1994, and Native American consultations were conducted as required. Two cultural resource studies were undertaken to determine the nature, if any, of cultural resources at the site, the first in 1991 and the second in 1995. Not until a third cultural resource study was conducted in 1997 did assertions arise that the Imperial Project area was considered "sacred" to the Quechan tribe which has a reservation over 10 miles to the south. Yet, the same Quechan tribal historian participated in all three studies.

In 1999, the tribal historian testified before the Advisory Council on Historic Preservation that the site is part of a broad regional trail system running from Arizona to Los Angeles and south to Mexico, encompassing hundreds of square miles. There is no claim that tribal members ever occupied the project site for any substantial length of time, nor is it a burial site. The alleged sacred site is part of an asserted "Trail of Dreams" encompassing a broad region and many hundreds of square miles in southern California. See Figure 2. Both the Tribe's attorney and tribal members reiterated the broad scale of concern in testimony and in letters that are part of the record in this matter. For example, Mr. Lorey Cachora, the Quechan tribal historian, testified on March 11, 1999, as follows:

> It is a region we are discussing. It just so happens that this area, Indian Pass, is right in the path of one of those regions . . . .[T]his trail follows west to the present town of Los Angeles, then down to San Juan Capistrano, then it goes into Catalina Island and trails into Mexico. To this point we don't know how deep into Mexico we went but . . . in this creation history it tells of the Amazon Parrot. So you can imagine how far they went.

Advisory Council on Historic Preservation, Hearing Transcript, pages 179–180 (March 11, 1999). Similarly, the Quechan Tribe's legal counsel, Courtney Coyle, stated in a letter to the BLM on January 29, 1999, that "Quechan sacred lands include the Indian Pass area and clearly encompass the proposed Imperial Project site, but also extend towards the north up to Blythe, towards the south connecting with Pilot Knob, towards the west and the Cargo Muchachos Mountains and east to the Colorado River and along portions of what is now western Arizona." The area described thus spanned hundreds of square miles comprising a major part of southern California.

It is significant that when BLM prepared its Indian Pass Management Plan in 1987, it noted that "there is no evidence that the area is used today by contemporary Native Americans." BLM, Indian Pass ACEC Management Plan § V (1987). Glamis has modified its mining plan and otherwise attempted to accommodate the Quechan concerns with mitigation, but has been told that no level of disturbance at the site is acceptable.

The Imperial Project is located on federal land that was open to mineral entry at the time Glamis acquired its mining claims. The area is within the California Desert Conservation Area and has been the subject of intense land use planning processes, the establishment of 7.7 million acres of park and wilderness areas pursuant to the California Desert Protection Act in 1994, and the creation of large protected areas outside the Imperial Project site to protect Native American cultural values. Following all of these land designations, the Imperial Project area remained open to mineral development and Glamis proceeded with its substantial investment in development.

On January 17, 2001, during his final week in office, former Interior Secretary Bruce Babbitt held a press conference and announced that he had denied the Imperial Project based on a novel legal opinion rendered by his Solicitor. On November 23, 2001, Interior Secretary Gail Norton rescinded the Babbitt denial based on the legal opinion of her Solicitor, rendered October 23, 2001, which held that Interior had no discretionary power to veto the mine proposal.

Glamis Gold has a duty to its shareholders to recover its investment in the Imperial Project and its expected return on that investment. That duty can be fulfilled by developing the mine or by an alternative arrangement of equal economic value,

and the company is prepared to consider all reasonable alternatives. Glamis will not abandon its substantial investment and property interests.

Legislation that would further delay or prohibit the Imperial Project without compensation to Glamis would be grossly unfair to Glamis and its thousands of shareholders.

B. THE 1994 CALIFORNIA DESERT PROTECTION ACT

Ironically, the Glamis Imperial Project controversy arose in an area where a major effort was made by the U.S. Government to address Native American cultural concerns. The California Desert Protection Act of 1994 provided permanent protections to vast lands of cultural significance to Native Americans. 108 Stat. 4471 (1994). This Act was the most significant federal public land legislation in the past two decades.

The Act established major new National Park lands and wilderness areas, and the congressional findings reveal that the purposes for which these lands were protected are quite similar to the general concerns being raised in connection with the landscapes affected by the Glamis Imperial Project. For example, the Congress found that the designated "desert wildlands display unique scenic, historical, archeological, environmental, ecological, wildlife, cultural, scientific, educational and recreational values . . . ." 108 Stat. at 4471 (emphasis added). Accordingly, Congress declared that "appropriate public lands in the California desert shall be included within the National Park System and the National Wilderness Preservation System in order to

(A) preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes;
(B) perpetuate in their natural state significant and diverse ecosystems of the California desert;
(C) protect and preserve historical and cultural values of the California desert associated with ancient Indian cultures . . . .

108 Stat. 4472 (emphasis added).

The lands set aside for preservation by the California Desert Protection Act included over 7.7 million acres, the largest wilderness area ever designated by Congress in the lower 48 states encompassing an area larger than the State of Maryland. See Washington Post, p.A–1 (Apr. 14, 1994). Notably, the Imperial Project is not within the newly designated park lands and wilderness areas. Two wilderness areas were designated near the Imperial Project specifically for Native American cultural purposes. They were the Indian Pass Wilderness, which encompasses over 34,000 acres, and the Picacho Peak Wilderness Area, which encompasses 7,700 acres. The House Natural Resources Committee Report (No. 103–498), dated May 10, 1994, specifically discussed the Native American cultural preservation purposes supporting these two wilderness areas, and it notes that the Picacho Peak Wilderness "represents the former territory of the Quechan Coyote Clan and . . . [is] associated with a ritual collection area for hawk, eagle and owl feathers." House Report at 46.

The wilderness areas in the California Desert Protection Act were studied extensively by the BLM pursuant to the wilderness study review provisions of FLPMA, 43 U.S.C. § 1782. In addition, those studies were conducted by the BLM in coordination with land-use plans developed by BLM pursuant to the provisions of FLPMA dealing with the California Desert Conservation Area. 43 U.S.C. § 1781. In the 1980 California Desert Conservation Area Plan, prepared pursuant to FLPMA, the BLM heavily focused on Native American cultural values and stated that "these values will be considered in all CDCA land-use and management decisions." Id. at 26. BLM's stated goals were to "[a]chieve full consideration of Native American values in all land-use and management decisions." Id.

In the California Desert Protection Act, Congress acted on BLM's wilderness recommendations and took special steps to ensure that the designated wilderness areas of importance to Native Americans did not prevent traditional cultural and religious use of those lands. Accordingly, Congress provided the following special access provisions for Native Americans:

> In recognition of the past use of the National Park System units and wilderness areas designed [sic] under this Act by Indian people for traditional cultural and religious purposes, the Secretary shall ensure access to such Park System units and wilderness areas by Indian people for such traditional cultural and religious purposes. In implementing this section, the Secretary upon the request of an Indian tribe or Indian religious community, shall temporarily close to the general public use of one or more specific portions of the Park System unit or wilderness area in order to protect the

privacy of traditional cultural and religious activities in such areas by Indian people.

108 Stat. 4498.

The California Desert Protection Act contained another significant provision which reveals the unfairness of using sacred site allegations to block the Glamis Imperial Project. Section 103 of the Act stated: "Congress does not intend for the designation of wilderness areas in Section 102 of this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that non-wilderness activities or uses can be seen or heard from areas within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area." 108 Stat. 4481.

Through the California Desert Protection Act, the Congress settled in a significant and meaningful manner longstanding disputes between competing public land users and interests. Many millions of acres of public lands were permanently set aside for preservation purposes, including Native American cultural purposes. Other areas, including the Glamis Imperial Project lands, remained classified as multiple use public lands open to the federal mining laws and other management standards which permitted continued development. Glamis recognizes the legitimate interest of Native Americans in the California Desert Area, and we believe that those interests have been recognized and protected by Congress through the California Desert Protection Act of 1994. Glamis is willing to carry out additional mitigation measures at the Imperial Project site in further accommodation to Native American interests, but appropriate mitigation measures should be designed considering the enormous protections already provided by the Interior Department and the Congress in the California Desert Protection Act.

C. MITIGATION MEASURES

Glamis did not conduct itself in a manner that was insensitive to Native American concerns once they arose in 1997. As Glamis became aware of the Native American cultural features that would be affected due to its mining plan, immediate steps were taken by Glamis to avoid potential disturbance of cultural features whenever possible. A wide variety of mitigation measures are available to address the cultural aspects of the Imperial Project site.

1. Avoidance by Project Redesign

As the BLM's second Draft EIS/EIR (1997) on the Imperial Project stated, "[s]ince November, 1996, substantial revisions have been made in the Proposed Action by the Applicant" (p.S–1). These revisions were made primarily to respond to cultural resource concerns. As explained in the December 1997 report by KEA Environmental, "Glamis Imperial has already modified the Project to reduce impacts." See KEA Environmental, "Where Trails Cross: Cultural Resources Inventory and Evaluation for the Imperial Project, Imperial County, California" at 307 (December 1997). Specifically, mine facilities were redesigned, moved or eliminated to avoid and preserve Quechan cultural features. Glamis reduced the heights of overburden stockpiles, eliminated an overburden stockpile, moved topsoil stockpiles, redirected haulage routes and altered the footprint of the processing leach pad to avoid cultural features. Glamis was and is committed to these measures notwithstanding that the alterations would substantially increase Glamis operating costs over the life of the project.

Notably, the most distinct and identifiable Native American cultural feature in the vicinity is the "Running Man" which is a rock formation approximately four feet by four feet. See Figure 3. Quechan tribal members have stated that this feature was built in the 1940s. See KEA at 286 (1997). It would not be disturbed as it lies approximately two miles outside the project area.

2. Wilderness Areas/Indian Pass ACEC Enhancement

Glamis also offered to relinquish its property interests in the Gavilan Wash mining claims that abut the Indian Pass Area of Critical Environmental Concern ("ACEC"), as designated by BLM in 1987, in immediate proximity of the Indian Pass and Picacho Peak Wilderness areas—where the "Running Man" feature is located. Drilling results have revealed the presence of notable mineralized values. To keep Gavilan wash open for mineral entry, Glamis actively participated in the congressional process leading to the 1994 California Desert Protection Act (discussed above) when the wilderness areas were created. This area contained 58 mining claims and totaled nearly 1,200 acres. Relinquishing these claims would increase protection of the Indian Pass ACEC and the congressionally-designated wilderness areas.

3.Cultural Feature Treatment Plans

Glamis also proposed that unavoidable cultural features would be mitigated through an Onsite Treatment Plan. This type of mitigation, consistent with accepted mitigation measures adopted throughout the federal public lands in the West, would procure, document, report and curate significant cultural features that would be affected by operations. The participation by a Quechan representative and the results obtained through this action could further preserve, display, make available for use and increase knowledge of their traditional cultural past. The details of the Onsite Treatment Plan and Data Recovery Recommendations were set forth in Chapters 8 and 9 of the 1997 KEA report.

The Indian Pass ACEC, as described in the 1987 BLM designation, is one of the focal points of the traditional Quechan presence in the area. An Offsite Treatment Plan of the Indian Pass ACEC, as designated by BLM in 1987, is a possible mitigation measure which would further promote Quechan knowledge of their traditional past. This plan would involve funding a concentrated study of the ACEC to provide a better understanding of its significance. Glamis also offered funding to insure the Quechan have the means to be an active participant in the cultural mitigation plan. This proposal would fund a Quechan representative in the treatment plans previously mentioned.

4.Cultural Land Bank

Glamis has proposed a plan to the Quechan Tribe that would mitigate impacts to cultural features at the Imperial Project site by protecting traditional cultural tribal lands off the site. This suggestion could include establishing a "Cultural Land Bank", away from the Imperial Project site, but within acres formerly occupied by the Quechan. Glamis has identified some riparian lands along the Colorado River which are today in private ownership, but which may be of historical and cultural importance to the Tribe. Potentially, such lands could be acquired and conveyed to the Tribe for cultural resource enhancement purposes. Unfortunately, the Quechan Tribe has rejected all of these proposed mitigation measures.

III. THE BILL WOULD CONSTITUTE AN UNLAWFUL ESTABLISHMENT OF RELIGION.

H.R. 5155 would create a new and unprecedented power in Native American groups to impede and potentially prohibit a wide range of development projects on federal lands such as the Glamis Imperial Project. Moreover, it would afford Native American groups virtually unfettered discretion to extract demands of all types as conditions for consent to projects, regardless of whether such conditions are in the public interest.

In addition to the adverse public policy implications of this legislation and the chaos that it would create over development projects across the western U.S. If this legislation were to be enacted, it would violate the U.S. Constitution, which prohibits the establishment of a religion by the Government. The express purpose of the legislation is to protect alleged Native American religious practices and sites.

Adoption of H.R. 5155 would violate the U.S. Constitution, which prohibits the establishment of a religion by the Government. The express and exclusive purpose of this legislation is to protect alleged Native American religious practices and sites, and this would constitute an unconstitutional establishment of religion as prohibited by the First Amendment of the U.S. Constitution. U.S. Const. amd . 1 ("Congress shall make no law respecting an establishment of religion . . ."). Consequently, H.R. 5155 should not be adopted.

The Government is prohibited under the U.S. Constitution from taking action based on such a clear motivation to promote and protect, and thereby endorse, religion. As the Ninth Circuit has explained, "[t]he Supreme Court has focused Establishment Clause analysis on whether governmental practice has the effect of endorsing religion." Separation of Church and State Committee v. City of Eugene, 93 F.3d 617, 619 (9th Cir. 1996) (holding that a cross in a city park represented an impermissible governmental endorsement even though the city contended it was a memorial in honor of veterans rather than a religious symbol). By determining that certain religious concerns should supercede mining and other development rights, H.R. 5155 would clearly have the effect of endorsing Native American religious beliefs and "demonstrate[s] a preference for one particular sect or creed" Id. Irrespective of whether the Government could claim additional purposes for H.R. 5155, "the practice . . . in fact conveys a message of endorsement . . ." Id.

The Supreme Court has repeatedly held that the Establishment Clause requires that "government may not promote or affiliate itself with any religious doctrine or organizations . . . ." County of Allegheny v. ACLU, 492 U.S. 573, 590 (1989). This line of reasoning extends back to the Court's decision in Everson v. Board of Edu-

cation of Ewing, where the Court stated that "[t]he establishment of religion clause of the First Amendment means that . . . [n]either a state [n]or the Federal Government . . . can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U.S. 1, 15–16 (1947). The prohibition contained in the Establishment Clause "precludes government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred." Wallace v. Jaffree, 472 U.S. 38, 70 (1985) (O Connor, J., concurring). See Larson v. Valente, 456 U.S. 228, 224 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). "Whether the key word is "endorsement," "favoritism," or "promotion," the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief . . . ." County of Allegheny, 492 U.S. at 594 (emphasis added).

Actions similar to H.R. 5155 have been found by courts to constitute unconstitutional establishments of religion. For example, in Lyng v. Northwest Indian Cemetery Protective Ass n, 485 U.S. 439 (1988), the U.S. Supreme Court held that Indian tribes could not require the government to prohibit timber harvesting in National Forests in order to protect areas used for religious purposes:

> [n]o disrespect for these [Indian religious] practices is implied when one notes that such beliefs could easily require de facto ownership of some rather spacious tracts of public property. Even without anticipating future cases, the diminution of the Government's property rights, and the concomitant subsidy of the Indian religion, would in this case be far from trivial: the District Court's order permanently forbade commercial timber harvesting, or the construction of a two-lane road, anywhere within an area covering a full 27 sections (i.e., more than 17,000 acres) of public land.

485 U.S. at 453 (emphasis added). See also Inupiat Community of Arctic Slope v. United States, 548 F.Supp. 182 (D. Alaska 1982) (rejecting tribe's claim because "carried to its ultimate, their contention would result in the creation of a vast religious sanctuary"). The same would be true if H.R. 5155 is enacted and implemented.

Similarly, the U.S. Court of Appeals for the Tenth Circuit, in Badoni v. Higginson, 638 F.2d 172 (10th Cir. 1980), explained that administrative action taken to aid religious conduct on public lands would violate the establishment clause. Id. at 179 ("[I]ssuance of regulations to exclude tourists completely from the Monument for the avowed purpose of aiding plaintiffs' conduct of religious ceremonies would seem a clear violation of the Establishment Clause."). In Badoni, the court held that if either the purpose or primary effect of government action is "the advancement or inhibition of religion then the enactment exceeds the scope of the legislative power as circumscribed by the Constitution. Id. The text of H.R. 5155 makes clear that here there is not "a secular . . . purpose and a primary effect that neither advances nor inhibits religion." Id. Indeed, the bill's exclusive or primary purpose is to have a positive influence on the religious practices it seeks to protect and effects the purpose and priority given to the Native American religious beliefs at the expense of property interests of others.

IV. The Bill Would Effect a "Taking" Of Private Property.

Under the U.S. Constitution's Fifth Amendment, property owners have the right to use their property without unreasonable interference with or damage to the value of their property, and to be free from the taking of or damage to reasonable investment backed expectations in their property. For example, federal mining claims are constitutionally protected property interests (see United States v. Locke, 471 U.S. 84 (1985)), as are federal mineral leases. Yet, this legislation takes and damages individuals' property rights—to use their property according to existing investment backed expectations—without compensation.

H.R. 5155 would unconstitutionally infringe on property rights without compensation. Accordingly, it would expose the U.S. Treasury to substantial liabilities to compensate property owners for this interference. These conclusions are supported by many judicial cases over the past decade. See, e.g., Lucas v. South Carolina, Coastal Council, 505 U.S. 1003 (1992) (holding that denial of home development in coastal area was a takings subjecting state to over $1.2 million liability); Whitney Benefits v. United States, 926 F.2d 1169, 1178 (Fed. Cir. 1991) (holding a taking due to the prohibition in the Surface Mining Control and Reclamation Act on mining in alluvial valley floors and affirming the Claims Court's determination that the coal owner was entitled to over $60 million for the loss of its mineral reserves, plus prejudgment interest); United Nuclear Corp. v. United States, 912 F.2d 1432 (Fed. Cir. 1990) (holding a taking occurred when the Secretary of the Interior required approval from tribal council to approve a mining plan for Navajo reservation land

when such approval had never been required; the government eventually settled with United Nuclear for $67.5 million for the taking of these uranium leases; Stearns Co. v. United States,—- Fed. Cl.—-, 2002 WL 2001280 (Fed. Cl. Aug. 5, 2002) (holding that a taking occurred through the operation of the federal Surface Mining Control and Reclamation Act, which "eliminated traditional property rights" of the plaintiff mineral estate owners); see UNC Unit Gets Payment, Wall St. J., Jan. 16, 1992, at A2); Yuba Natural Resources v. United States, 821 F.2d 638 (Fed. Cir. 1987) (holding government prohibition of mining based on erroneous interpretation of property rights was a temporary taking for which mineral owner was entitled to compensation for period in which government action blocked mining); Del–Rio Drilling Programs v. United States, 46 Fed. Cl. 683 (Fed. Cl. 2000) (holding that government's allowance of tribe to control physical access necessary to develop the oil and gas mineral leases which were located on Indian reservation amounted to a veto to access to property rights that was compensable as taking); NRG Co. v. United States, 24 Cl. Ct. 51 (Ct. Cl. 1991) (holding on summary judgment that government's cancellation of mineral prospecting permits would be deemed a taking).

H.R. 5155 would cause a substantial diminution in the value of mining property and the minerals which lie therein, and substantially interfere with reasonable investment backed expectations. Moreover, the takings liabilities would extend far beyond mining properties and include takings claims based on a wide variety of blocked development projects.

V. CONCLUSION

H.R. 5155 would introduce chaos across the western United States into the project review process, a process which is already cumbersome and expensive. The legislation would grant unprecedented power to Native American groups over virtually all major development projects on federal lands. Further, the proposed legislation would be unconstitutional and spawn extensive litigation, exposing the U.S. Treasury to significant liabilities.

Mr. HAYWORTH. You may have heard the bells ringing. We are mindful of the fact we have a floor vote. We would turn now to Mr. Hardiman to offer his testimony.

STATEMENT OF MICHAEL HARDIMAN, AMERICAN LAND RIGHTS ASSOCIATION

Mr. HARDIMAN. Thank you, Mr. Chairman. My testimony will not run over 5 minutes.

Good morning, Mr. Chairman. Thank you for inviting me to testify today. My name is Michael Hardiman, representing the American Land Rights Association. ALRA is a 25-year-old organization with members in all 50 States. Our membership generally includes land owners located within or nearby Federal property, as well as lease and permit holders on Federal lands. I am an inholder of a small parcel in the Southern California desert surrounded by Bureau of Land Management property.

H.R. 5155, the Native American Sacred Lands Act, contains at least three parts which, especially in combination, pose a severe threat to private property rights and the wise use of Federal lands.

First is Section 1, Part B(4), the definition of what can be designated as a sacred land. This reads in part, "any geophysical or geographical area or feature which is sacred by virtue of its traditional cultural or religious significance." The term "geophysical" is defined in the Merriam-Webster dictionary as, "physical processes and phenomena occurring in the earth and in its vicinity." It would be difficult to come up with a broader definition than that.

Second is Section 3, Parts C and D, the hearing and appeal process. From the time a petition is filed, the agency in question has only 7 months to hold a public hearing and produce a written deci-

sion and rule on any appeals. This is an incredibly rapid designation process. It is greased lightning compared to getting a species delisted under the Endangered Species Act, for example.

However, due to the multi-billion-dollar maintenance backlog of the National Park Service and other land management agencies, this section may actually aggravate the degradation of sacred lands. For example, the burial grounds of Chumash Indians on the Channel Islands off the coast of Santa Barbara have exposed remains. The Park Service claims it is unable to address the problem due to lack of funds. If H.R. 5155 became law, even more resources would be drawn away from current protection efforts in order to deal with this bill's mandated deadlines, making the situation even worse.

Third is Section 4, Part A, exemptions from the Freedom of Information Act. This states, in part, that no petitioner's information which, "contains a reference pertaining to a specific detail of cultural practice or religion, or the significance of sacred land, or the location of that sacred land, shall be released." Now, it is understandable that there may be a desire to keep certain traditions and practices confidential. However, this should be balanced by the general public's and the directly affected landowners' right to know. This section, as currently written, keeps too many people in the dark.

H.R. 5155 effectively assigns sweeping new land use powers to Indian tribes, combined with a fast-track designation process not available in many other statutes. It then provides for broad exemptions from public disclosure laws, allowing much of the land lock-up process in this bill to be hidden away behind closed doors.

Here is an example. My property is located a few miles away from the Chocolate Mountain Gunnery Range, a bombing and training area used by United States Navy aviation units flying out of Yuma, Arizona, as well as El Centro, California. Portions are used for Navy SEAL special forces training, also. The Navy's Blue Angels also train in the area. I have been treated to many magnificent shows overhead without the long lines and crowds below.

The Chocolate Mountains contained within the Gunnery Range boundaries are a dark, foreboding spine of rock rising out of the desert floor, a dramatic and unusual site. Under this bill, they may be subject to the whims of Native American geophysical phenomena, and within only 7 months, largely in secret, be locked away from any further use by the American military. Now, I do not stand a chance if they come for my land with this proposal for a nearly open-ended ability to eliminate use of property.

Mr. Chairman, I have heard it said that if the only tool you have is a hammer, then everything begins to look like a nail. If this proposal becomes law, as it stands, sacred geophysical phenomena in this country, there may be more of that than we ever could have imagined.

Thank you for the opportunity to testify today, Mr. Chairman.

Mr. HAYWORTH. And we thank you for your testimony, as we thank all of the panelists.

[The prepared statement of Mr. Hardiman follows:]

Statement of Michael Hardiman, representing the American Land Rights Association,

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It would be difficult to come up with a broader definition.

SECOND is Section Three, parts (c) and (d), the hearing and appeal process. From the time a petition is filed, the agency in question has only seven months to hold a public hearing, and produce a written decision, and rule on any appeals.

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THIRD is Section Four, part (a), exemptions from the Freedom of Information Act. This states in part that no petitioner's information which "contains a reference pertaining to a specific detail . . . of cultural practice or religion, or the significance of . . . sacred land, or the location of that sacred land, shall be released."

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I don't stand a chance if they come for my land, with this proposal for a nearly open-ended ability to eliminate use of property.

I have heard it said that if the only tool you have is a hammer, then everything begins to look like a nail. If this proposal becomes law, there may suddenly appear across the American landscape more sacred geophysical phenomena in this country than we could ever have imagined.

Thank you for the opportunity to testify today, Mr. Chairman.

Mr. HAYWORTH. In consultation with my friend from Michigan from the minority, we have decided to let you know that we have several questions for each of you that we will ask you to answer individually in writing. Given the strictures of time and the vote

on the floor and other panels to get to, that will be our approach. We thank you for your cooperation not only today with oral testimony here, but we look forward to getting responses to our questions in writing, and thank you for your testimony.

Before adjourning to run over to vote, I would ask unanimous consent to insert into the record a letter from Arizona Snow Bowl, some of my constituents in Arizona, concerning H.R. 5155. With nobody here to object, guess what, that is going in the record.

[The letter follows:]

September 19, 2002

The Honorable J.D. Hayworth
United States House of Representatives
Washington, D.C. 20510

Dear J.D.,

The purpose of my letter is to convey to you and members of the House Resource Committee my concerns with H.R. 5155.

H.R. 5155 is not needed to provide Native Americans an opportunity to voice their opinions on proposals on Federal land. Laws and regulations already exist to deal with sacred places. H.R 5155 seems to duplicate regulations that we are familiar with and seem to work. This Bill does not cover the issues or articulate the process as well as existing laws. An example is the consultation mentioned in section 2. The National Historical Preservation Act is quite explicit in its description of the consultation process with tribal governments. We are currently involved with a Section 106 consultation process under the NHPA and find the process to be working.

H.R. 5155 does not articulate what is to happen with existing developments on Federal land. This bill would bring to a halt many projects underway after Federal agencies have complied with all existing laws. Would existing developments be grandfathered? Could existing developments proceed with approved projects not yet initiated?

I do not see how Federal land can be identified as unsuitable without a comprehensive inventory being conducted. If every proposal for any action on Federal land had to ascertain the status of the land prior to proceeding, the result would be that no proposals would be made. You cannot presume or find evidence of what is sacred unless you ask the question. Such a vague law will serve to curtail all activities on Federal land, even actions proposed by government agencies. The Federal government does not have the means to conduct such an inventory.

What would happen to existing planning documents completed or in progress by agencies, communities, and private enterprise? Almost all Western municipalities have been required to produce regional growth and planning documents. Many of these studies involved urban interface and involvement with nearby Federal land. Federal land is a key component to community planning; those plans would be worthless if Native Americans can designate it as unsuitable. In Flagstaff, Arizona, much of the land surrounding the community would be labeled as such. Many important projects would be stopped, even those requested by governmental entities and needed for sustainability of local communities.

This bill will not add to protection and will create more civil lawsuits. It would be devastating to many western communities to have to participate in a debate over so much land being locked up. It would contribute to racism when we are currently all trying to work together using existing laws.

The Arizona Snowbowl is currently beginning a very extensive Environmental Impact Study to improve the sustainability of the business. We have a permit to operate the ski area located entirely on Forest Service land. We are adhering to the NEPA process and because the San Francisco Peaks are sacred to local tribes we are also conducting formal consultation with the oversight of the State Historical Preservation Office. We are very aware of existing laws and regulations pertaining to sacred places and

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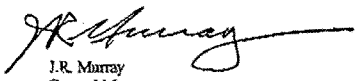
sites. We can attest to the difficulty in gaining consensus between tribes and also within tribes as to the level of sacredness of certain property. We also see the environmental community using the sacred sites as a platform for themselves to stop development. The environmental community has taken it upon themselves to become spokespersons for tribal interests. The tribes themselves do not authorize such action, however, the activists are more successful in obtaining media coverage than local tribes. We have good, productive meetings with local tribes. We cannot achieve such civility with environmental groups who use the sacred mountain as their mantra to stop progress. The current process allows for mitigation measures and ultimately a management strategy involving a memorandum of agreement with concerned tribes. This process is working!

I urge you and your committee to defeat H.R. 5155. It is too vague and serves to threaten existing operations and at the same time prevents good projects from being proposed due to the unscientific and unpredictable process of designating Federal land as unsuitable.

Please include my letter in the formal record of the committee hearing that is scheduled to occur on September 25, 2002. Thank you for your attention on this matter. If you have any question do not hesitate to contact me.

Sincerely,



J.R. Murray
General Manager

Mr. HAYWORTH. The Committee stands adjourned, subject to returning from the vote.

[Recess.]

Mr. HAYWORTH. We are glad to resume the hearing and we welcome panel five. One note for our panelists as we introduce them this morning, or this afternoon, if it would be possible as clearly as possible to adhere to the 5-minute rule. Of course, we will take your full testimony and include it as part of the record.

Mindful of that, we would begin the testimony from panel five with Mr. Mark Boughton, the Mayor of Danbury, Connecticut. Mr. Mayor, welcome. We look forward to your 5-minute statement.

STATEMENT OF MARK D. BOUGHTON, MAYOR, CITY OF DANBURY, CONNECTICUT

Mr. BOUGHTON. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here. For the record, my name is Mark Boughton. I am Mayor of the city of Danbury. And on a personal note, I want to tell you how much I appreciate your performances on the Imus in the Mornings show.

Mr. HAYWORTH. If the gentleman would yield, that is just the perfect thing to say to the Chair. Thank you very much.

[Laughter.]

Mr. BOUGHTON. I think you do a great job.

Mr. HAYWORTH. Thanks, Mark. You may continue.

Mr. BOUGHTON. Mr. Chairman, I am Mayor of the city of Danbury. The city of Danbury is located on the Western side of the State of Connecticut. We are a city of 75,000 residents with a varied economy, multiple cultures and ethnicities, and we enjoy a very high quality of life. We have an unemployment rate of 2.3 percent and we have one of the lowest crime rates in New England.

First of all, I want to thank you for your interest in an issue that can have a profound effect on the quality of life not only for my great city, but the entire Eastern Seaboard of the United States.

I would also like to thank Congresswoman Nancy Johnson for her vision in introducing H.R. 992, and certainly the support of Congressman Maloney and Congressman Simmons.

Ladies and gentlemen, the tribal recognition system process in the United States is broken. It is broken because the system is no longer seeking to right a wrong, the exploitation of Native Americans on this continent by the early settlers. It is now about a multi-billion-dollar industry called gambling. I believe that Congress must act to strike a new balance in the recognition process by separating the act of recognition of Native American tribes from the establishment of casinos. A new balance will allow Native Americans to receive the acknowledgment that they so richly deserve while protecting and preserving the quality of life in Connecticut and throughout the country.

While the Bureau of Indian Affairs and Congress decide how to restore the balance to the recognition process, it is up to the cities and towns to wrestle with the fall-out of proposed casinos and proposed land claims. In short, as mayor of a city of 75,000 people, we must foot the bill for escalating legal costs to protect the quality of life that my predecessors and I have worked to establish in our community.

Recently, if recognized, the Schaghticoke Tribal Nation has expressed interest in purchasing a large tract of land in Danbury, which was home to the world headquarters of Union Carbide. This property is approximately 600 acres of pristine woodland that is zoned for industrial use. Danbury receives approximately $4.5 million per year in property taxes from this parcel. It is my vision that this property be developed to meet the needs of our dynamic economy and provide an economic engine well into the next century. I envision housing, major corporations, and a minor league baseball stadium on this land. I do not envision a casino.

A casino on this site does not enhance our quality of life or our economic vitality. Traffic, public safety costs, emergency services, and the loss of tax revenue are just some of the negative impacts that Danbury faces if a casino is located at the Union Carbide site. At this point, the city, along with our regional organization, the Housatonic Valley Council of Elected Officials, has entered into the recognition process as an interested party. We have convinced our local business leaders to pay for a traffic study. However, because of financial constraints, we are participating at a very low level.

H.R. 992 will provide a city like Danbury with the necessary resources to oppose recognition when a casino threatens a community. In addition, it will also help protect communities who are faced with land claims. In Connecticut, several tribes have threatened to place land claims on hundreds of acres of property before they receive recognition, an effort to force negotiations on the location of a proposed casino once recognition has been secured.

Mr. Chairman and members of the Committee, I only seek the ability to participate fully in the recognition and land claim process. As a lifelong resident of Danbury, I never dreamed that we would be facing the reality of a casino. It is my intention that this never happens. Allocation of dollars will give my city a jump-start in being an active participant in the recognition process.

As I stated at the outset of my remarks, the process is broken. However, until there is time to reform and review the process, H.R. 992 will go a long way in helping cities like Danbury face this critical challenge. I certainly thank you for your time and consideration.

Mr. HAYWORTH. And Mr. Mayor, we thank you for your testimony.

[The prepared statement of Mr. Boughton follows:]

Statement of the Hon. Mark D. Boughton, Mayor, Danbury, Connecticut

Mr. Chairman, members of the Committee, thank you for inviting me to testify before your Committee today. I also want to thank you for your interest in an issue that can have a profound effect on the quality of life of not only my great city, but the entire eastern seaboard of the United States. I would like to thank Congresswoman Nancy Johnson for her vision in introducing this legislation.

I would also like to thank my friend Congressman Rob Simmons, for his tireless work on behalf of a critical issue that faces not just his district, but also all of Connecticut.

Ladies and Gentleman, the Tribal recognition system in the United States is broken. It is broken because the system is no longer seeking to right a wrong, the exploitation of Native Americans on this continent by the early settlers; it is now about a multi billion-dollar industry called gambling.

While the Bureau of Indian affairs and Congress decide how to restore balance to the recognition process, it is up to the cities and towns to wrestle with the fallout of proposed casinos and land claims. In short, as a mayor of a city of 75,000 resi-

dents, we must foot the bill for escalating legal costs to protect the quality of life that myself and my predecessors have worked to establish in our community.

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I only seek the ability to participate fully in the recognition and the land claim process. Allocation of dollars will give my city a jump-start in being an active participant. As I stated at the outset of my remarks, the process is broken. However, until there is time to review the process, H.R. 992 will go along way in helping cities like Danbury face this critical challenge. Thank you for your time and consideration.

Mr. HAYWORTH. The Chair would note that our friend, Nancy Johnson, has returned, and true to her modesty, she could sit on the dais, but she is sitting there in the gallery. It is always good to see your smiling face, Nancy, and we thank you very much for coming back to visit.

Now the Chair would call on the First Selectman of the Town of Kent, Connecticut, Ms. Dolores Schiesel, for her testimony. Welcome.

STATEMENT OF DOLORES R. SCHIESEL, FIRST SELECTMAN, TOWN OF KENT, CONNECTICUT

Ms. SCHIESEL. Thank you. I am pleased to have the opportunity to speak before you today on H.R. 992. These are serious issues that come before us. I spent some time on a written document. I hope you will read it, but I will just summarize it for your purposes.

We cannot be too cautious in the determination of a government-to-government relationship that affects small towns throughout our country. I would like to focus on the history and experience that we have in our town in Kent and then talk about why I think the Federal Government should assist in the financial burdens on these issues.

Kent is in the Northwest corner. As Representative Johnson said, we have 2,858 people by the 2000 census. We were settled in the 1730's. We were incorporated in 1739, and in 1752, the State of Connecticut reserved land for Indian use at Schaghticoke, which generally means, in language, where the two rivers meet.

We have a thriving local economy. We are in many ways a rural community that also lives in an urban area in the sense that we are outside of New York City. We are very careful to keep the

growth and values that we consider important in our community, and all of us, including the residents of the reservation, have done that over the years.

In 1981, the Schaghticoke Indians filed a letter of intent before the Bureau of Indian Affairs for recognition or acknowledgment. That sat dormant until about 1994, when a group called the Schaghticoke Tribal Nation more or less took over the petition and it became very clear that they had substantial amounts of funds behind them. It was a completely different story, and they filed about 15,000 pages worth of documents in their submittal that went in in 1996.

In 1998, the town and five or six other defendants were sued for land claims that amounted to about 2,000 acres and a town road. It was very clear to us that what those land claims were about were accelerating the petition process. That was successful, and the Schaghticoke Tribal Nation petition is now under review. It would have been probably 5 years from now before it was reviewed.

Financially, the Town of Kent, when we first got involved in the land claims and the petition, we appropriated $200,000 for that cause from our town budget. At that time, when we started this, we had an $8,000 legal account, if you will. Last year, in the spring, we put another $100,000 toward this litigation and this recognition process. We have spent about $129,000 of that, but keep in mind that amongst that, we are working with a team of defendants, all of us involved in the land claims, and we have each spent about $70,000. So the cost that we as a group have spent is closer to $300,000.

The reason that the Town of Kent thinks it is important to be involved in this, and I would think any town needs to be, but especially in Connecticut with the casino gaming, is the impacts that a tribe recognized on a government-to-government basis will have with a community. We will not have zoning control. We will not have local environmental control. We will not have any say in the kind of growth that happens on the reservation, and our community people think that that is worth making sure, and I think this is the most important thing, making sure that the truth is in the petition and in the documentation that the Bureau has to look at.

When the process first started, I think there was a sense that the Bureau people would be able to do research, that they could use their own resources and find out and go check facts and go into communities and check on stories and meet with people. That has not been the case. They are absolutely overwhelmed. We heard this morning about some of the sheer numbers of this.

We, as municipalities, now have to be part of that process and do our own research so that the Bureau has an even-handed approach to this, so that they have both sides of the story. In my testimony, I talk about an example of the Schaghticokes submitting half-truths, some information, but not the whole document, so the story is warped, and that is where the Federal Government comes into this.

When this kind of decisionmaking by the Federal Government is going to have impact on the towns throughout this country, I think the Federal Government can help the towns do the research, both in the acknowledgment and in the trust claims, that it is going to

be an economic benefit to a community and acknowledge that casino money has changed the entire story—at least in our State, it has changed everything about what happens—and the Federal Government can help the process by helping the towns do the research and come to this on some kind of a level playing field, and that is what I would ask you to consider with the bill that Representative Johnson submitted. Thank you.

Mr. HAYWORTH. And we thank you for your statement.

[The prepared statement of Ms. Schiesel follows:]

Statement of Dolores R. Schiesel, First Selectman, Town of Kent, Connecticut

INTRODUCTION

I am Dolores R. Schiesel, First Selectman of the Town of Kent, Connecticut. I am pleased to submit this written testimony to accompany my remarks in support of H.R. 992, a bill "To provide grants to local governments to assist such local governments in participating in certain decisions related to certain Indian groups and Indian tribes."

The seriousness of determining a particular group of tribal people so socially, culturally and politically distinct that it should be on a government to government relationship with the United States of America can not be taken too seriously. In these remarks I am addressing my support of this bill, while not addressing the issues concerning the process itself.

HISTORY

Kent is a rural town, with a population of about 2800, in the northwestern corner of Connecticut. It has 49 square miles of landmass and 66 miles of town roads. Within our boundaries are three private preparatory schools, two traffic lights, a small downtown, fourteen miles of dirt roads, one historic covered bridge, a section of the Appalachian Trail, three state parks, and a State Indian reservation.

The presence of the 400 acre Schaghticoke Reservation brings me before you to share with you the issues local governments face with Federal creation of sovereign nations within the boundaries of towns and why Federal support for the towns is necessary.

Kent was first populated by Europeans expanding from the Hartford area in the 1730's. It was incorporated as a Connecticut municipality on October 1739. In 1752, the State of Connecticut legislature reserved for Indian use land at Schaghticoke in Kent. The remains of that original set aside are about 400 acres of primarily wooded mountainside in the southwestern corner of Kent along the Housatonic River. It is currently home to a few families. In recent decades, the population on the reservation has varied from about 6 to 15 people. The town and residents of Schaghticoke live with each other and Schaghticoke has been little more than another neighborhood in town.

PETITION PROCESS IN KENT

When I took office in 1995, I was aware of the Federal recognition process and that the Schaghticokes had filed a petition for acknowledgment that was dormant for many years. I knew that the Indian Regulatory Gaming Act (IGRA) had changed the stakes for Indian groups around the country, and particularly in Connecticut. I quickly moved that the town be granted intervernor status in the petition review at the Bureau of Indian Affairs (BIA) so we could track the petition. At the time it was scheduled for consideration in eight to ten years.

Not long after taking office, I was told by a group calling themselves the Schaghticoke Tribal Nation ("STN") that it had resubmitted petition documents to the tune of 15,000 pages and was ready to make land claims in Kent. This group must be distinguished from the people that live on the reservation in Kent. The leadership of STN is not residents of Kent and has little to do with the residents of the reservation.

By 1998, the Town and other parties were sued in land claims brought in Federal Court under the Non–Intercourse Act of 1790. The land claims involved a town dirt road and 2000 acres, including about one-half of the Kent School campus. The primary defendants are the Town, by virtue of the road claim, Kent School, a private preparatory school, Connecticut Light & Power Company and Preston Mountain Club, a private hunting club. The goal of the land claims was clearly to put on

enough pressure that it would accelerate the petition of the STN ahead of other groups.

Even more apparent and of much more concern, was my growing awareness of the financial backing the STN had. I knew the town was seriously undermatched when I learned the STN had retained as genealogist a former member of the Bureau of Indian Affairs staff, one Danbury law firm, two Hartford law firms, one Washington, DC law firm, one New York public relations firm and untold number of lobbyists. In 1998, the town's legal budget was $8,000 per year. A Kent resident informed me that the PR firm would not even sit down to discuss representation for $8,000. The STN will not confirm the source of the group's funding, but its leader has confirmed his interest in developing a gaming facility. It is fair to say that the backer(s) are casino developers.

Ultimately, the initiation of land claims was a successful legal maneuver and accelerated the petition review for the STN. From time to time during the legal back and forth, the financial backer did not seem happy with the slow timetable. Each time, more motions were filed and the town incurred more and more legal fees.

The defendants have now joined together to pool resources and retained a single team to do our research into the validity of the claim for recognition. The bureau staff is in the process of reviewing all submittals. The reservation residents, calling themselves the Schaghticoke Indian tribe ("SIT"), have tried to join in as much as possible. They do not seem to have financial backing from casino interests. In addition, members of a family long associated with the reservation have formally broken ties with the STN. They are proud of their heritage and say they wish to remain so.

FINANCIAL SUPPORT TO MUNICIPALITIES

The federal recognition process and particularly IGRA added stakes to Native American acknowledgment that can not be denied. When casino investors became the high stakes players, the local governments could not match the ante.

The introduction of gambling money took a review process that I believe was well intended and structured with western groups in mind—groups that had lived in one area, stayed indigenous and could not break out of a cycle of poverty, and allowed eastern peoples, with none of those characteristics to take advantage of it. In the name of "economic investment opportunities" the true beneficiaries in the east are gambling investors, not the individuals who were raised, lived and worked in the towns, even states, far from their families' origins. The true impacts are on the communities which are now declared to have sovereign nations within their borders.

In Kent we talk a lot about "rural character". It is that indefinable quality that makes living, working and visiting Kent so special. It is in part, the Southern gateway of green hills, including the one of the reservation, the leaves floating on the river, the shops on Main Street, owned and operated by local residents, the narrow roads and finally the independent spirit of our New Englanders.

I wish that I could claim Kent had enough sophistication and funding to meet the STN head on. I can not say so. There is no public relations firm. There is just a town attorney and a shared defense team. I sit before you, no attorney at my side, as the town's leader who seeks only the best for our town. We want only to be able to meet at the playing field fair and square so that a full review of the claims of the STN and SIT is done without political pressure and based on both sides' presentation of facts. Federal funds will help Kent and other towns in our situation bring out the facts.

Our town believes that if we can speak to the petition with resources such as STN has, then we will have been given a fair chance. Meanwhile, if we are to have a sovereign nation within our town, we want to be sure that we have done all we can to prove this nation belongs here. We however, come up hopelessly short in financing this endeavor against interests that are looking at millions of dollars of profit each year. I constantly have the sense that gambling millions will wear us down.

Our town budget is now $6,000,000. In 1999, the town appropriated at a town meeting $200,000 to support the STN litigation and related tribal issues. In 2002, it added $100,000 to the amount to be spent. To date, the town has spent $127,500 on attorneys and historians. The town has talked about the financial burden of continuing in the litigation and petition process at town meetings and is in full support. But for the other defendants and the Connecticut Attorney General, our community feels very much like it is going it alone in a process instituted by the Federal government.

ACKNOWLEDGMENT AND H.R. 922

The bill before you would allow some federal support to towns for participation in the acknowledgment process. The recognition process is the first step. As I ex-

plained in Kent, we are involved because we know what it could be like to have a sovereign nation in our borders. We have seen what happened to our neighbors in Southeastern Connecticut. I first thought that intervenor status would put the town fully in the mix. I was wrong. With the high stakes, the sheer numbers of groups seeking recognition, the funding and rules under which the BIA staff operates, more is needed.

To fully analyze the validity of a claim under the seven criteria, both sides of the story should be presented. The hard working staff at BIA should have a full record. They are not expected to generate that record, nor can they be expected to make this kind of momentous decision on what is presented by one side only. Through our full reading of the 15,000 pages of the STN petition documents and the historical record, we have learned that often times the STN omitted important details that refuted a premise. Thus they left the impression of one fact, when the other half of a given document disproved the fact. One example is a report of its own expert researcher that indicated the group failed to meet key criteria (Starna Report, available on request). The filling in of those omissions, by the intervenors and defendants, so the Bureau staff can base its decision on all the history, has been a major undertaking. Records and data must be accumulated, organized for content and meaning and presented in a coherent manner. The burden of the presentation, under current operations falls on the States and more so, on the municipalities. In the end, local communities are most affected by a positive finding. If they can not afford to participate in the process, a group not deserving could receive recognition.

Congress establishes the federal process of acknowledgment. Setting aside the question of its inherent fairness, I focus on its impact. Success in the process creates a government-to-government relationship between the United States of America and a tribe. The local government is not included once that relationship exists; not for zoning, not for environmental review, not for any of the levels of government oversight we take for granted. A town should be in the review process from the start with full resources. It could actually facilitate the process. The acts of Congress and its agent the BIA, will change our town forever if a group is acknowledged to be a tribe. When first conceived, perhaps there was no clear understanding of how much gambling money would enter into the formula of acknowledgment. It can not be denied that money is in the game now. You can help the municipalities' research so those truly worthy groups are acknowledged not just those who have financial backing.

TRUST LAND AND H.R. 922

Recently, both before and after formal acknowledgment, groups and tribes have become involved in land claims to expand the borders of reservations. After acknowledgment, this taking into "trust" of adjacent or even distant land requires Federal government involvement. There is a review process requiring a showing of facts to support the need to annex the land. This too can be fact intensive and therefore costly for municipalities to join in the review.

It is related to the need for assistance in the recognition process in that it is costly and can be detrimental to towns. We well know, if it is key to a casino operation, the infusion of gambling money will outlast the municipality every time. The inclusion of this provision in the bill allows municipalities to also address the loss of land for gaming facilities. The addition of so-called trust land is a situation we in Kent have not had to address. But, in our town, if a tribe was to build a casino and then add more land to the reservation, it will mean lost taxes and development in a direction we would not choose to go. It also adds to the land not under local zoning and environment laws. The decision to allow trust land acquisition is done by the BIA, as agent for the Federal government. Local participation in that process, on a level playing field is a must. This bill could help provide that opportunity.

CONCLUSION

I respectfully request this committee's support of H.R. 922. Representative Nancy Johnson has proposed a bill designed to assist communities likely to be affected by tribal acknowledgment. Tribal Acknowledgment is not just an issue for Indian interests. The acts of the United States government will affect all citizens of this country. I am confident that support of this bill will only bring fairness and create a better process for Indian groups and municipalities.

Mr. HAYWORTH. Now the Chair would recognize Michele Mitchell from the Native American Rights Fund. Welcome, Ms. Mitchell, and we look forward to your testimony.

STATEMENT OF MICHELE MITCHELL, NATIVE AMERICAN RIGHTS FUND

Ms. MITCHELL. Good afternoon. I thank the Committee for inviting me here today. My name is Michele Mitchell. I am a staff attorney with the Native American Rights Fund. The Native American Rights Fund is a nonprofit organization that has been providing legal representation and technical assistance to Indian tribes, organizations, and individuals nationwide since 1970.

I am here today to provide testimony on H.R. 992. NARF strenuously opposes this bill. The principal defect which pervades every aspect of this bill is that it ignores more than two centuries of history and law that govern the relationship between the Federal Government and Indian tribes.

While recognizing Indian tribes as distinctive political entities or sovereign governments, the U.S. Government has guaranteed to protect the rights, property, and existence of Indian tribes. Indeed, the trust relationship or trust responsibility has been described as one of the primary cornerstones of Indian law.

As stated in the Indian Policy Review Commission Final Report, the Federal trust responsibility emanates from the unique relationship between the United States and Indians in which the Federal Government undertook the obligation to ensure the survival of Indian tribes. It has its genesis in international law, colonial and United States treaties, agreements, Federal statutes, and Federal judicial decisions, and, of course, the Constitution.

This bill directly contravenes that trust relationship. It would provide funding to local governments in order to finance their opposition to acknowledgment and recognition of tribes, land into trust on behalf of tribes, and land claims to recover land lost in violation of Federal law, and "any other action or proposed action likely to significantly affect the people represented by that local government." The bill appears not to include tribes among the local governments to which grants may be provided.

If this is the case, it is our interpretation that the purpose and effect of the bill will be nothing more than to provide funding to non-Indian governments to oppose tribal governments. However, even if the bill were adjusted to address this inequity, it would still be at odds with the government's trust relationship with Indian tribes. A trustee simply does not fund opposition to its beneficiary.

To make matters even worse, this money is likely to come from money that would otherwise go to fund Indian programs. In short, such actions would be at odds with the government's trust relationship with the Indian tribes and the bill should be rejected on that basis alone.

However, NARF has additional concerns with respect to the bill's effects. Numerous Indian tribes have survived intact as identifiable tribes but are not federally recognized. Lack of Federal recognition deprives the tribes of their rightful government-to-government relationship with the Federal Government and the benefits and services which accompany that relationship. Federal recognition does not create new tribes. It acknowledges that tribes that have always existed as tribes are entitled to the same government-to-government relationship with the United States as other similarly situ-

ated tribes. Providing Federal funding to further politicize the process of Federal recognition is not in anyone's best interest.

This bill would also fund opposition to the process of taking land into trust. The process of taking land into trust is a remedy to attempt to overcome at least some of the effects of Federal policies which resulted in the loss of 90 million acres of reservation land prior to 1934. While we recognize that the taking of land into trust could impact local governments by removing lands from the tax rolls, the Federal Government, rather than supporting opposition to the action, should address the problem directly by providing funding to lessen the impact of its actions on local governments. In fact, the Federal Government already provides funding in the area of education for States that are impacted by the existence of Federal trust land within the State. The imposition by the Federal Government of even more obstacles to already inadequate remedy for past Federal actions resulting in the loss of land violates the Federal trust responsibility to tribes.

The same is true as to funding the fighting of land claims. Land claims are brought to recover land lost because of the failure of the Federal trustee to perform its obligations in the first place. Land claims are a right of action created by the disposition of Indian lands in violation of Federal law. It is a legal remedy for a legal wrong. The Federal Government, as the trustee of Indian tribes, is obligated to support a tribe's valid land claim. Providing resources to support opposition to a valid land claim clearly violates that trust responsibility.

The bill also provides grants for opposing other undefined actions if the Secretary determines that an action would significantly affect the people represented by a local government. This catch-all covers virtually all of the cases involving Indian tribes' interests. Tribes in the West fight for water rights. Tribes fight to exercise their sovereign right to jurisdiction. Not only would the funding of such opposition violate the trust relationship, but because these decisions regarding tribal trust resources are often decisions made jointly with the Federal Government and tribal governments, it would contravene the principles of tribal self-government.

Finally, the bill is fraught with ambiguity. It does not define terms such as participation, action, or local government. Does participation mean lobbying the Department of Interior? Does it mean challenging Federal Government decisions through litigation? What is a local government? Is it a county, a municipality, a State? And what does it mean in the context of a land claim? Is a local government any local government that would be affected by the boundaries of a land claim?

In conclusion, the Native American Rights Fund strongly opposes H.R. 992 as a violation of the trust responsibility of the Federal Government toward Indian tribes and as an attempt by special interest groups to use the guise of participating in processes intended for the benefit of tribes to instead fund opposition to tribes' exercise of their legal rights. Thank you.

Mr. HAYWORTH. Thank you, Ms. Mitchell.

[The prepared statement of Ms. Mitchell follows:]

Statement of Michele Mitchell, Attorney, on behalf of the Native American Rights Fund

Good morning, I thank the Committee for inviting me here today. My name is Michele Mitchell. I am a staff attorney with the Native American Rights Fund. The Native American Rights Fund (NARF) is a non-profit organization that has been providing legal representation and technical assistance to Indian Tribes, organizations and individuals nationwide since 1970. I am here today to provide testimony on HR 992, a bill that would authorize the Secretary of Interior to provide grants to local governments to assist them in participating in certain decisions related to Indian groups and Indian Tribes.

NARF strenuously opposes this bill. The principle defect, which pervades every aspect of the bill, is that it ignores more than two centuries of history and law that govern the relationship between the federal government and Indian Tribes.

Since the beginning of the Republic the federal government has had a government-to-government, trust relationship with the Indian Tribes. While at once recognizing the Indian Tribes as "distinctive political" entities, or sovereign governments, the United States government has guaranteed to protect the rights, property and existence of Indian Tribes. Indeed, the trust relationship or trust responsibility, has been described as "one of the primary cornerstones of Indian law." Felix S. Cohen, Handbook on Federal Indian Law, 122 (1982 ed.).

As stated in the Indian Policy Review Commission Final Report submitted to Congress in 1977:

> "The Federal trust responsibility emanates from the unique relationship between the United States and Indians in which the Federal government undertook the obligation to insure the survival of Indian Tribes. It has its genesis in International Law, colonial and United States treaties, agreements, federal statutes and federal judicial decisions.

This bill directly contravenes that trust relationship.

This bill would provide funding to "local governments" in order to finance their opposition to acknowledgment and recognition of Tribes, applications to put land into trust on behalf of Tribes, land claims to recover land lost in violation of federal law, and any other "action or proposed action . . . likely to significantly affect the people represented by that local government." The bill does not appear to include Tribes among the "local governments" to which grants may be provided. If this is the case, it is our interpretation that the purpose and effect of the bill will be nothing more than to provide funding to non–Indian governments to oppose tribal governments. Even if the bill were adjusted to address this inequity, it would still be at odds with the government's trust relationship with Indian Tribes. A trustee simply does not fund opposition to its beneficiary. To make matters even worse, this money would likely come from money that would otherwise go to fund Indian programs. In short, such actions would be at odds with the government's trust relationship with the Indian Tribes and the bill should be rejected on that basis alone.

However, NARF has additional concerns with respect to the bill's effects as set forth below.

Concerns Regarding Acknowledgment and Recognition Decisions

Numerous Indian tribes have survived intact as identifiable Indian Tribes, but are not federally recognized. Lack of federal recognition deprives the Tribes of their rightful government-to-government relationship with the federal government and the benefits and services which accompany that relationship. Federal recognition does not create new Tribes. It acknowledges that Tribes that have always existed as Tribes are entitled to the same government-to-government relationship with the United States as other, similarly-situated Tribes. It is a rigorous process, designed to eliminate political pressures on the process and to eliminate unfounded claims. The process is designed to allow federal recognition decisions to be made by experts based upon objective criteria. To provide funding for the politicization of the process is not in anyone's best interest.

Concerns Regarding Land Issues

The bill would also fund opposition to the process of taking land into trust. The process of taking land into trust is a remedy to attempt to overcome at least some of the effects of long discredited federal policies which resulted in the loss of 90 million acres of reservation land prior to 1934. While we recognize that the taking of land into trust would impact local governments by removing lands from the tax rolls, the federal government, rather than supporting opposition to the action, should address the problem directly by providing funding to lessen the impact of its actions. In fact, the federal government already provides funding in the area of education for states that are impacted by the existence of federal trust land within the

state. For the federal government to impose obstacles to an already inadequate remedy for past federal actions resulting in the loss of land violates the federal trust responsibility to Tribes.

The same is true as to funding the fighting of land claims. These claims are brought to recover land lost because of the failure of the federal trustee to perform its obligation to protect Indian lands. Land claims are a right of action created by the dispossession of Indian lands in violation of federal law. It is a legal remedy for a legal wrong. The federal government, as the trustee of Indian Tribes, is obligated to support a tribe's valid land claim. Providing resources to support opposition to a valid land claim clearly violates that trust responsibility.

Concerns Regarding the Potential Breadth of the Legislation

The bill also provides grants for opposing other actions if the "Secretary determines that the action or proposed action is likely to significantly affect the people represented by that local government." This catchall covers virtually all of the cases involving tribe's interests. Tribes in the West fight for the water rights upon which their prospects for economic self-sufficiency depend. Tribes fight to exercise their sovereign right to jurisdiction and constantly must fight with local governments over such exercise. In Section (4), "other actions," is defined in terms that are so broad as to potentially encompass the funding of non–Indians to oppose and interfere with decisions relating to these tribal trust resources. Not only would the funding of such opposition violate the trust relationship, but as decisions regarding tribal trust resources are decisions made jointly by the federal government and tribal governments, it would also contravene principles of tribal self-government. This bill is an effort to provide funds to fight Indian rights on all fronts - actions unworthy of any trustee.

General Concerns

The bill is fraught with ambiguity. It does not define "participation," "action," or "local government." Does participation mean lobbying the Department of Interior for a negative acknowledgment decision? Does it mean challenging federal government decisions through litigation? Is a local government a county, a municipality, a state? What does it mean in the context of a land claim? Can each local government affected by a particular action participate in receiving grants under the proposed bill? What happens if one "local government" supports a Tribe's recognition bid and another "local government" opposes it; are both sides funded equally in order to ensure fair "participation ?

In addition, the proposed bill would add to an already existing atmosphere of animosity between some Indian Tribes and the communities near which they are located or of which they may be actual members. In the latter case, it finances local governments to fight on behalf of some of its citizens against the rights of others- an approach of doubtful validity in law. Further, we are unaware of, and the proponents of this bill have not indicated, any other circumstance where the federal government provides funding to support opposition to federal agency action of this kind.

Conclusion

H.R. 992 would essentially be funding non–Indian interests to fight against Indian rights of every nature. Providing such funding to local governments violates the federal government's trust responsibility to Indian Tribes. In many instances, the federal government's actions in violation of its trust responsibilities or failures to fulfill its trust obligations are the cause of the loss of valuable rights. Now, in addition to causing the harm to the Tribes, the trustee is proposing to fund those who would oppose attempts by Tribes to rectify the situation. That hardly seems like appropriate action for a trustee. Adding injury to insult, the money will likely come out of monies that would otherwise go to fund Indian programs.

The Native American Rights fund strongly opposes HR 992, as a violation of the trust responsibility of the federal government toward Indian Tribes and as an attempt by special interest groups to use the guise of participating in processes intended for the benefit of Tribes, to instead, fund opposition to Tribe's exercise of their legal rights.

Mr. HAYWORTH. Now the Chair calls on Arlinda Locklear, attorney at law. Welcome, Ms. Locklear, and you can begin your statement.

STATEMENT OF ARLINDA F. LOCKLEAR, PATTON BOGGS, LLP

Ms. LOCKLEAR. Thank you, Mr. Chairman. I appreciate the opportunity to testify this afternoon in opposition to H.R. 992. In my last 25 years of practice of Federal Indian law, I have represented numerous tribes on a number of issues that could be impacted by this bill.

Just by way of illustration, for example, I represent the Lumbee Tribe of North Carolina in its quest for Federal recognition. In the interest of full disclosure, I should also advise I am a member of the Lumbee Tribe, as well. I have also represented tribes in New York State on land claim cases, including the Oneida Tribe of Wisconsin and the Seneca Nation, on claims that are pending in Upstate and Western New York. In addition, I have represented the Fort McDowell Yavapai Nation on its water rights settlement, which happily was enacted by Congress in 1990 and is now resolved.

The fundamental premise that I would like to assert today in opposition to this bill is that it proceeds on a factual error, and that is that there is somehow an unlevel playing field in terms of resources available to local governments now in opposition to tribes on these various issues. If I may speak briefly about some of those.

First of all, with regard to Federal acknowledgment of tribes, if I may digress here for just a moment, I would like to put on the record our appreciation, the Lumbee Tribe's, for the comments made earlier today by Delegate Faleomavaega. He is a great friend of the Lumbee people and we appreciate his support.

It should be noted, as Ms. Mitchell observed, the American Indian Policy Review Commission published in 1977, well before the advent of Indian gaming, that there were at that time at least 100 documented non-federally recognized tribes. This issue has been with us for generations. The injustice that results from this issue has been with Indian people for generations. In the case of the Lumbee Tribe, for example, the tribe has sought, as Delegate Faleomavaega mentioned, recognition from the United States since 1888, literally 100 years before the enactment of the Indian Gaming Regulatory Act. These issues have not been generated by the advent of Indian gaming. They long predate Indian gaming.

Neither is it true the suggestion that, by and large, these petitioners are supported or funded by Indian gaming. There are notorious examples where that does take place, and you have heard testimony this afternoon about some of those. But in the majority of cases, that does not take place. These petitioners fund this effort, which can range in cost from $500,000 to $1 million or more, out of their own very limited resources, and typically, they do it on their own without the support of the Federal Government. I should note the Department of the Interior does not, emphatically does not fund these petitions themselves. They provide no funding or research or other assistance to tribes for that purpose. There are some limited ANA grants available for that purpose, but again, they are limited and generally small in amount.

Further, on the land claim issue, it is a misrepresentation to suggest that somehow the defendants, including local governments, in the land claim issues need the assistance of this particular bill to provide a defense to that. In the case of New York State, for exam-

ple, where most of those claims are now pending, the State of New York, by State law, has voluntarily assumed the cost of defense of all of those cases, including the cost of defense by the local governments. Outside the State of New York, typically, title insurance companies bear the cost of expense of those claims, including the cost of defense by local governments. Generally, there is not expected to be any out-of-pocket expenditure by local governments or private defendants in the defense of land claim cases.

As a result, many resources have been brought to bear by the defendants in those cases. White and Case, for example, one of the largest firms in Manhattan, has been retained by the State of New York to defend all defendants, including local governments, in the land claims cases there. The largest firms in Boston, Massachusetts, first and second, Hale and Dorr, Goodwin, Proctor and Hoar, have been retained by title insurance companies to defend these cases outside the State of New York—Massachusetts, Connecticut, South Carolina, and elsewhere.

Resources are available. There need not be a raid on the limited Federal Indian programs to make resources available to local governments to defend these actions. There is now, if anything, an unlevel playing field in the sense that tribes are obliged on their own, in most cases, to mount their own offense against this array of defense resources.

Finally, with regard to the assistance of the United States in the land claim cases, oftentimes, we hear complaints about the presence of the Department of Justice as a co-plaintiff in those cases, and it is true that in a number of cases, the United States has appeared, in New York State and elsewhere. However, the Department of Justice as a matter of policy pursues those claims only against States themselves. They do not file such claims against local governments or private property owners.

That being the case, this body need not concern itself about funding the defense of local governments or private property owners in the land claim cases as against the United States. We think H.R. 992 is unnecessary and we urge the Committee to reject it. Thank you.

Mr. HAYWORTH. And we thank you for your testimony, Ms. Locklear.

[The prepared statement of Ms. Locklear follows:]

Staement of Arlinda F. Locklear, of Counsel, Patton Boggs, LLP

Mr. Chairman and committee members, I appreciate the opportunity to testify this morning on H.R.992, a bill to provide grants to assist local governments in participating in certain decisions relating to Indian groups and tribes. The bill authorizes the expenditure of $8 million dollars in the form of grants to local governments for the purposes of participating in actions relating to Indian affairs. The bill identifies three federal actions specifically—federal acknowledgment of Indian groups, trust acquisition of land for an Indian tribe, and assertion of land claims under federal law—as appropriate for such grants. In addition, the bill provides that such grants can be made available regarding any other action if the Secretary determines that the proposed action is likely to significantly affect the people represented by that local government. In other words, the bill appears to authorize grants for local governments as to any action, whether by the federal government or otherwise, so long as the action significantly impacts a local government. The bill is premised on a grossly inaccurate view of the relative resources of Indian tribes and local governments and, if enacted, would constitute a breach of faith by the United States with its supposed beneficiaries, i.e., Indian tribes.

Relative resources of Indian tribes and local governments

The proponents of this bill have argued, both in this body and the Senate, that there is an imbalance in resources that this bill would set right, an imbalance that arises largely from tribal gaming revenues or gaming backers of tribes. My twenty-five years' experience in representing Indian tribes convinces me that this imbalance is a myth. The reality is very different.

Gaming revenues are so recent in time as to be an insignificant factor on the issues for which local governments would be eligible for grants. Many of these issues have been matters of controversy for generations. In 1977, the American Indian Policy Review Commission documented the extent and long-standing nature of the discrimination suffered by the more than one hundred non-federally recognized Indian tribes. These tribes' quests for federal recognition long preceded the advent of Indian gaming and most go forward today without benefit of any gaming revenue or backer. The experience of my own tribe, the Lumbee Tribe of North Carolina, is typical in these regards. The Lumbee Tribe, which is the largest non-federally recognized tribe in the country, has sought federal recognition consistently since 1888, or one hundred years before the enactment of the Indian Gaming Regulatory Act. It took the Tribe nearly ten years to prepare its documented petition for acknowledgment at a cost of more than $500,000, none of which was fronted by gaming interests. The Tribe was told after it submitted its fully documented petition that it was not eligible for the acknowledgment process. Patton Boggs LLP now represents the Tribe pro bono in its on-going effort to obtain special federal recognition legislation. As with the Lumbee Tribe, gaming revenue is simply not a factor for most tribes seeking federal acknowledgment.

Further, gaming revenues are limited in reach in Indian country. The Government Accounting Office has documented that of the 561 recognized tribes, only 193 actually conduct gaming enterprises and only 27 of those (or about 5% of all tribes) generate more than $100 million a year. These 27 tribes produce about two-thirds of all Indian gaming revenues. Improvements Needed in Tribal Recognition Process (GAO–02–49), November 2001, pp. 5–6. To be sure, these gaming revenues have dramatically affected the quality of life for these tribes, but these numbers demonstrate that gaming revenues do not support the majority of tribal claims for acknowledgment, trust land, land, or otherwise. This being so, the majority of local governments are not at a relative disadvantage because of the advent of gaming.

In fact, the reality is directly contrary to that suggested in H.R.992. There is no shortage of resources available to local governments and others to defend against tribal claims. The land claim cases, singled out for funding in H.R.992, are typical in this regard. Most land claims currently in litigation are located in New York State. By state statute, New York State is required to and does, indeed, pay the cost of defense for all defendants in those cases, whether or not the state is a party. This state funded defense is available to all defendants—local counties, other local governments, and all private property owners. When the state is a defendant, the New York State Attorney General's office provides for the defense of the state and all other defendants. When the state is not a defendant, New York State makes available the services of White & Case, one of the largest law firms in Manhattan, at no cost to the defendants. Under no circumstance is a local government or private property owner required to pay for the defense of a land claim in New York State.

There is no shortage of deep pockets outside New York State to pay for the defense of local governments or private parties against Indian claims. In land claim cases elsewhere, title insurance companies typically underwrite the costs of defense. As has New York State, the title insurance companies hire large firms with substantial resources. Hale and Dorr and Goodwin, Proctor & Hoar, the first and second largest firms in Boston, Massachusetts, respectively, have developed an expertise in defending tribal land claims, having been hired by several title insurance companies to do so. These tribal claims defense firms are highly effective and their representation comes at no cost to the local governments or private defendants.

Finally, the Department of the Interior itself does not typically play an active role in support of tribes on the issues identified in H.R.992. More often than not, the United States is a neutral fact arbiter on those issues. In the acknowledgment process, the United States certainly does not advocate for the petitioning tribe. The petitioning tribe bears the burden of proof (itself a moving target) and gets no assistance from the Department of the Interior in the preparation of its petition. In the trust land acquisition process, the tribe again bears the burden of making out a satisfactory trust application, a particularly heavy burden in the case of trust acquisitions for gaming purposes. Even in the land claim cases, where the United States has appeared as co-plaintiff for the tribe in certain instances, the United States eschews all claims against local governments or private parties and only asserts claims against the state involved.

In the end, no factual case can be made that H.R.992 is necessary. In every manner of action contemplated by H.R.992, local governments are not at a relative disadvantage to Indian tribes. Local governments' litigation expenses against such claims are most often paid by others, the tribes are obliged to bear the burden of proof and their own expenses (with little impact from gaming revenues), and the United States is typically the decision-maker only providing little, if any, assistance to the tribes.

Breach of faith by the United States

The Bureau of Indian Affairs of the Department of the Interior has primary responsibility for providing the bulk of federal services and carrying out the federal trust responsibilities to Indian tribes. The earliest of these federal services was based on treaties as compensation, in part, for land cessions and other benefits granted by the tribes to the United States. Other services were authorized initially by statute. Now, these services and responsibilities are consolidated in a variety of Bureau of Indian Affairs' programs. See generally F. Cohen's Federal Indian Law (1982 ed.), pp. 673–677.

Because of the "distinctive obligation of trust incumbent upon the Government in its dealings" with Indian tribes, the actions of federal administrative officials denying or limiting services receive close judicial scrutiny to insure that the trust responsibility has been fulfilled. Morton v. Ruiz, 415 U.S. 199, 236 (1973). Thus, the trust relationship includes an obligation to perform vigorously and effectively those services that Congress chooses to provide. See Eric v. Secretary of U.S. Department of Housing & Urban Development, 464 F. Supp. 44 (D. Alaska 1978).

Of course, Congress itself holds wide ranging authority in Indian affairs, so that it can authorize or direct the Secretary of the Interior to provide funds for purposes that the Secretary could not herself fund. However, even Congress' authority regarding Indian programs has limits. The Supreme Court has held federal Indian legislation must be tied rationally to the fulfillment of Congress' unique obligation toward the Indians. Morton v. Mancari, 417 U.S. 535, 555 (1974). Where the circumstances of Indian legislation demonstrate such a rational connection, the courts will not disturb Congress' judgment. Id.; Delaware Tribal Business Committee v. Weeks, 450 U.S. 73, 86 (1977).

H.R.992 is clearly Indian legislation. It targets certain administrative decisions relating to Indian tribes and directs that the Secretary of the Interior, chief administrator for the trust responsibility to tribes, make grants available to local governments relating to those decisions. In addition, the expenditures authorized by H.R.992 are certain to come from Indian program funds. Given the lateness in the appropriations process and the absence of a declared emergency or other circumstance justifying departure from rules governing federal appropriations, the Interior expenditures directed by the bill must fit within the current caps on Indian program expenditures approved for the Department of the Interior. Simply stated, H.R.992 proposes a raid on Indian programs, which as always are funded well below the level of demonstrated need of Indian tribes, to fund grants to local governments for the purpose of opposing tribal claims.

Judged even by the rational basis standard applicable to federal Indian legislation, it is uncertain that H.R.992 would pass legal muster. There is no rational argument that the bill is intended to benefit Indian tribes or to fulfill the United States' trust responsibilities to Indian tribes. It is the precise opposite—a redirection of federal appropriations for Indian programs to local governments for the purpose of opposing tribal claims. If enacted, this could be the first Indian statute struck down by a court as beyond Congress' admittedly broad authority over Indian affairs.

Even were there some federal Indian policy to be served by leveling the federal playing field or some other such justification to enhance the ability of local governments to oppose tribal claims, H.R.992 again falls short. By its terms, H.R.992 applies not to just the three types of federal actions identified in the bill, but also to "any other action or proposed action relating to an Indian group of acknowledged Indian tribe if the Secretary determines that the action or proposed action is likely to significantly affect the people represented by that local government." sec.(b)(4). In other words, whether or not tribes benefit from representation by the United States or any other federal involvement in a particular action, an action could trigger the local government's right to apply for funding to oppose the tribe. For example, if a tribal referendum might affect a local government, could it apply for federal funding to attempt to influence the referendum? It appears so from the face of the literal language of H.R.992. Surely this is a mischief the drafters did not intend and the Congress must avoid.

Conclusion

At the end of the day, Congress' responsibility to Indian tribes is a moral one, one informed more by a sense of justice than a sense of legal obligation. Judged by that higher standard, H.R.992 is not worthy of serious consideration by this Committee. It proposes to divert some portion of the limited and precious resources still available to Indian tribes, resources first promised in federal Indian treaties to Indian tribes, and make them available to local governments to oppose Indian tribes on claims that typically arise out of the same Indian treaties. We and our tribal clients urge members of this Committee to vote against H.R.992.

Mr. HAYWORTH. Thanks to all the panelists. It is question time and we turn to the gentleman from Michigan.

Mr. KILDEE. Thank you, Mr. Chairman. Thank you very much.

I certainly am not unaware of the concern municipalities have when there is going to be a possible change in the plans and the planning in their community. I have seen the same thing in Michigan. We have 12 tribes in Michigan. But we do have to recognize the fact that the Constitution does recognize the Indian tribes as sovereign, and when we do finally recognize or reaffirm their sovereignty—we are not granting it to them because it is a retained sovereignty, and that is a very, very important concept. John Marshall made that very, very clear. It is a retained sovereignty, and I have helped five tribes in Michigan get their sovereignty—reaffirmation of the recognition of their sovereignty, not the granting of the sovereignty. So it is a retained sovereignty.

So the BIA or the Congress determines whether we will recognize that sovereign government, just as we recognize the government of France or the government of Germany. We recognize that. So that is the reality that we have to deal with as Members of Congress who have sworn to uphold the Constitution. We recognize that the Constitution recognizes three types of sovereignties and it is very clear.

I do recognize, too, that very often, towns, cities are probably less concerned about sovereignty than they are about gaming, because they may have a variety of reasons for being concerned about gaming. But the fact of the matter is that if a State outlaws a certain form of gaming or if a State outlaws all gaming, then it can outlaw it on all land, including Indian sovereign land, and that is the Cabazon decision. That is the decision of the Supreme Court that we have to follow here.

So in Utah, we have Indian tribes in Utah and they cannot game, because Utah outlaws all gaming. If Connecticut wanted to outlaw all gaming, then it could outlaw all gaming. Hawaii outlaws all gaming. There are two States. Michigan in 1972 outlawed all gaming. It was in our 1837 constitution and it was changed in 1972, and if Michigan had not changed that constitution, there would be no gaming tribes in Michigan now.

So the Cabazon decision basically said, if you outlaw a form of gaming or you outlaw all gaming, you can outlaw it even on Indian sovereign land.

Then Congress passed IGRA, the Indian Gaming Regulatory Act. I was sitting a little further down here back in those days. I have been serving on this Committee—I have been in Congress 26 years, serving on this Committee for 22. And we passed IGRA and IGRA was really a limitation on the Cabazon decision and I was a little

reluctant, because I followed the Supreme Court decision, but the Indian tribes finally said, OK, we can live with these limitations. It is a limitation forcing them to compact with the State, and that is what has happened in Michigan. They have compacted with the State.

So I do think that those who are concerned about gaming, if they really want to stop gaming, if they have some moral concerns or other concerns, then they could have their State do what Utah and Hawaii have done and outlaw all gaming.

So I am not insensitive to the concerns of cities and towns, but I do recognize that the court has spoken and we should not say, we are not going to recognize your sovereignty, not grant it, we are not going to recognize your sovereignty because you might game, because that would be unfair. You are either sovereign or you are not sovereign. So I think we have to separate the question of recognition of sovereignty, not the granting of sovereignty, from gaming, and that is my only point I want to make.

By the way, I work with Charlie Rose on the Lumbee Tribe and I buy my gasoline on the way to Florida at the Lumbee gas station down there.

[Laughter.]

Ms. LOCKLEAR. We appreciate that business, as well.

Mr. KILDEE. I yield back the balance of my time, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman from Michigan.

The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman. I recognize that the gentlewoman from Connecticut is well intentioned with this legislation, but I have to say that I am very much opposed to it because—and I think Ms. Locklear basically summed it up—because it sort of assumes, the legislation sort of assumes that there is sort of an unlevel playing field and that the towns need to be empowered with grants or Federal dollars in order to make their case. I think in many cases, their case would be to try to oppose Federal recognition of a tribe or something similar with regard to the land trust.

I just think that it is totally—first of all, I do not agree that there is an unlevel playing field except perhaps in the other direction. You know, just for example, the next panel is representing legislation that would federally recognize certain Virginia tribes, I think, and it is very clear that the reason that they need the legislation is because of the fact that, historically, the State of Virginia did whatever it could to try to make it impossible for them to gain recognition.

We are going to have testimony, I understand—I am looking at the written record about a Dr. Walter Plecker, who served as the Registrar of the Virginia Bureau of Vital Statistics for about 50 years and he was a white supremacist who did whatever he could to try to make it clear that no Indians ever lived in the State of Virginia, which I know is absurd, but he tried to basically forge the records to accomplish that.

Those are the kinds of things that tribes have. They have had a series of, I would call it discrimination, racism by State and sometimes local governments and certainly the Federal Government that has made it very difficult for them to achieve Federal recognition. That is why Mr. Moran has to introduce this bill.

So to suggest that somehow local governments need added resources to fight a battle against the big bad Indian tribes that have all this money to achieve recognition, it is just not true. I think of an analogy. We have a similar type thing with the Superfund program, where the local group can get funds from the State government to make their case with regard to Superfund. But in that case, you usually have a huge corporation, corporate polluters that are trying to say that the site should not be recognized as a Superfund and a group of local citizens who have no money or resources who need a little money to make the case. But that is simply not true here.

The thing that is really bothering me is that the suggestion that somehow this is the right thing to do, and I think the right thing is on the other side. In other words, as Mr. Kildee said, historically, our goal, or our role as a Federal Government is to just reaffirm sovereignty that is already there. So I do not think that we should be stepping in to try to encourage towns or give them resources so they can make the opposite case. It almost goes against the role of the Federal Government.

The only thing I would ask is if Ms. Locklear or Ms. Mitchell wanted to explain a little more how it is often the case that some tribes do not have the resources to make their case, because I think that it is often the case that they do not. If either of you wanted to comment on that, I do not know if you have those statistics, but just from my experience, that has definitely been the case.

Ms. LOCKLEAR. That is certainly the typical case, Congressman. To my knowledge, no statistics have been compiled on that regard with respect to non-acknowledged tribes and that is a function of the fact that those tribes basically do not appear in the records. By virtue of historical circumstances and forces of history, those tribes are largely invisible in the public record, including public funding. Typically, their petitions are prepared by volunteer graduate students who are professors. They employ their own people in the preparation of those petitions. And they look for nonprofit organizations, such as the Native American Rights Fund and others, to provide that assistance to them.

I am proud to say that Patton, Boggs has agreed to represent my tribe, the Lumbee Tribe, pro bono in its effort to obtain Federal recognition. But absent access to those kinds of sources, tribes simply cannot do it. There are tribes whose material takes years to compile because of the expense involved. and you are absolutely correct in your observation that to the extent an imbalance exists, it is in favor of those who would oppose the petition rather than those who prepare them.

Mr. PALLONE. I do not know if Ms. Mitchell wanted to add to that.

Ms. MITCHELL. No.

Mr. PALLONE. My concern is that the history is that the State, whether that is the State government, the Federal Government, the local government, in most cases has played historically a discriminatory role against Indian tribes and that is why they have the difficulty. So for us to step in and empower the State or the local government to do more in that regard, it is really in some ways a very improper, immoral thing to do.

I do not mean that—I understand the reason for the bill. I am not suggesting that the sponsor or any of the people here are looking at it that way. I understand where they are coming from and I am not suggesting that they are badly intentioned. But I think you have got to look at the history, not of the existing local or State governments but what we faced 50, 100 years ago, and the history of this type of discrimination. Thank you.

Mr. HAYWORTH. I thank the gentleman from New Jersey.

To the panelists, we have some additional questions we will submit in writing to you individually. I just want to thank you all very much for your testimony and making it part of the record.

Mr. Mayor, do you have a comment you would like to make in response?

Mr. BOUGHTON. I would just like to spend just a quick second, Mr. Chairman, responding to Mr. Pallone's comments, if I may.

Mr. HAYWORTH. Yes, you may.

Mr. BOUGHTON. Thank you. I think that if you operate in a vacuum, Mr. Pallone's explanation is correct. Certainly, myself and Selectwoman Schiesel are not arguing that Indian nations do not have the right to sovereignty. We understand that concept within the Constitution. But this issue is much, much deeper in terms of recognizing somebody's sovereign right versus recognizing the forces that are flowing behind many of these applications.

The Bombay doors are open to casino gaming in Connecticut because of the State law, you are absolutely right, Mr. Kildee, but I think the issue really is now, as you know, laws are never retroactive. So if we were to go back to the legislature and try to close that door with all the applications that are pending, then we end up into a problem where we cannot stop on the issue of gaming license and the issue of casinos, and there are no zoning laws, there are no environmental laws, there are no planning laws that come into play at all. Because of the sovereignty, that very precise problem that you have mentioned, we have to fight a battle to protect and preserve the quality of life in our community that many of us have fought very hard to have.

So this is not an issue in terms of looking at the sovereignty of a nation. It is more of what is a tribe going to do once they receive recognition, and that is something that all of us have to deal with in terms of how we lead our communities and how we have that.

In terms of Mr. Pallone's comments regarding the level playing field, I would argue that battling Mr. Trump or perhaps the Wilmot family, who have built malls all over the country, is not a level playing field for my city, with a $150 million budget with about $2 million worth of discretionary spending in it. I cannot compete with those types of forces that are in play and that is why we are here today. We are looking for help to compete with that, to level the playing field in a way that can recognize those tribes that clearly have established their identity versus tribes where you can question whether or not their identity even existed 100 years ago, and that is really the battle that we are facing in the Northeast. You, Mr. Pallone, should know that more than anybody, being a very close resident to Connecticut and knowing the battles in which we have gone through.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Mayor, and thanks to all the panelists. You are excused and we appreciated, of course, your willingness to come and testify before us today on H.R. 992.H.R. 2345

Mr. HAYWORTH. Panel six will discuss H.R. 2345, and the Chair and Committee welcomes to the witness table the Chief of the Upper Mattaponi Indian Tribe, Ken Adams; Ms. Danielle Morretti-Langholtz from the College of William and Mary, if America serves, America's second-oldest institution of higher learning—I think that is correct from my days being recruited there for football, but we could check with the gentleman from Ohio, Mr. Chabot, who played linebacker there for Lou Holtz; and the Reverend Jonathan M. Barton, the General Minister of the Virginia Council of Churches.

Lady and gentlemen, we welcome you, and Chief Adams, if you would like to begin with your testimony.

STATEMENT OF KENNETH F. ADAMS, CHIEF, UPPER MATTAPONI INDIAN TRIBE

Chief ADAMS. Good morning, Mr. Chairman, Committee members, and guests. I am Kenneth Adams, Chief of the Upper Mattaponi Indian Tribe. With me today are Chief Adkins, Chickahominy; Chief Bradby, Eastern Chickahominy; Chief Branham, Monacan; Chief Bass, Nansemond; and Chief Richardson, Rappahannock.

In all due respect to Mr. Fleming and Mr. Smith, who were here earlier, concerning the statement that was made that we will not be alive to see Federal recognition through the administrative process, I would like to ask these folks to raise their hands if they were in the room when that statement was made.

[Show of hands.]

Chief ADAMS. Thank you. We are the proud descendants of the keepers of this great land when the English colonists arrived in 1607. The Peace Treaty of 1677 established the governing authority of the Pamunkey queen and the Monacan chief over our ancestors, which were over 200 villages and towns. We are the direct descendants of those colonial tribes. Today, these nations have come together to ask the Congress of these United States to acknowledge our one-on-one relationship with the government of this nation. Bill H.R. 2345 clearly identifies who we are and the tribes that we are associated with.

Chief Justice John Marshall in 1832 stated, "The Constitution, by declaring those treaties already made, as well as those to be made, the supreme law of the land, has adopted and sanctioned the previous treaties made with the Indian nations."

Each of these great chiefs carry in their hearts many burdens of our people. I cannot express for them the sorrows they have endured, but I can express to you a sample of what we have all endured.

When I was a child growing up in King William County, Virginia, high school education for Indians in the State was almost nil. Even before I entered grade school, my older brothers and sisters were being sent off to Oklahoma and Michigan to complete high school. I was the first Indian to graduate from King William High School in 1965. Myself in 1967 and my older brother in 1968 served in Vietnam. Shortly afterwards, I went to visit my brother. It was

almost like walking into the house of a stranger, not because of any experiences in Vietnam, it was because of the policies of the State of Virginia. It was the policy that had forced him from home in order to seek a high school education. And what was his response to that policy? His response was to put his life on the line for the United States of America.

I can surely tell you today, in these individual tribes, there are many more stories like this one. I can say with 100 percent certainty, when it comes to defending this homeland, Virginia Indians have spilled their blood.

You might ask us, why do you come now? We have an answer. For almost 400 years, Virginia attempted to diminish our presence. After 1700, we were pushed onto increasingly smaller pieces of land, and by the mid-1900's, Virginia was attempting to document us out of existence. The fight to maintain our identity was a struggle our mothers and fathers fought well, but they lacked education and resources. They had been told on several occasions no help from the Federal Government was available.

In 1946, one of the chiefs attempted to obtain high school educational resources through the Office of Indian Affairs. The only help offered was in the form of education at a Federal boarding school. Nothing was available in Virginia. That same chief 2 years earlier had lost a grandson in the Philippines.

If the State government was attempting to deny our existence and the Federal Government provided little assistance, where could these people possibly go? Who could they possibly turn to? That is the main reason it has taken us so long to get here.

Virginia has recognized its errors. Along with bill H.R. 2345 sponsored by Representatives Moran and Davis, who were here earlier this morning, Senator Allen, with the support of Senator Warner, has introduced S. 2964, granting Federal acknowledgment to these six tribes. In 1999, the Virginia General Assembly passed a resolution with overwhelming support asking for Congressional recognition of these tribes. King William County, home of the Upper Mattaponi, also passed a resolution in favor of Federal acknowledgment. They also asked for Congressional recognition. The local community is in total support of this. We have support of the majority of the Virginia Congressmen and women. As you can see, we have overwhelming support from the Commonwealth of Virginia.

Now the U.S. Congress has the opportunity to make a historical change, a change that would honor you as well as honor us. We ask you to make the right decision and support this bill for Federal acknowledgment of Virginia Indians.

[Applause.]

Mr. HAYWORTH. Chief, we thank you for your testimony.

[The prepared statement of Chief Adams follows:]

Statement of Kenneth Adams, Chief, Upper Mattaponi Indian Tribe

Good morning, Mr. Chairman. I am Kenneth Adams, Chief of the Upper Mattaponi Indian Tribe. With me today are Chief Adkins, Chief Bradby, Chief Branham, Chief Bass, and Chief Richardson. We are the proud descendants of the Keepers of this Great Land when the English Colonists arrived in 1607. The Peace Treaty of 1677 established the Governing authority of the Pamunkey Queen and the Monacan Chief over our ancestors. We are the direct descendants of those colonial

tribes. Today these nations have come together to ask the Congress of these United States to acknowledge our one on one relationship with the government of this nation.

Chief Justice John Marshall in 1832 stated, "The Constitution, by declaring those treaties already made, as well as those to be made, the Supreme Law of the land, has adopted and sanctioned the previous treaties made with the Indian Nations.

Each of these great Chiefs carry in their hearts many burdens of our people.

I cannot express for them the sorrows they have endured.

But I can express to you a sample of what we have all endured.

When I was a child growing up in King William County, Virginia, high school education for Indians in the state was almost nil. Even before I entered grade school, my older brothers and sisters were being sent off to Oklahoma and Michigan to complete high school. I was the first Indian to graduate from King William High School in 1965. Myself in 1967 and my brother in 1968 served in Vietnam. Shortly afterwards, I went to visit my brother. It was almost like walking in the house of a stranger. Not because of our experiences in Viet Nam. It was because of the policies of the State of Virginia. It was the policy that forced him from home in order to seek a high school education. And what was his response to that policy? His response was to put his life on the line for the United States of America. I can surely tell you today, in these individual tribes, there are many more stories like this on. I can say with 100 per-cent certainty, when it comes to defending this homeland, Virginia Indians have spilt their blood.

You might ask us, why do you come now? We have an answer. For almost 400 years, Virginia attempted to diminish our presence. After 1700 we were pushed onto increasingly smaller pieces of land and by the mid 1900s Virginia was attempting to document us out of existence. The fight to maintain our identity was a struggle our Mothers and Fathers fought well, but they lacked education and resources. They had been told on several occasions no help from the Federal Government was available. In 1946 one of Chiefs attempted to obtain high school educational resources through the Office of Indian Affairs. The only help offered was in the form of education at a federal boarding school. No help was available in Virginia.

If the state government was attempting to deny our existence and the federal government provided little assistance, where could these people possibly go? That is why it has taken us so long to get here.

Virginia has recognized its errors. Along with Bill HR 2345 sponsored by Congresspersons Moran and Davis, Senator Allen, with the support of Senator Warner, has introduced Senate Bill 2964 granting Federal Acknowledgement to these six tribes. In 1999, the Virginia General Assembly passed a Resolution with over whelming support asking for Congressional Recognition of these tribes. King William County, Virginia, home of the Upper Mattaponi, also passed a resolution in favor of Federal Acknowledgement. We have the support of the majority of the Virginia Congressmen and Women. As you can see, we have overwhelming support from the Commonwealth of Virginia.

Now, the United States Congress has the opportunity to make a historical change. A positive change that would bring honor to you as well as honor to us.

We ask you to make the right decision and support this bill for Federal Acknowledgement of Virginia Indians.

Mr. HAYWORTH. Now we turn to Ms. Moretti-Langholtz from the College of William and Mary. Welcome.

STATEMENT OF DANIELLE MORETTI-LANGHOLTZ, PH.D., COORDINATOR, AMERICAN INDIAN RESOURCE CENTER, COLLEGE OF WILLIAM AND MARY

Ms. MORETTI-LANGHOLTZ. Thank you, and you are right about us being the second-oldest educational institution.

Mr. Chairman, members of the Committee and guests, I am Dr. Danielle Moretti-Langholtz, Coordinator of the American Indian Resource Center at the College of William and Mary. Thank you for the opportunity to address you today in support of H.R. 2345. Additional statements have been submitted by Dr. Helen Rountree and Mr. Edward Ragan, and they are in the room today. At this time, I would like to summarize my longer statement to you.

The history of Virginia's indigenous population is uniquely intertwined with the history and founding of the United States of America. Widely known is the story of Chief Powhatan and his daughter Pocahontas and the role they played assisting the first English-speaking settlers at Jamestown during the early 17th century. Less widely known is what became of Virginia's indigenous population and their struggle for the survival of their culture, communities, and identity during the intervening four centuries.

At the time of the English colonization, Virginia's coastal plain was occupied by a paramount chiefdom of Algonquian-speaking tribes and its Piedmont by alliances of Siouan-speaking tribes. Both archaeological evidence, early maps, such as that of John Smith's, which indicates the names of the tribes at the time of contact, and other historical documents indicate that these native peoples were horticulturalists with highly organized political structures that included male and female chiefs, and I would like to note that today we have Chief G. Anne Richardson with us, who is Chief of the Rappahannocks, and this is an example of that continuing tradition.

The rapid English settlement of Virginia resulted in a demographic change in favor of the colonists as the early economic life of the colony shifted toward the growing of tobacco. These tribes were signatories to 17th century colonial treaties which established reservations for some of them. All but two lost control of their reservation lands by the 1800's, and Virginia Indians came under increasing pressure to conform to non-Indian society. Many Virginia Indians converted to Christianity during the period known as the Great Awakening.

Over time, Virginia enacted increasingly strict codes pertaining to slavery and racial identity. Virginia Indians developed strategies to survive in this hostile climate by withdrawing into close-knit communities and maintaining separate tribal identities. Historical documents from this period highlight the pressures on Virginia Indians as the State regularly manipulated the definitions of Negro, mullato, Indian, and free persons of color to maintain white control over non-white persons.

The emergence of the Eugenics Movement in the 20th century was arguably the most trying time of all for Virginia Indians. Virginia's Racial Integrity Law of 1924 instituted a system of birth registration, placing the population into one of two categories, white or colored. The latter category was mandated for all non-white persons, regardless of race or ethnicity. This legislation was engineered by Dr. Walter Plecker, head of the Bureau of Vital Statistics in Richmond, and made it a felony for individuals to file a false registration of race. The racial designations on the birth records of many native persons were changed from Indian to the generic non-white category of colored without their consent. This experience is unique to the Virginia Indian community and its negative effects were far reaching.

The Racial Integrity Law remained in effect until its repeal by the U.S. Supreme Court in 1968. Nevertheless, scholars have documented that during these years, Virginia Indians maintained their tribal structures, church-sponsored schools, and refused to give up their Indian identity.

Between 1983 and 1989, the Commonwealth of Virginia granted State recognition to the six tribes whose leaders are here today, thereby acknowledging the tribes' historical importance, contributions, and continued presence in the State since the colonial encounter.

In 1999, the Virginia legislature passed a joint resolution asking the Congress of the United States to extend acknowledgment to these tribes. The scholarly community represented here supports this request based upon the criteria for Federal recognition.

This is a compelling case that the Virginia Indians have. These tribes have maintained a separate, identifiable Indian identity in their ancestral homelands since the time of European colonization, and their shared experience has forged in them a sense of solidarity.

Mr. Chairman, in 2007, this nation will celebrate the 400th anniversary of the settlement of Jamestown. These tribes have waited long enough for Federal acknowledgment. Please set the record straight and support the extension of Federal recognition to these six tribes. Thank you.

Mr. HAYWORTH. We thank you for your testimony, Dr. Moretti-Langholtz.

[The prepared statement of Ms. Moretti-Langholtz follows:]

Statement of Danielle Moretti–Langholtz, Ph.D., Coordinator, American Indian Resource Center

Mr. Chairman, members of the committee and guests, I am Dr. Danielle Moretti–Langholtz, coordinator of the American Indian Resource Center at the College of William & Mary and Visiting Assistant Professor in the Department of Anthropology. I am pleased to have the opportunity to address you today on this important issue. For the record, more extensive treatments of Virginia Indian history have been submitted by me, Dr. Helen Rountree, professor emeritus of Old Dominion University and Dr. Jeffrey Hantman, of the University of Virginia and Mr. Edward Ragan of Syracuse University.

The history of Virginia's indigenous population is uniquely intertwined with the history and founding of the country we know today as the United States of America. Widely known is the story of the great Chief Powhatan and his daughter Pocahontas and their interactions with some of the earliest English-speaking settlers at Jamestown during the early 17th century. Less widely known is the story of what became of Virginia's indigenous population and their struggle for the survival of their culture, communities, and identity during the intervening four centuries. Today, representatives of six of these native tribes are before you seeking support for the passage of legislation to extend federal recognition to them.

At the time of colonization by the English in 1607, Virginia's coastal plain was occupied by a large paramount chiefdom of Algonquian-speaking tribes. According to early English documents the chiefdom was lead by Wahunsenacawh also known to us as Chief Powhatan, the father of Pocahontas. While the Virginia Piedmont was occupied by alliances of Siouan-speaking tribes. Anthropologists, archaeologists and historians still consult John Smith's early map of Virginia for its usefulness in identifying the names and locations of the native settlements during the early part of the colonial encounter. The six tribes seeking Congressional federal acknowledgment, descendant communities of some of the tribes encountered by the earliest settlers, have maintained their tribal governments and the center of their cultural events within the boundaries of their traditional homelands. Both archaeological evidence and early historical documents indicate these native peoples were sedentary horticulturalists, growing corn, beans and squash. Early English documents indicate the Powhatan tribes lived in ranked societies exhibiting differential dress, especially the wearing of copper by individuals of high status and differential burial practices for chiefs. Additionally, Virginia Indians society displayed highly organized political structures that included female chiefs. Today, the Rappahannock Tribe has a female chief, Chief G. Anne Richardson, and she is an example of that continuing tradition. Powhatan society was complex and included subchiefs that acted as intermediaries between the paramount or primary chief and the tributary tribes. The lat-

ter paid tribute or taxes to the central polity or paramount chief. Such taxes were paid in the form of food, skins, shells, miliary service or labor.

It is difficult to reconstruct the size of the indigenous population at the time of colonial settlement but serious estimates of at least fifteen thousand for the Powhatans and thus tens of thousands for the Commonwealth of Virginia are acceptable. However, the rapid settlement of the colony of Virginia after 1607 resulted in a demographic shift, with settlers gaining control of the majority of the land originally controlled by Virginia Indians, as the economic life of the colony focused on the growth of tobacco. Moreover, the indigenous population was greatly reduced due to conflicts and disease and as time passed Virginia Indian identity was sometimes subsumed under other racial categories, as will be discussed in more detail below.

In the early colonial records Indians and tribes are mentioned by using distinct terms to represent the communities. An examination of the Acts of Assembly for October 1649 suggests some of the pressure that the community was under and indicates that Indian slavery was practiced in Virginia. The Assembly made the "kidnapping" of or "purchase" of Indian children illegal. The second act of 1649 made the killing of Indians while they were within the limits of colonial (English) settlements illegal. In order to identify specific Indians as friendly the English instituted the use of metal badges which granted permission to certain Indians to enter lands controlled by the English. Thus Indian access to their former lands and their freedom of movement was restricted by the colonial government. Given the pressures on Virginia Indians, particularly in the Tidewater area, the survival of the tribal entities from the time of colonial contact to the present is remarkable.

The Virginia tribes were signatories to colonial treaties. One in particular, the 1677 Treaty of Middle Plantation guaranteed Indians civil rights, and rights to gather food, and property rights. For some of the tribes reservations were established. The 1677 treaty indicated that "Indian Kings and Queens," the Colonial title for tribal leaders, could not be imprisoned without a warrant, thus implying the treaty was an attempt to reinforce tribal authority in the face of overwhelming pressures by settlers to weaken the paramount chiefdom. Despite the treaties, by 1700 all of Virginia's tribes were forced onto increasingly smaller pieces of their traditional homelands and nearly all tribes lost control over their reservation lands by the early 1800s. Details of Indian land loss have been enumerated by Helen Rountree in her book Pocahontas's People: The Powhatans of Virginia Through Four Centuries (1990).

From the beginning of the colonial encounter, Virginia Indians came under increasing pressure to conform outwardly to non–Indian society. This may be seen in the switch to speaking English in place of native languages and in the demise of traditional religious practices. In the eighteenth century many Virginia Indians converted to Christianity during the historical period during the mid-eighteenth century known as the "Great Awakening." One of the main thrusts of the "Great Awakening" was a move from the standard practice of having clergy ordained in England, as required by the Anglican Church, to having the leadership of individual congregations selected from among the membership of the church. This form of leadership or pastoral authority became the practice of the New Light Baptist Churches. Formal education was not a criteria for holding a position of leadership within the churches. My current research (The Rise of Christianity Among Virginia Indians, Paper Presented at the Annual Conference of the Middle Atlantic Archaeological Conference, 2001) suggests this conversion permitted the traditional leadership of the tribes to maintain positions of power within the community by transferring Indian hegemony into the church arena at a time when the practice of traditional religion became too dangerous for the leadership of the Virginia Indian community. Additionally, the New Light Movement was strongly committed to education and supported Sunday school programs to teach children, male and female, to read scripture. For more than a century this was the only educational opportunity open to Virginia Indian communities. Churches have continued, to the present-day, to be a haven and source of support for the Virginia Indian community.

From 1705 onwards the General Assembly of Commonwealth of Virginia enacted increasingly strict codes pertaining to slavery and racial identity. These are known in the academic literature as "slave codes" or "black codes." Elsewhere, I have argued that between 1607 and 1983 extant Powhatan tribes and the Monacan Indian Nation maintained an internal and Indian identity even as the Commonwealth of Virginia implemented a bipolar model or two-category system of race that subsumed Indian identity into the category of "free persons of color." Virginia Indians developed strategies to survive in this racially hostile climate by withdrawing into close-knit communities separate enough to maintain their tribal identities. An examination of birth, death and property records from this time period highlights the difficult position in which Virginia Indians found themselves as the state regularly ma-

nipulated the definitions of "Negro," "mullato," "Indian," and "free persons of color," to maintain white control over non-white persons (Winthrop Jordan 1968, Jack Forbes 1993). Confusion and chaos over the application of categories such as "colored" and "Indian" are clear in the throughout the historical record up through the 1970s. This is due to the tension between the state's attempt to imposed a bipolar model of race onto a population of persons of Indian descent who resisted the state-sponsored racial designations by asserting their Indianness.

As trying as the seventeenth and eighteenth centuries were an even more difficult time for the maintenance of Virginia Indian identity occurred with the emergence of the Eugenics Movement in the twentieth century. This pseudo-scientific movement was linked in England to the standard bearers of Darwin's concept of natural selection and in fact the founders of the movement were blood relatives of the eighteenth-century thinker. These men argued that heredity was the primary force in individual character and in the history of civilization. The nascent ideas of the Eugenics Movement may been seen in Herbert Spencer's philosophy of Social Darwinism. Proponents of the movement opposed the "mixing of races" through intermarriage as this was viewed as weakening the superior races by introducing the negative characteristics of one group into the other. According to their views of science, drawn from observations with animal husbandry, the maintenance of racial purity would lead to the betterment of humankind. In more practical terms the adherents to the movement opposed free public education, and such things as public aid to the unfit of society.

The Eugenics Movement gained support into the early twentieth century and had its fullest expression under the Nazi regime of the Third Reich. Sadly, adherents to the so-called scientific aspects of the movement guided legislation through Virginia's General Assembly consistent with their beliefs that the maintenance of racial purity was essential for the betterment of mankind. In 1924 the Commonwealth of Virginia passed the Racial Integrity Law, thereby requiring all segments of the population to be registered at birth in one of two categories; "white" or "colored," the latter category was mandated for all non-white persons regardless of race or ethnicity. This legislation was supported by Dr. Walter Plecker, head of the Bureau of Vital Statistics in Richmond, and made it illegal for individuals to correctly identify themselves as Virginia "Indians." Walter Plecker personally changed the birth records of many native persons from "Indian" to the generic non-white category of "colored" as required under the law. Birth certificates with "proper" racial designations were necessary in order to obtain marriage licenses. The legislation made it illegal for persons of different races to be married within the state of Virginia and mandated fines and prison terms for persons attempting to circumvent the law or file what the state deemed to be "false" papers with regard to race. It must be noted that the primary target of the Racial Integrity Law was the African American community and that all person's of mixed-blood heritage were impacted by the law in negative ways. However, the pressures and restrictions that this legislation placed upon Virginia's native population were significant. Proponents of the agenda heralded by the Eugenics Movement saw the Virginia Indian community as the threat; one that would make it possible for persons of mixed heritage of African American and Native American ancestry to move eventually out of the category of "colored" and into the category of "white." The law permitted persons of white and Virginia Indian ancestry, as long as it was not more than 1/16 of Indian blood quantum to be classified as "white." Thus the bipolar categorization of Virginia's racial categories made "Virginia Indian" a very problematic category. Officials from the state's Bureau of Vital Statistics actively sought to denigrate and deny person of Virginia Indian descent the right to identify themselves as "Indians" forcing them whenever possible to be declared by the state as "colored." The historical, political and cultural characteristics of the Virginia Indian communities were ignored by state officials during the years prior to the repeal of the 1924 legislation. The experience of subsuming the identity of "Indians" under a state-generated alternate category is unique to the Virginia Indian community and its effects were wide-reaching. It is the primary reason that our citizens are unfamiliar with Virginia's Indian tribes. Many Virginia Indians left the state to escape this oppressive legislation and for better jobs, and educational opportunities during these years. Those who remained withdrew into the communities and in general Virginia Indians sought to draw little or no attention to themselves. Scholars have documented that Virginia Indians refused to give up their Indian identity even during the difficult years of the legislation. In two instances Monacan tribal members challenged the restrictions on marriage laws based upon racial categories generated by the state. In each instance the Monacans prevailed in court. These court challenges are significant given the circumstances of the Monacans at the time, living in poor rural communities without benefit of quality education or financial means. Indian communities resisted

the legislation in less public ways. They refused to put their children in segregated "colored" schools, relying instead on church-sponsored elementary schools, and by maintaining their tribal structures even as the state declared they were colored persons and not Indians. Obtaining a high school education for Virginia Indians was practically impossible during this time and those who managed to do so resorted to attending Indian boarding schools in other states. Nevertheless, during World Wars I and II Virginia Indians served their country despite the hardships which the Racial Integrity legislation placed upon the. Historical documents and tribal records indicate the tribes had functioning separate tribal governments during the time was making it nearly impossible to declare oneself a "Virginia Indian." It must also be noted that some anthropologists, using the rhetoric of the Eugenics Movement described Virginia Indians in very negative terms as "obscure" populations, "half-breeds", and "tri-racial isolates" (Calvin Beale 1957, Brewton Berry 1963). Such work was used against the Virginia Indian community by proponents of the Eugenics Movement. However, more prominent anthropologists such as James Mooney and Frank Speck did fieldwork among these tribes and detailing their history, material culture, and genealogy. Frank Speck photographed many of the Powhatan tribal leaders and members and these photographs are housed in the Smithsonian's Archives. The body of work produced by Mooney and Speck constitutes the largest and most anthropologically accurate material on Virginia Indians collected during the early twentieth century. This work clearly establishes the distinct and enduring nature of Virginia's Indian tribes more than three hundred years after the settlement of Jamestown. The Racial Integrity Law remained in effect until its repeal by the U.S. Supreme Court in 1968 in the famous Loving v. Loving decision. The more recent work of cultural anthropologists such as Helen Rountree and Danielle Moretti–Langholtz (We're Still Here: Contemporary Virginia Indians Tell Their Stories, coauthored with Sandra Waugaman, 2000) has documented the continued presence of Virginia's Indian tribes into the present day. There has been culture change in these communities but there has also been a remarkable degree of cultural continuity as well.

With the repeal of the Racial Integrity legislation and the growing national Civil Rights Movement in the United States a period of more openness on matters of identity and history led to greater public visibility for Virginia Indians. Educational opportunities improved for Virginia Indians and a period of construction of tribal centers and museums began, and continues to the present time. In 1982 a subcommittee was established by the Virginia General Assembly to explore the granting of state recognition to some of Virginia's Indian tribes. The findings of the subcommittee were favorable to the extension of state-recognition to a number of tribes based upon the history, contributions and authenticity of the tribes. Between 1983 and 1989 the Commonwealth of Virginia granted state recognition to the six indigenous tribes present here today. In 1983 the Commonwealth of Virginia established the Virginia Council on Indians, a state-sanctioned advisory board to deal with educational issues and other matters pertaining to Virginia's state recognized tribes and issues for members of other tribes residing within the Commonwealth. As part of my fieldwork among Virginia Indians, my regular observations of the workings of the Virginia Council on Indians, since 1995, show the Council and an active and effective body dealing with issues of importance to the community on the state level. In 1997 former Virginia Governor George Allen signed legislation allowing Virginia Indians to correct their birth records. This important piece of legislation energized the Virginia Indian communities in positive ways. Tribal elders, many of whom lived during the 44 years the Racial Integrity legislation was in force, have become more comfortable speaking about their heritage to non–Indians and in public settings, thereby enriching the lives and cultural diversity of all our citizens. [I have just completed (2002), with the help of my students, a two-year project, the Virginia Indian Oral History Project, which resulted in the making of a video documentary, "In Our Own Words: Voices of Virginia Indians." This video will help the students and general public of Virginia to learn about the history of the state-recognized tribes and the work and responsibilities of tribal leadership. The years of racially restrictive legislation has made the Virginia Indian community understudied and too little known outside of a handful of anthropologists and historians.]

In February 1999 the Virginia Legislature agreed to House Joint Resolution No. 754. This bill, named for the late Thomasina E. Jordan, the first American Indian chairwoman of the Virginia Council on Indians, requested the Congress of the United States to grant historic Congressional federal recognition to these tribes based upon their demonstrated historical documentation as the descendants of Virginia's original tribes, the contemporary location of the tribes within their traditional homelands as documented at the time of contact with European settlers and their contributions to the history of this country. The anthropological and scholarly

community represented here today acknowledges the authenticity of these tribes and supports their request for federal recognition based upon the criteria for federal recognition. These six tribes; the Chickahominy, Chickahominy——Eastern Division, Monacan, Nansemond, Rappahannock, and Upper Mattaponi, have maintained a separate Indian identity within the Commonwealth of Virginia since the time of European colonization. The functioning of tribal governments, church-sponsored schools and tribal centers can be documented from the early 1900s. Broadly speaking, these tribes have a shared common experience of history which has forged in them a sense of solidarity and identity.

In 2007 the Commonwealth of Virginia and the country as a whole will mark the four-hundredth anniversary of the founding of Jamestown. Before marking such an occasion it would be fitting, honorable and historically accurate to extend federal recognition to these tribes thereby acknowledging their continued existence and their contributions to the founding of our nation. After four centuries Congress has the opportunity to enable these tribes to join the community of other federally recognized tribes thereby setting the historical record straight for all Americans. Mr. Chairman, four centuries is long enough to wait. Please support the extension of Congressional Federal Recognition to these six Virginia tribes.

Mr. HAYWORTH. Now we turn to Reverend Barton. Welcome, Reverend.

STATEMENT OF REV. JONATHAN M. BARTON, GENERAL MINISTER, VIRGINIA COUNCIL OF CHURCHES

Rev. BARTON. Good afternoon. Mr. Chairman, members of the House Committee on Resources, I am the Reverend Jonathan Barton and I am the General Minister for the Virginia Council of Churches. I would like to thank you for enabling me, giving me this opportunity to speak today. I would also like to express my appreciation to Representatives Moran and Davis and the other members of the Virginia Congressional delegation for all of their efforts on behalf of these tribes.

And to the members of the six tribes gathered here today, you honor the Virginia Council of Churches greatly by your invitation to stand with you as you seek Federal acknowledgment, and we stand with you today in support of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001. On behalf of the Council of Churches, I would like to apologize to each one of you for any acts of injustice that our churches may have been complicit or complacent in during the past and ask your forgiveness.

The Virginia Council of Churches is the combined effort of 16 different denominations, 34 governing bodies of those denominations, and the Commonwealth of Virginia. A list of our member denominations has been appended with my comments. I have also added various letters from various religious leaders across the State urging support for this bill, including one from General Secretary Bob Edgar, head of the National Council of Churches and former member of this body. I would ask that they be included into the record.

Mr. HAYWORTH. Without objection.

[The letters have been retained in the Committee's official files.]

Rev. BARTON. During our 58-year history, we have stood for fairness, justice, and dignity of all peoples. We were one of the first integrated bodies in the Commonwealth of Virginia and have been for our entire history. We stand here today in our faith, rounded in our faith and our history and our values. The churches have had and have been in relationship to these tribes ever since our first

European ancestors arrived and were welcomed by the ancestors of these men and women here today. These tribes have developed very close ties with the Episcopal Church, the Baptist Church, the United Methodist Church, and the Assembly of God. Three of our leading religious executives are Native Americans, the Rev. Dr. Wasena Wright, the Rt. Rev. Carol Joy Gallagher, and the Rev. Dr. Cessar Scott.

Alexander Hamilton stated in 1775 that the sacred rights of mankind are not to be rummaged about among old parchments or must records, but they are written as with a sunbeam in the whole volume of human nature, by the hand of the divinity itself, and can never be erased or obscured by mortal power. What we are addressing here today are the sacred rights of these six tribes.

Our history has not always been marked by peace or understanding. Treaties, indeed, have been broken and land has been taken. There has been suspicion and mistrust on both sides. But there is, perhaps, no deeper wound that you can inflict on a person than to rob them of their identity, to relegate them to the box marked "other," to proclaim, as we have done in Virginia during the time of Mr. Plecker, that you do not exist.

Those who bear the legacy of their forefathers, the first inhabitants of this great land, have suffered much discrimination, bigotry, and injustice. In the past, they have been prevented from employment and attendance in public schools. Churches often sought to provide educational opportunities during that period of time, but it often meant having to go out of State to attend Indian schools in other parts of the country. Even as we prevented their attendance in our classrooms, we proudly placed their names on our school buildings. We took their names and we placed them on our roads and our towns and on our rivers. The discrimination that they suffered not only erased their identity, it also robbed them of their voice. These tribes have proudly served this nation even as this nation has turned its back on them.

These tribes are here today humbly to ask nothing more than to have their identity acknowledged, to be recognized for who they are and the contributions they have made. You can make this possible. You can make it possible that the healing of these deep wounds might finally begin to be realized.

In 1983, the State of Virginia acknowledged the Chickahominy, the Eastern Division; the Upper Mattaponi, and the Rappahannock. The Nansemond Tribe was recognized in 1985, and in 1999, both houses of our General Assembly agreed, urging Congress to grant Federal recognition to the Virginia tribes. Our legislature asked the State delegation in Congress to take all necessary steps forthwith to advance it. Senator George Allen, in introducing his companion bill in the Senate stated that it is important that we give Federal recognition to these proud Virginians so that they can now be honored in the manner that they deserve. There is absolutely no reason why American Indian tribes in Virginia should not share the same benefits that so many Indian tribes around the country enjoy.

God has called these people by name and has blessed them. God has recognized them as long as the sky is blue and will even if it should turn gray. God will be there as long as the grass is green

and when it turns brown. For as long as the water shall flow and even on cold winter days when it freezes over, God will be there and will continue to recognize these people. It is now time for the U.S. Congress to do the same. Thank you.

Mr. HAYWORTH. Thank you, Reverend Barton.

[The prepared statement of Rev. Barton follows:]

The Rev. Jonathan M. Barton – General Minister
Virginia Council of Churches
Testimony before the House Committee on Resources
H.R. 2345
Thomasina Indian Tribes of Virginia Federal Recognition Act of 2001
September 25, 2002

Chairman Hansen, members of the House Committee on Resources, my name is Jonathan Barton and I am the General Minister for the Virginia Council of Churches. I would like to thank you for the opportunity to speak with you today. I ask your permission to revise and extend my comments. I would also like to express my appreciation to Congressman James Moran, Tim Aiken of his staff and the other members of the Virginian Congressional delegation for all their efforts. To the members of the six tribes gathered here today, you honor the Virginia Council of Churches greatly by your invitation to stand with you as you seek federal acknowledgment. We stand with you today in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001" (H.R. 2345). On behalf of the Council I would like to apologize for any acts of injustice we may have been complicit or complacent in during the past and ask your forgiveness.

The Virginia Council of Churches is the combined effort of 16 different denominations in the Commonwealth of Virginia. A list of our member denominations has been appended to my written comments. I have also appended letters from various religious leaders in Virginia urging support for this bill. Together we include one out of every five Virginians. During our fifty- eight-year history we have always stood for fairness, justice and the dignity of all peoples. We were one of the first integrated bodies in the Commonwealth and

have been for our entire history. We stand here today in faith, grounded in our history and our values. The churches have had a relationship with these tribes ever since our first European ancestors arrived and were welcomed by the ancestors of these men and women here today. These tribes have developed close ties to the Episcopal Church, the Baptist Church, the United Methodist Church and the Assembly of God. Three of our leading religious executives are Native American: The Rev. Dr. Wasena Wright, The Rt. Rev. Carol Joy Gallagher, and The Rev. Dr. Cessar Scott.

Alexander Hamilton stated in 1775: "The sacred rights of mankind are not to be rummaged for among old parchments, or musty records. They are written, as with a sunbeam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power." What we are addressing today are the "sacred rights" of these six tribes. Our history has not always been marked by peace and understanding. Treaties have been broken and land has been taken. There is suspicion and mistrust on both sides. There is perhaps, no deeper wound you can inflict on a person than to rob them of their identity. To relegate them to a box marked other. To proclaim, as we have done in Virginia during the time of Mr. Walter Plecker, State Registrar for the Commonwealth, that you do not exist. Those who bear the legacy of their forefathers, the first inhabitants of this great land, have suffered discrimination,

bigotry and injustice. In the past they have been prevented from employment and attendance in public school. Churches sought to provide educational opportunity during this period, which often meant having to go out of state to attend Indian schools. Even as we prevented their attendance in our classrooms, we proudly placed their names on our school buildings. We took their names and we placed them on roads, towns and rivers. The discrimination they suffered not only erased their identity it also robbed them of their voice. These tribes have proudly served this nation even as this nation has turned it's back on them.

There has been much discussion regarding "gaming" during these proceedings. I would like to state clearly that the Virginia Council of Churches is on record opposing all forms of gaming and we are convinced that this is not relevant to our testimony here today. The Indian Gaming Regulatory Act of 1988 covers this legislation. These tribes here today humbly ask nothing more than to have their identity restored, to be recognized for who they are. You can restore their identity so that the healing of these deep wounds might finally be realized.

In 1983, the State of Virginia (Resolution No. 54) acknowledged the Chickahominy, Eastern Division; the Upper Mattaponi; and the Rappahannock and formally recognized them in a ceremony at the capital. The Nansemond tribe was recognized in House Joint Resolution No. 205 in 1985 and the Monacan

tribe in 1989 (House Joint Resolution No. 390). In 1999 both chambers of Virginia's General Assembly agreed to House Joint Resolution 754 urging Congress to grant federal recognition to the Virginian tribes. Our legislature asked the state's delegation in Congress "to take all necessary steps forthwith to advance it." Senator George Allen in introducing the companion bill in the Senate stated: "It is important that we give Federal recognition to these proud Virginia tribes so that they cannot only be honored in the manner they deserve but also for the many benefits that federal recognition would provide. Members of federally recognized tribes, most importantly, can qualify for grants for higher education opportunities. There is absolutely no reason why American Indian Tribes in Virginia should not share in the same benefits that so many Indian tribes around the country enjoy."

God has called these people by name and has blessed them. God will recognize them as long as the sky is blue, even if it should turn gray. God will be there as long as the grass is green and when it turns brown. For as long as the water shall flow or on cold winter days freezes over, God will be there. It is long past time for the United States Congress to do the same.

Virginia Council of Churches

- African Methodist Episcopal Church
- African Methodist Episcopal Zion Church
- Armenian Church in America
- Baptist General Convention
- Catholic Church(Roman)
  - Diocese of Richmond
  - Diocese of Arlington
- Christian Church (Disciples of Christ)
  - Christian Churches in Virginia
- Christian Methodist Episcopal Church
- Church of the Brethren
  - Shenandoah District
  - Virlina District
- Episcopal Church
  - Diocese of Southern Virginia
  - Diocese of Southwestern Virginia
  - Diocese of Virginia
- Evangelical Lutheran Church in America
  - Metro Washington, DC Synod
  - Virginia Synod
- Greek Orthodox Church
  - Greek Orthodox Churches of Virginia
- Moravian Church in America
  - Southern Province
- Presbyterian Church (U.S.A.)
  - Abingdon Presbytery
  - Presbytery of Eastern Virginia
  - Presbytery of the James
  - National Capital Presbytery
  - Presbytery of the Peaks
  - Shenandoah Presbytery
- United Church of Christ
  - Potomac Association
  - Shenandoah Association
  - Eastern Virginia Association
- United Methodist Church
  - Holston Conference
  - Virginia Conference
- Baltimore Yearly Friends Meeting
- Observer Participants
  - Church of Jesus Christ of Latter Day Saints

Mr. HAYWORTH. Thanks to all three witnesses. Are there questions? The gentleman from Michigan.

Mr. KILDEE. Thank you, Mr. Chairman, and thank you for having this hearing, also.

First of all, to Reverend Barton, yourself and the Virginia Council of Churches represent the very, very best in the church. The church has a divine element and a human element and you represent the best in that. I am personally edified by your testimony.

Rev. BARTON. Thank you.

Mr. KILDEE. For the Virginia tribes, you have the Constitution, you have the laws, you have the facts clearly on your side. I really feel that I have been given a task to make sure that the injustices of the past, as bad as they were, will not continue into the future.

Dr. Moretti-Langholtz, it is very good to hear a historian pull together so much as you have done here and talk about those Plecker years, which must have been miserable years where a person could not put down the real identity of their child when that child was born. But you have motivated me. I have always supported the tribes. I have talked to some of you before. I read John Marshall's decision to every Indian tribe I could think of, and you quoted it perfectly, exactly there. It is such an important document, and just thank you very much for your testimony.

Thank you, Mr. Chairman.

Mr. HAYWORTH. And we thank the gentleman from Michigan.

Again, we would offer our thank you not only to the witnesses on this panel, with reference to H.R. 2345, but all who have joined us today to talk about these important issues.

Just one reminder to our final panel. There may be some questions that we will have individually for you that we will submit to you in writing and would appreciate your response in kind.

Again, the purpose of the hearing is to have a chance to talk about these different pieces of legislation. We are pleased to make these different perspectives on these different pieces of legislation part of our Congressional record. We thank all for their participation and this hearing stands adjourned.

[Whereupon, at 1:45 p.m., the Committee was adjourned.]

[Additional statements and response to questions submitted for the record follow:]

Statement of Chief Stephen R. Adkins, Chickahominy Indian Tribe

Virginia history shows a government-to-government relationship between the Commonwealth of Virginia and the Chickahominy Indian Tribe beginning in the early 1600's. In 1614, the Chickahominy and the English signed a mutual aid treaty. The tribe was also party to the 1677 Treaty and a number of subsequent Treaties and negotiations between the Commonwealth and Powhatan Tribes.

From the mid 1700's to the mid 1800's, the Chickahominy lived in what is present day King William County. In the mid- to late nineteenth century the Chickahominy began moving southward to the banks of the Chickahominy River and the central ridge zone of Charles City County. They still reside in these areas.

In 1901, the Chickahominy Indian Tribe formalized its leadership structure and soon thereafter began operating its Indian School. This leadership structure consisted of an elected Chief, Assistant Chief, Clerk, Treasurer and Councilmen. It evolved into our present day form of an eleven member Board of Directors with the Chief as presiding officer. Regularly scheduled meetings have been held since 1901. The Chickahominy Indians formed Samaria Indian Baptist Church about 1900 and tribal membership in the Church continues today. The tribe enjoyed de facto Virginia state recognition throughout its modern history with formal state recognition occurring in 1983. The fact that the Chickahominy Tribe served, for several years, as an operating agency for the Native American component of the Governor's Comprehensive Employment Training Act provides an example of de facto state recognition.

In 1922, Assistant Chief 0.W. Adkins met with the Charles City School Board requesting financial help in defraying the expense of teachers' salaries. The board agreed to help pay the salaries of the teachers of Samaria Indian School. The State agreed to pay two-thirds of the salary of the Samaria Indian School teachers, with the Board assuming the obligation of paying one-sixth of this salary and the Tribe providing a like amount. This payment continued until a sovereignty dispute arose between the Tribe and the School Board in 1925 over the operation of Samaria Indian School, but the payment resumed in 1930.

In 1950, the state discontinued its contribution to the tribe of $200 per pupil for tuition and transportation costs, to attend high school beyond the ninth grade at Bacone, Oklahoma. The Charles City School Board would assume those costs.

Discussions occurred between the Charles City School Board and Chickahominy tribal members regarding the School Board's purchase of land and erection of a new school building for the tribe. Land was purchased by the Tribe from M.A. Holmes and donated to the school board. The Indian School was completed in 1951.

It was assumed that this school would provide elementary and secondary education for the Chickahominy Tribe and Eastern Chickahominy Tribe. Additionally, the school would provide secondary education for Mattaponi and Pamunkey students. The Eastern Chickahominy students were transported from New Kent County to Charles City County and several Mattaponi students came from King William County to attend Samaria High School. This multi-tribal education continued until full Virginian desegregation closed the Samaria Indian School in the late 196O's.

Research establishes a longstanding Tribal relationship with Virginia through letters of introduction to State and Federal officials from several state officials, which include Governor Westmoreland Davis, Governor E. Lee Trinkle, Governor Harry F. Byrd, Governor Garland Pollard and Governor James H. Price. Governor Baliles hosted a Thanksgiving Dinner at the governor's mansion in honor of the Indian

Tribes native to Virginia. The next year the Virginia Indian Tribes held a Thanksgiving Dinner at the Chickahominy Tribal center and hosted Governor Baliles.

With formal state recognition, the Chickahominy Indian tribe gained two seats on the Virginia Commission on Indians. The Commission hosted several state functions for all of the Virginia Indians and provided a viable conduit through which the Chickahominy Tribe is able to bring issues and concerns to the Governor and the state legislature.

The Charles City County School Board is the recipient of grants under the Title IV Indian Education Act to provide education for the Chickahominy Indian students.

The research compiled as a result of the Chickahominy Tribe's quest for formal state recognition was both painful and rewarding. It was painful because it revealed a deliberate effort by appointed officials within the Bureau of Vital Statistics to eradicate the existence of the indigenous people of Virginia. It was rewarding because it showed the ability of Virginia Indians to persevere and maintain their heritage against seemingly insurmountable odds. Under former Governor Allen's administration the Chickahominy Tribe, along with the other Virginia Tribes, was afforded the opportunity to correct the records within the Bureau of Vital Statistics.

In September 2001 the Chickahominy Indian Tribe held its 50th annual Fall Festival and Powwow. The event was attended by eight thousand people over a two day period. The tribe has held Fall Festivals for many years but the consecutive string was broken during World War II. Over the years state, federal, and local officials have attended the Fall Festivals.

Today the Chickahominy Tribe enjoys a lifestyle in which we proudly live and own our heritage. This lifestyle starkly contrasts the one lived by our ancestors only one generation ago and even to some extent the one that many of our elder's lived in their youth. One generation ago, our people feared the loss of property and rights if they made too much "noise". However, despite that threat they still persevered and maintained both their heritage and dignity.

The present day lifestyle of the Chickahominy shows a group of people who have worked to secure a place in mainstream America. You will find our people at the polls every November on Election Day. You will see their names on the ballot and hear them deliver their victory speeches. We serve on school boards, commissions, Board of Directors at financial institutions and civic organizations, church boards and offices and community college boards. Our people work as court clerks, Commissioners of Accounts, serve in the military and in many other organizations.

On the fourth of July, you will see Chickahominy Indians waving flags and participating in Independence Day celebrations, even though formal U.S. citizenship was not attained until the second decade of the twentieth century. In the spring of the year, you will see Chickahominy Indians as they march proudly to center stage to receive their high school, college, and post-graduate degrees. Many times, in Charles City County, you will see Chickahominy students delivering speeches as valedictorian or salutatorian of their class. You will see these people go on to become productive citizens within their communities as skilled craftspeople, factory workers, nurses, doctors, lawyers, engineers, entrepreneurs, teachers and other professions.

In addition, you will see our people go on to serve in the Armed Forces of the United States of America, where they serve with honor and distinction. Over the decades, we have seen many casualties of war within our tribe. These casualties include injury in World Wars I and II, the Vietnam War, and the Korean Conflict. Our people were also present in Desert Storm and Kosovo and currently serve in Afghanistan. On Veterans Day and Memorial Day, our people gather to honor those who gave so much to the "Free World". This gathering is bittersweet for some of our people who feel both pride and pain as they remember loved ones who lost their lives while serving this country.

Today you have seen a snapshot of who we were and, more importantly, who we are. We approach you without fanfare or hype. Rather, we stand before you to simply state our case and express our fervent desire that you grant Federal Recognition to the Chickahominy Tribe and the other five Virginia Indian Tribes appearing before you. We believe Federal Recognition will provide avenues to help our people gain access to better health care, education and economic opportunity.

In 1983, the Commonwealth of Virginia demonstrated its value and respect for its Native People by granting them State Recognition and forming the Virginia Commission on Indians. Recently, the Commonwealth asked its Native People to participate in Jamestown 2007.

As the nation and the world watch this historic event unfold, it would be very appropriate for the descendants of the original greeters of the English colonists to be officially recognized by the Congress of the United States of America.

Statement of Chief Barry Bass, Nansemond Indian Tribe

The Nansemond Indian Tribe is currently comprised of what is historically known as the christianized Nansemonds. The split in the Nansemond Tribe in the mid 1600's when they were being pushed from their villages along the banks of the Nansemond near the present day village of Chuckatuck. The traditional Nansemonds moved to the Courtland area along the Nottaway river, while the christianized Nansemonds settled along the edge of the Dismal Swamp. The membership of the current tribe must prove their Nansemond heritage through genealogy. At present all the membership descend from the documented marriage of Elizabeth, her christianized name to John Bass in 1638.

Elizabeth was the daughter of Robin the Elder, King of the Nansemond Nation. The christianized Nansemonds who settled along the edge of the Dismal Swamp were farmers for the most part and continued to hunt the swamp. They remained a close knit community despite having to keep a low profile in the out lying areas. They did managed to stay in contact with the traditional Nansemond tribe traveling back and forth. The christianized Nansemond's worked hard at adapting to the English way of life to ensure a life for future generations. They remained a close community relationship despite struggling with harsh discrimination from the larger English community. It was extremely difficult to raise their families and teach them to survive in the English way of life while trying to hold on to their Nansemond heritage, but they did, they maintained their Nansemond heritage at the price of being discriminated upon, to the point of having to have to be certified as being of Nansemond descent, not being allowed to attend the regular English schools. They were shunned by most of the English community and even found it increasingly hard to find work outside the farm to be able to support their families. The leadership of the christianized Nansemonds was passed from generation to generation in the Bass family, who were looked to as their root to their Nansemond heritage. In certain ways that still continues today, although the process is now formalized by bylaws and elections of tribal officers. Leadership of the tribe has passed from my great great grandfather, James Michael Bass to my great grandfather Jesse Linsey Bass, to my grandfather Earl Lawerence Bass, and now to me, Barry W. Bass. And rather than being passed from father to son we now elect officers every 4 years since receiving State Recognition in 1985. My grandfather was elected Chief at that time formally and served as Chief until his death in 1996. The christianized Nansemonds, the current Nansemonds being one and the same are but one big family, which has remained very close and determined to keep their Nansemond heritage alive and strong for future generations.

Today however it has become as important to achieve the Federal Recognition that our forefather and mothers so deserve for keeping our heritage alive for us the current Nansemond tribe as well as the future Nansemond tribe. By adapting to the English way of life has cost us a lot of our heritage which has been lost along the way it has also allowed us to gain in our sense of pride in our heritage and what our forefathers and mothers had to sacrifice for our survival. The Nansemonds of today work at all types of professions, white and blue collar jobs, some still hunt and farm, but the one most important thing that remains is the pride in our heritage and family ties. The discrimination that our ancestors had to endure was extremely painful, and even today this is still evident at times in the eyes of some of our elders, but they have endured and we will continue to carry our heritage forward. Because they weren't allowed to attend the English schools the Nansemond Indian Public School was established in 1850 by the Methodist. The Basses have always been known as avid hunters, and they knew the Dismal Swamp like the back of their hand. My great grandfather Jesse was known as the Daniel Boone of the Great Dismal Swamp and would take hunting parties of doctors and lawyers into the swamp on hunts, my grandfather Earl was a great hunter of the swamp as well, he was often called on to go into the swamp and find hunters who had gone into the swamp and gotten lost, because he knew it so well. As descendants of the Nansemonds we have had many generations of change and made many concessions to ensure a place for future generations of Nansemonds. We have really been focused on making sure that we will be able to preserve and build on our heritage. We are currently working to obtain some land in the area of one of the original village of our Nansemond ancestors at Mattanock. Here we plan to establish an authentic village to honor our ancestors and share our heritage with the general public. This we hope to accomplish in—time to coincide with Jamestown 2007, which for all that the history of Jamestown teaches may not have survived if not for the corn obtained from our ancestors. We have also established a museum which has done much for relationships in the community of Chucatuck as well as strengthened our pride in our heritage. The current Nansemond nation is governed by bylaws,

and an elected Chief, Assistant Chief, five Council persons, a Secretary, and Treasurer. We hold monthly tribal and council meetings to discuss the business of the tribe. We are seeking Historical Federal Recognition as a Tribe because we believe it is long overdue and necessary to continue to build on our tribal heritage, and better care for elderly as well as provide better opportunities for our future generations.

Statement of Chief Marvin Bradby, Chickahominy Indian, Eastern Division, Inc.

We, the Chickahominy Indians, Eastern Division, Inc., give this written testimony as a factual account of our history and our reasons for petitioning the United States government for recognition of our people.

For the sake of brevity, we will not repeat the history of our ancestors shared with the Chickahominy Indians. Instead, we refer you to the testimony of the Chickahominy Indians prior to 1910 and we will limit our history to the historical events of the Chickahominy Indians, Eastern Division, Inc. since that time.

Our tribe is located on Pocahontas Trail about four miles east of Providence Forge, in New Kent County, Virginia. Our people have been established in this area longer than we have written records, due to two fires that consumed all New Kent County records prior to 1870. However the earliest surviving record, the Virginian Census of 1870, shows an enclave of Indians in New Kent County, which forms the basis for proof of our existence. Further evidence of our existence is an acknowledgment by the Commonwealth of Virginia on a historical marker which reads: "Chickahominy Indians–One mile south is the home of descendants of the Chickahominy Indians, a powerful tribe at the time of the settlement of Jamestown. Chickahominies were among the Indians who took Captain John Smith prisoner in December 1607. Currently two state-recognized Chickahominy tribes reside in the area."

In the beginning of our tribal history our livings were made primarily on the Chickahominy River through fishing, trapping, and selling of animal furs and game. This mode of life continued until a dam on the Chickahominy River in New Kent, now known as Walker's Dam, was constructed by the City of Newport News. Some of our tribal members then began working for the Chesapeake & Ohio Railroad Company, now known as CSX, which passed directly through the area. Other tribal members found it necessary to leave the state of Virginia to find gainful employment. Our members have moved as far north as Michigan and as far west as Arizona.

The Chickahominy Tribe consisting of both the Charles City County and New Kent County Indians formed Samaria Indian Baptist Church in 1901. During this time, all Chickahominy men were assessed a tribal tax so their children could receive an education at Samaria Indian School. This money was used to build and maintain the school, buy supplies, and pay a teacher's salary. However, in 1910, due to the distance involved geographically between our people, we realized our needs as groups would be served better by becoming two independent tribes and the Chickahominy Indians, Eastern Division was formed. One of our first actions as a tribal entity was to start a one-room schoolhouse in New Kent County called the Boulevard Indian School. The building was built by our people on land donated by two of our tribal members. One teacher taught grades one through eight.

Our official tribal government was formed in 1920. Edward Pemberton Bradby was the first elected Chief. Our church, Tsena Commocko Baptist Church, was organized on September 24, 1922 in the Windsor Shades area. Church services were held in the school building until a separate building was built on the same parcel of land. In 1923, the church was accepted into the Dover Baptist Association and it remains affiliated with this organization today. In 1925, the tribe was incorporated for the purpose of non-taxable status to better serve our needs. All tribal males sixteen years and older began contributing dues toward the financial operation of the tribe. This policy was later changed to reflect that all tribal members 16 years or older must pay annual dues as well as attend tribal meetings.

In 1950, the tribal school was closed and our tribal children were sent to Samaria Indian School in Charles City County, which offered an education through the twelfth grade level. Transportation for our children was provided by New Kent County. The loss of this tribal school came in 1967 when Virginia integrated its school systems. Around this time, an Educational Assistance Program was established, which served all Virginia tribal students. This fund was established by Doctor Custalow of Newport News and Tsena Commocko Baptist Church.

In the late 1970's, our tribe was awarded a grant from the U.S. Department of Housing and Urban Development, which gave the tribe two mobile homes to be used as office and classroom space. Another grant, awarded by the Office of Native American Programs, was used for the purchase and improvement of office equipment and supplies.

Between 1982 and 1984, the tribe helped to build a bigger sanctuary for Tsena Commocko Baptist Church to accommodate church growth. Since its formation in the early 1900's, our tribe has always had a strong belief in Christianity and a Southern Baptist affiliation; because of this, we are not interested in any aspect of gaming, and in fact, believe this practice to go against our spiritual beliefs.

In 1983, after many years of petitioning for racial clarification of state records that were maintained through the Bureau of Vital Statistics under the leadership of Walter Plecker, the Commonwealth of Virginia recognized us, along with four other Virginian tribes. This was a proud and hard-earned day for our people who had to endure much paper genocide and racism. This is the main reason our tribe is petitioning the United States Government for recognition at this time. We are proud of our existence. We would like to be acknowledged for existing for so many years despite so much adversity.

We want to simply say that we always have and still exist and that we have earned our place in history along with other federally recognized tribes. We only humbly ask to be recognized.

The Virginia Council of Indians was formed as a state agency in 1985 and the Chickahominy Indians, Eastern Division was appointed a seat on the Council. This agency was formed as a liaison between the Governor of Virginia and tribal people in Virginia. It attempts to address the concerns and needs of Virginian Indians in the State's policies on Indians. We continue to serve on this council.

In 1988, the United Indians of Virginia was formed as a non-profit organization that would provide a unified voice on issues common to all state recognized tribes. It was said that strength lies in a unified voice. This organization was instrumental in the removal of offensive textbook material and continues to represent the concerns of seven of the eight state recognized tribes. The Chickahominy Indians, Eastern Division was granted a seat on the Board of Directors and continues to support this organization. Our Chief, Marvin D. Bradby, currently serves as Chairman of the organization.

In 1996, the tribe supported the United Indians of Virginia in its attempt to obtain an Administrative Grant on behalf of all the Virginian tribes to gain federal recognition. This was a clarification grant and information was submitted to the BAR to address our standing as tribal entities. Virginia Indian Tribal Alliance for Life, VITAL, was formed in May 2001 as a lobbying group to further this goal.

In 2002, the Chickahominy Indians, Eastern Division, dissolved its Educational Assistance Program and the remaining money was used to purchase land for future tribal development. Our people believed that this was an important step for the future of our children and our tribe. The Chickahominy Indians, Eastern Division is the last state recognized tribe to purchase tribal land and we are very proud of this accomplishment. The land occupies 41 acres and is located along Pocahontas Trail in the Windsor Shades area near Tsena Commocko Baptist Church.

Employment in recent years has been diverse among our people. We have self-employed businessmen, technicians, teachers, supervisors, installers and military servicemen. We have in the past several years, shared in the function of the New Kent County Sheriff's Department, the Providence Forge Rescue Squad, New Kent Social Services Department, New Kent Board of Supervisors, and the New Kent County Planning Commission. Twenty-seven of our tribal members have served in a branch of the military.

The tribe presently has 125 members with 52% of our members residing in Virginia. The tribe holds meetings in the Tsena Commocko Baptist Church fellowship hall twice a year in April and October according to the guidelines in our Bylaws and Constitution.

Soon we will be implementing teleconferencing to allow our out of state members to participate in meetings. We are in constant communication with our members via, telephone and written correspondence. Lastly, additional events are held for tribal members allowing fellowship and interaction with our out-of-state members.

We, the Chickahominy Indians, Eastern Division, ask the House of Representatives Committee on Resources for the same privilege shared by other federally recognized tribes in this great nation to be properly recognized.

Respectfully Submitted,

Marvin D. Bradby, Chief

Gene W. Adkins, Assistant Chief
Lesa D. Bradby, Secretary
Matthew C. Adkins, Treasurer

Statement of Chief Kenneth Branham, Monacan Indian Nation

The Monacan Tribe is the only tribe that is recognized by the state of Virginia that is not part of the Powhatan Chiefdom. The Monacans lived along the James River above the falls at Richmond claiming the whole piedmont area of Virginia as their homeland. Hunting was their number one source of getting food. They hunted white tail deer, wild turkey, box turtle, elk rabbits, squirrel and other small game. The men also would construct fish traps to catch fish in the rivers and streams throughout their territory. The Monacans also had small gardens in which they grew corn, beans, squash, pumpkins, sunflowers, and small amounts of tobacco that was used in their religious ceremonies. The Monacans were different from the Powhatan Indians in their language. The Powhatan Indians spoke Algonquian while the Monacans have a Siouan dialect. Despite the differences between the Monacans and Powhatans, there was trading among the two. Copper was one source of trading between the two tribes.

The first encounter of the colonist was with Captain John Smith in 1608 when and his men made an expedition into Monacan territory. Smith's map of 1612 names five Monacan towns located along the James River which was at that time called "The Powhatan Flue." Five more towns were located in Mannahoac territory to the north of the Rappahannock River.

Before the English arrived at Jamestown, the Monacan way of life had already begun to change. Spanish explorers arrived in Central American in the 1500's bringing epidemic diseased that spread rapidly through America. Indian people had never been exposed to many of these diseases and had not developed any type of immunity to them. IN some cases more than half of the people in some villages died as these diseases swept across the land. These epidemics brought many changes as well. Small villages were forced to join with larger groups in order to survive. As a result, tribes were weakened. Therefore, it was with the Monacans, a tribe of 15 to 20 thousand at our peak. By the year 1800, it was reduced to less than 1000 members.

In 1757, John lynch, founder of the City of Lynchburg was living at the Old Ferry House on the now James River. There were two villages of Monacan Indians located nearby. One was on property near White Rock Hill and one the opposite side of the river next to Madison Heights, which is part of Amherst County. These Indians were peaceful and did not cause any harm to their white neighbors. As time past, the Indian people began to marry into the different races in this area, but maintained their Indian way of life and passing their culture on to their young people.

Laws of Virginia made it extremely hard to maintain our Indian way of live and many of the Monacans did, but paid a very heavy price for doing so. Lack of educations was the hardest price we had to pay. Local churches helped out by opening a school for the Monacan children. This school remained in operation until 1963. This was the only place that we were allowed to obtain our education because we were not accepted into public schools (black or white) until 1963. The first Monacan graduated from Amherst High School in 1971, three more Monacans including the Chief, would graduate the following year. Please, be reminded this was only 30 years ago, not ancient history.

In 1989, the Monacan Indian Tribe became the eighth recognized tribe in Virginia. Today, many tribal members live near Bear Mountain in Amherst County. We have a Chief who is elected by the members of the Tribe every four years. We have a Tribal Council elected every four years as well. These are the people who conduct the day to day business of the Monacan Indian Nation.

Each May we have a Pow–Wow, which brings a lot of our people home to the Amherst area and is a means by which we raise funds for the upkeep of our Tribal buildings and various other projects. In addition, each October St. Paul's Mission celebrates their annual Homecoming. Scholarship auction is conducted during the Homecoming activities to raise money for our scholarship fund. We give a way three $1,000.00 scholarships to members of our tribe each year.

We have had two reburials of ancestral remains on the Sunday following our Homecoming. We have plans for a reburial ceremony again this year, and will invite other Chiefs and their tribal people to join us.

I have only touched the surface of our history, but have included a Brief History of the Monacan Nation written by our Project Director Karenne Wood.

Today, we are seeking Federal Recognition along with five other Virginia Tribes. We as Indian people deserve our rightful place in the History of this Commonwealth

and this Great Nation. We can use the educational grants, the health care and better housing programs already offered to Federally Recognized Tribes, however the most important issue with the Monacan Indian Nation is that the United States Government acknowledges our sovereign rights as a Native American Indian Nation.

Statement of Chief Quiet Hawk, Golden Hill Paugusset Tribe

Mr. Chairman, Vice Chairman and Members of the Committee, my name is Chief Quiet Hawk of the Golden Hill Paugussett Tribe of Connecticut. The Golden Hill Indians have and will continue to be a strong, determined group of people. This strength is made evident by our continued existence as an Indian tribe from time immemorial and the State of Connecticut's continuous recognition of us as an Indian tribe for more than 350 years. Despite this, we have been waiting for over 20 years, as have other petitioners, for the Department of the Interior to recognize our existence as an Indian tribe and to establish the government-to-government relationship with our tribal community. I cannot begin to describe the amount of time and distress it has taken our tribe to progress through this demanding and exhaustive process.

Over the past two weeks, legislation has been introduced in both chambers of Congress concerning federal recognition of Indian groups and the role of state and local governments in that process. This legislation directly and adversely affects the members of my tribe and other Indian tribes and petitioning Indian groups throughout the United States.

I am aware of the concerns raised by some of the local communities in Connecticut regarding the federal recognition process. We share some of their

concerns and often find ourselves struggling for similar things; the right to be heard and recognized. However, the legislation under consideration here today is not the appropriate response to such concerns. Funding local governments to oppose tribal recognition, land-into-trust, land claims, and other matters will only heighten the acrimony and will not bring any meaningful improvement to the processes associated with these important federal decisions.

While it is important to recognize that local governments have an interest in the outcome of these decisions, first and foremost, we must remember what these decisions are all about and what they are not about. They are about restoring the government-to-government relationship with this country's first nations and the land base that was rightfully ours long before the creation of this great nation. Those decisions are made based on findings of historical fact and law, not on the weighing of interests of affected parties. It is unfortunate that the acknowledgment of our inherent sovereignty and the restoration of our lands may impact some of our neighboring communities, but these are issues we should be working out on the local level. They are not issues that should bear on the outcome of federal determinations about the existence of an Indian tribe or the legitimacy of a tribal land claim.

On Monday, I had the opportunity to hear Senator Inouye, Chairman of the Senate Committee on Indian Affairs and Senator Campbell, Vice–Chairman of the Committee, speak to the Dodd amendment that would have imposed a moratorium on federal recognition. The floor statements made by these two respected Senators, provide insight on why the H.R. 992, the bill being discussed here today, is unacceptable to Indian country.

The State of Connecticut and a number of local communities have repeatedly sought to delay the recognition of our Tribe. This has been accomplished through litigation, burdening the Bureau of Acknowledgement and Research with Freedom of Information Act requests, and the hiring of professionals, such as genealogists and anthropologists, in an effort to develop information to oppose our petition for federal recognition. However, this is not how the process is supposed to work. It is the responsibility of the petitioning group to provide evidence that supports their recognition efforts. The recognition process was not established to have individuals and local communities disprove, that Indians exist. Therefore, it is not the responsibility of the federal government to provide federal funds to local communities in an effort to contest the sovereignty of Indian people.

Native Americans have struggled for centuries with state and local governments over tribal sovereignty and the possession of land that was originally inhabited by our people. Now, Representative Johnson has introduced H.R. 992, legislation that would enable local governments to apply for grants so they can continue to fight Indian tribes over these matters. For generations we have been trying to have our inherent sovereignty recognized by the federal government and to restore the land

base that was taken from us, so that we can provide for the social, economic, and cultural needs of our people.

Senator Inouye stated, "that many individuals have the impression of American Indians as "give me, give me, give me, all the time," they have given more than any one of us can expect. They are not asking for a handout. They are asking for what the Constitution calls for and what the laws of this land call for." Chairman, we are only asking for the federal government to acknowledge what we have always been, the sovereign people of the Golden Hill Paugussett Tribe, and for the opportunity to provide for the well-being of our people.

Senator Inouye went on to say that, "Our Founding Fathers felt so strongly about the importance of Indian nations that in the Constitution of the United States they have set forth, in good language, that Indians should be recognized as sovereign countries and as sovereign nations. We have entered into 800 treaties with Indian countries, as we do with the British, the Germans, the French, the Japanese, and the Chinese." He reported that of the 800 treaties signed by the President of the United States only 430 were ratified by our predecessors. Of the 430 ratified, the United States violated provisions in all of them. At one time Native Americans had control over 550 million acres of land, today we have less than 10 percent of this land left.

Certainly, we have given. Time and time again the interests of state and local governments have won out over the interests of Indian tribes and we have suffered as a result. Today, we are only asking that you not allow history to repeat itself yet again. We know our neighbors have concerns and we are willing to work with them, but do not allow their concerns to fundamentally change the nature of the federal processes that are at the foundation of federal-tribal relationship.

In closing, we believe providing funding to local governments to oppose tribal recognition, land into trust applications, and Indian land claims runs directly counter to the federal government's trust responsibility to Indian tribes and would only frustrate the legal obligations of the federal government to act in the best interest of Indian tribes. We believe that the concerns raised by the local governments are best addressed at the local level directly between the tribal government and their neighboring communities. For these reasons we oppose H.R. 992. Thank you for the opportunity to comment and for your consideration of the views of the Golden Hill Paugussett Tribe on this important matter.

SOCIETY FOR AMERICAN ARCHAEOLOGY

September 25, 2002

The Honorable James V. Hansen
Chairman, House Committee on Resources
1324 Longworth Building
Washington, DC 20515

Dear Chairman Hansen:

As president of the Society for American Archaeology (SAA), I would like to submit the following remarks for the record of today's Resources Committee hearing on the Native American Sacred Lands Act (H.R. 5155). The SAA strongly supports the protection of Native American sacred places, and has worked closely with Native Americans and Congress in the past to preserve and protect historically and religiously important places and wishes to continue to do so. However, we suggest that major revisions to this bill are needed to make it equitable. It is possible that many archaeological sites would be considered sacred places or would be included within sacred places; hence professional archaeologists have a strong interest in this legislation.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With nearly 7000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The SAA has members in all 50 states as well as many other nations around the world.

Previous legislation, including the 1966 National Historic Preservation Act (NHPA), the 1979 Archaeological Resources Protection Act (ARPA), the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) and Executive Order 13007 currently provide protection to Native American burials, sacred objects, and places, but they do so by seeking to achieve a balance between the concerns of Native Americans and those of other Americans. The proposed legislation does not contain that essential balance. In light of this, SAA has four major areas of concern.

Section 1 (4): As currently written, the definition of "sacred lands" could encompass vast tracts of land. It would be more desirable if this legislation used the existing definition of sacred sites contained in Executive Order 13007. Because many tribes consider the whole earth or their entire aboriginal territory to be a sacred landscape, it is necessary that this legislation focus on protecting the most important sacred places, those that are central to the practice of native religions. We urge the committee to write the definition in such a way that avoids the vagueness and ambiguity that would make it possible to declare almost any landscape as 'sacred.'

Section 3 (a): H.R. 5155 states that Federal lands shall be designated unsuitable for any or certain types of undertakings if, by a preponderance of the evidence, the undertaking is likely to cause significant damage to Indian sacred lands. The legislation needs to be specific about what is meant by "significant damage" in the context of a place's sacred character. For example, the current wording might be construed to include intangible damage. Because damage to the sacred qualities of a place is often intangible, land managers need a clear definition in order to determine what constitutes significant damage. In the interests of equity, land managers must also have the authority to reasonably weigh the harm caused by any damage against the benefits of other valid uses of public land.

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Section 3 (b): The legislation needs to be more specific about the method for determining sacred places. In section 3 (b) (2), the only supporting evidence mentioned is oral history, which, rightfully, is an important source of information. However, other evidentiary sources should be spelled out; these could include documentary sources (published and archival, historical and ethnological) and archaeology. The character of evidence should also be spelled out, e.g., there is a difference between evidence of specific activities (e.g., ceremonies) or associations and that of general attitudes or feelings. In addition, the method for determining who is authorized to speak for a tribe should be delineated. Determination of the preponderance of the evidence should include an objective evaluation of all information pertaining to the case.

Section 4: Although it is clear that information held by the tribe can rightfully be kept confidential if the tribe so wishes, it should be made clear that information gathered by archaeologists, anthropologists, or others in the process should still be available for educational and scholarly purposes.

I appreciate this opportunity to present SAA's views.

Sincerely,

Robert L. Kelly
President

Statement of Edward Ragan, Department of History, Maxwell School of Citizenship and Public Affairs, Syracuse University

Mr. Chairman, members of the committee, and guest, my name is Edward Ragan. I am a doctoral candidate in the Department of History at the Maxwell School of Citizenship and Public Affairs, Syracuse University, and I also represent the Rappahannock Tribe as their tribal historian. My testimony today is intended to reinforce what you have already heard: that the tribes you see represented here today are the rightful successors to those sovereign Indian nations who welcomed the English at Jamestown in 1607 and incorporated these foreign immigrant settlers into Indian Virginia. The previous statements have presented a well-documented history on the denial of Indians' civil rights and the effect on tribal culture. My statement builds on these and focuses on the ways that tribes in Virginia remained distinctly native. I am telling a parallel story organized around the importance of place and community to indigenous culture in Virginia.

For several thousand years, the ancestors of the people you see before you today have made their home in what is today Virginia. Their oral traditions, first recorded in the seventeenth century, recall the formation of the Chesapeake Bay at the end of the last Ice Age just as they recall the emergence of well-organized political chiefdoms in the century before European arrival. The memory of place has had a profound effect on native culture in Virginia. When English settlers pressed their plantations over and beyond Indian communities along the Atlantic seaboard, tribes responded in different ways based on what they determined was essential to maintain their cultural integrity. In Virginia, as with other Algonquian tribes in New England and the Carolinas, cultural integrity was inextricably linked to where people lived and the structure of their tribal communities.

What this meant was that tribal peoples in Virginia accommodated English settlement in order to remain in their ancient homelands and build upon generations of continuous kinship ties. Unable to engage a long-distance, communal hunts, Indian men became trappers and woodsmen for their families and local English planters. Unable to continue traditional trading practices in the face of expanding English settlements, Virginia's Indians had to rely on trade with colonial officials and private individuals, and so they came to depend on English goods like kettles and hatchets and needles at the expense of clay pots, stone blades, and bone points. English-style clothes and cabins were eagerly occupied, and in terms of language, Virginia's Indians learned the English of their new neighbors just as they had learned the unique dialects of their Indian neighbors in centuries past. It was nearly one hundred and fifty years before the local Indian tribes began to accept Christianity in significant numbers, and when they did, it was the Baptists whose evangelical, open services were most like the emotional expression and celebration of native ceremonies and rituals. None of these changes altered their sense of who they were because the tribes retained what was most important to them: they continued to live in places that were familiar to them, where their ancestors had lived and were buried. They retained traditional family and community structures. Certainly their access to ancestral lands was limited by English settlement, but that did not deter these tribes whose new communities were dispersed across the land exactly as their ancestors had responded a thousand years before to environmental stress. These separate settlements formed the nucleus of today's consolidated Indian communities. These communities reflect, in their structure and organization, patterns of settlement evident in the archaeological record of centuries past. What continued to bind these groups together was communion with tribal members in the Baptist Church and the continuation of marriage customs that predate English settlement. Those patterns of marriage continue today and have been an essential ingredient to the tribes' continuity for these last four centuries.

To get to where we are today, three governments, tribal, state, and federal, have had to agree on a forum and procedure that provides a process for recognition. To begin, tribal governments collected and presented the documentation that they can to demonstrate continuity over time. We have done that to the extent possible. Where that is not possible, we have prepared compelling reasons as to why the separate tribes have difficulty addressing each point of the criteria for each decade since first sustained contact (see Prof. Rountree's statement for a list of incomplete county records and their destruction dates).

Next, the state of Virginia has acknowledged, where appropriate, its culpable and wanton destruction of Indian records, communities, and identities, most notably during the so-called Plecker years, which Danielle Moretti–Langholtz has detailed in her statement. Since 1983, the state has steadily ameliorated its relations with Virginia's indigenous people in real and significant ways. In 1983, it created a state recognition process that formally recognized the tribes before you today. In 1997, the

Indian birth records initiative was signed into law by then Virginia Governor (the now United States Senator from Virginia) George Allen. Governor Allen returned to native peoples the right to publicly claim their identity at birth and to redress historic denials of that identity by the state. In 1999, the Virginia petitioned the United States Congress to federalize what the state acknowledged in 1983, that these groups represent the legitimate and rightful heirs to the indigenous groups who welcomed and incorporated English settlement into their world almost 400 years ago.

Today, the Committee on Resources of the United States Congress has the opportunity to redress this historic denial of recognition and lay the foundation for a strong relationship between the tribes of Virginia, the state of Virginia, and the United States of America.

Statement of Chief G. Anne Richardson, Rappahannock Tribe

The first documentation on the Rappahannock Tribe occurred when Captain John Smith was brought as a captive of King Powhatan to the Rappahannock King Accapataugh at his capital town, Tappahannock, on the Rappahannock River. Smith was brought to the Rappahannock King so that the people could inspect Smith to see if he was the man whom they befriended three years earlier.—In return, that sea captain had killed the Rappahannock king and took some of the people as captives.—John Smith was not the person who had violated the Rappahannock's trust, and the Rappahannock welcomed the English and agreed to grow corn for trade with the English.

At that time, Rappahannock territory included all of present day Richmond County and parts of several surrounding counties, including the ones we currently occupy, King & Queen, Caroline and Essex.—After 1651, the Rappahannocks moved off their beloved river to inland sites along freshwater tributaries.—A series of peace treaties signed with the surrounding counties designated parcels of land that the tribe could occupy peaceably. In 1682, the Rappahannocks became signators, as tributaries of Pamunkey, of the 1677 Treaty of Middle Plantation.—The colony of Virginia appropriated 3,434 acres of land to the Rappahannock in their present day location.—In 1683, they were moved from their homeland by order of the Colonial Council to Portobago Bay Indian Town, where they lived with the Portobago tribe and the Nansattico Tribe, who lived on the opposite side of the river. The French Huguenot Dauphine de Durand documented various aspects of Rappahannock culture in 1687, when he recorded in his journals their trade relations, religious practices, government, and village life.—In 1706, the Rappahannocks were moved again by order of the Colonial Council after English settlers had patented the land at Portobago Bay.—Portobago and Nansattico families joined the Rappahannock who returned to their traditional winter hunting grounds on the ridge between the Rappahannock and Mattaponi rivers, present day Indian Neck in King & Queen County, Virginia.

Since that time, the Rappahannocks have lived on that same land, where they have always enjoyed communal villages and strong traditional social patterns of marriage and kinship relations.—During the Civil War the tribe went underground, not wanting to get involved in a war about slavery, retreating into the marshes around Indian Neck where they were protected from the ever-present Confederate patrols who harassed Indian people.—Rappahannock families were listed on county indigent and poor rolls as well as church rolls in the counties during this period.—It was not until the early 1900's that Rappahannocks show up on county land records.—Of course, considering the courthouses in one of the three counties where we live burned during the Civil War and another counties records were largely lost to administrative neglect, we feel blessed to have whatever documentation we do for that time period.—The tribe was visited in the 1890's by James Mooney, Smithsonian ethnologist, who documented our tribal rolls in his Indian population study and in his 1907 ethnography of Virginia Algonquians.—Dr. Frank Speck, anthropologists of the University of Pennsylvania, studied the Rappahannocks from 1920 to 1946 (published in Speck 1925).—Speck documented many aspects of Rappahannock history and traditional culture during this period.—It is amazing to me that in this ever increasing harsh, oppressive, and racist social environment that brought such radical changes to our community over time, the Tribe was able to adapt to those situations while preserving much of its traditional culture.—Rappahannock culture was so engrained in who we are as a people that it continued under the most oppressive circumstances. For instance, the Rappahannocks formalized their government structure in 1921 by obtaining a corporate charter with the state of Virginia.—This action formalized the previous structure of informal leadership, which had

passed down through the royal family line in the Chiefdom since the seventeenth century.—Although, the formal structure was modified to accommodate contemporary situations in which they found themselves, the same people were elected that would have been selected traditionally.—I am the current Chief, G. Anne Richardson and my father, Chief Emeritus Captain O. Nelson, was Chief before me and served the tribe for 34 years.—Chief Otho S. Nelson, my grandfather, served as Chief for 32 years before my father and my great uncle, George Nelson, served before him and so on.

From their first appearance in the late 1600's to their ultimate expression in the 1920's, repressive racial laws intensified.—Under the guidance of state registrar of vital statistics, Walter Plecker, Virginia continued it racist campaign to expunge all traces of Indian ancestry from any official Virginia record.—The Racial Integrity Act of 1924, virtually legislated Indians out of existence and declared only two legal racial classifications in Virginia, white and colored.—Plecker attempted to destroy or change all birth, death, and marriage records that had been recorded as Indian before the 1924 law.—He was active in an organization called the "Anglo Saxon Club of America."—This organization was the main catalyst responsible for the purification of the "White" race in America and was in the forefront of a mad science known as eugenics.—In today's terms, Walter Plecker was a "White Supremist," and this fanatical racist stayed in that appointed position for over 40 years at the pleasure of our state government.—He held honorary degrees from the University of Heidelberg and was an associate of Adolph Hitler.—Plecker had started the sterilization process here.—Oral history in my Tribe, tells of how Plecker tested and developed the actual model that Hitler used against the Jews during those dark days in Germany's history, the Holocaust.—He sent out instructions to census takers, county officials, hospitals, doctors, and all agencies of the state and federal government to police all people claiming to be "Indian" that they must be documented as colored.—He even threatened the officials with legal action and fear of losing their jobs if they did not comply.—Plecker developed something he called his "Hit List" of all Indians and Indian family names, and he distributed this list to all public officials to be on the look out so as to ensure that "no rats (meaning Indian people) could slide in through the cracks."—The Chief of the U.S. Census Bureau is quoted in a letter to the War Department when Native men were being drafted that; "Adolph Hitler has no more detailed information on the genealogy of the Jews than Walter Plecker has on his Virginia Indians."

The education story of Virginia tribal Indians is utterly unbelievable to have occurred in America just 35 years ago.—Even during the Civil Rights era when African Americans were gaining their rights, there was little reprieve for the tribal people.—Plecker's policies were so horribly successful in oppressing tribal people and so far reaching that the effects are still felt today. The Rappahannocks could not go to school in integrated public facilities in the state of Virginia until 1966.—Before that, from the 1880's until 1966, the Rappahannocks ran tribal schools, taught in individual homes and utilized other Indian schools such as the Mattaponi Indian School.—Until 1964, Rappahannock were bused at the expense of King & Queen County to attend Sharon Indian School (the Upper Mattaponi Tribal School) in King William County.

In 1982, the Rappahannocks along with seven other tribes petitioned the General Assembly for state recognition.—The general assembly ordered that a study be done on the history of these tribes to determine the validity of their claims to Indian heritage.—Dr. Helen Rountree, Professor Emeritus at Old Dominion University and published author on many books on Powhatan history, was enlisted to conduct research for the tribes.—A year-long study was performed, and Rountree concluded that the tribes petitioning then, who are the same tribes before you here today, were in fact the successors to the historical antecedents of the seventeen-century tribes.—Therefore, in 1983, the Virginia General Assembly passed legislation to officially recognize the Virginia tribes.—That period marked the beginning of the re-emergence of public tribal life with the communities building tribal centers and various projects to support their people.—The tribes unified and began to share a vision to work together to accomplish their goals for their communities.

Today, the Rappahannocks have approximately 200 enrolled members with a Chief, Assistant Chief, and six members to our Tribal Council.—All positions elected by the people, and tribal leaders serve five-year terms. We have an annual Powwow at the tribal center and run various cultural classes for the children without any financial support from the state or federal government.—The Rappahannocks erected a 6,000 sq. ft. Cultural Center (the Rappahannock Tribal Center), which is located in the core of our community, Indian Neck. The center was completed in 1997 with assistance from the Virginia Conference of the United Methodist Church.

The Rappahannocks have enjoyed a long working relationship with the Methodist Church even though tribal people have tended toward the Baptist faith. My grandfather's family who were contractors with financial support from a Methodist circuit rider/philanthropist built our first tribal church in the 1870's.—This church, along with the Baptist church (Rappahannock Indian Baptist Church) that was established in my community in 1964, became the focal points of our communities because we had been stripped of everything except our spirituality.—It was a place that tribal values and traditional structures could be adapted, and church was the primary public place for Indians to gather.—I currently serve on the board of the United Methodist Native American Committee established during their National Annual Conference only a few years ago.

In the 1980s and 1990s, the Rappahannock became more politically active as a group and were successful in lobbying then Governor George Allen to pass a Bill to enable us to change the state records to reflect our correct racial classification.—However, it does not take into account those who have passed on or those whose birth records were destroyed.—In 1999, the General Assembly passed a resolution asking Congress to grant federal acknowledgment to the Virginia tribes.—The state of Virginia finally recognizes the grave injustices our people have suffered here and desires to rectify the damage done to us.—It makes me feel good to know that the sacrifice of many generations before me was not in vain, and today, we do have a good working relationship with our state government.

I operate a scholarship program for Indian students, and I see up close and personal the horrible effect that a lack of recognition has had on our people.—The lack of confidence, low self-esteem, and fear of failure is a major barrier when students apply to college or for jobs.—Native people could not get jobs because of the gross discrimination and as a result, we currently have tribal elders who attempt to survive on a $200 to $300 monthly income.—They cannot live on that level of income and nursing homes will not take them because their monthly checks are too low, so they must depend on family members and community to care for them.

I have cited only a few of the particulars of this purposeful and continuous racist campaign the state has maintained against its Indian citizens for the last 360 years.—It is a long and dark story, the history of the Virginia tribes, and I believe one of the most compelling cases of injustice you will find in America.—I do not see this Bill as one of recognition vs. non-recognition but rather one of justice vs. injustice.—The Congress of the United States has the power and has been asked by the state of Virginia to help bring justice to Virginia's Indians, a people who have so long deserved it.—I ask you to help Virginia bring healing to its people by passing the Bill before you, acknowledging the government to government relationship that exists between these six nations of indigenous people and the United States.—The state's recognition, while important, does not equate to complete justice for my people and that is why we they have come to you—because congressional action does.—You are in a unique position as you have the power to change history.—We want to take our rightful place in the history of Virginia and the United States, and you can make that happen. I do not want the many things that Congress thinks most tribes want.—All I really want is to be recognized for who I am, and that, my friends, is a basic human right that enables one to have basic human dignity.

Statement of Helen C. Rountree, Ph.D.

When the English established their Jamestown colony in 1607, there were about 40 tribes in what is now Virginia. Three groups, the Cherokees in the far southwest corner of the state plus the Nottoways and Meherrins in south-central Virginia, spoke languages related to Iroquois. There were two major alliances of Siouan-speakers, called Monacans and Mannahoacs, in the Virginia piedmont. And thirty or so tribes lived in the Tidewater and spoke Algonquian dialects. Since they were dominated by Powhatan, the father of Pocahontas, the English called them collectively Powhatans.

The six tribes whose bill for federal acknowledgment is being considered are the Siouan-speakers (Monacans) and Algonquian-speakers (two Chickahominies, Nansemonds, Rappahannocks, and Upper Mattaponis).

All the Virginia tribes lived by a mixture of farming (corn, beans, and squash) and gathering wild plants, fishing, and hunting. All had fairly formalized political organizations, although they lacked writing. The Powhatans had a hereditary paramount chief, which is what Powhatan himself was. The Monacan situation in 1607 is less certain, given their distance from the record-making Jamestown English. However, either they or their not-so-distant ancestors were mound-builders, which argues for their having chiefs as well.

The chiefs led their people in alternately resisting and accommodating the flood of English settlers that poured into Virginia's Tidewater in the 17th century.

By 1670 the Powhatans were left on tribal islands of territory in a sea of aliens; the other native people, to the west, saw the handwriting on the wall. Thus in 1677, the Powhatans, Monacans and numerous others signed a treaty with the English crown that "guaranteed" them land to live on and also civil rights equal to those of ordinary English people. That treaty is still in force, since two reservations survive in Virginia. These six tribes appearing today have held their communities together in spite of not having reservated land.

The Monacans lived far enough west that no reservation land was ever surveyed for them before English settlers flooded in, in the 1720s–1760s. Instead of causing trouble - and thus keeping the attention of the Virginia colony's government - the Monacans quietly withdrew westward to the foot of the Blue Ridge. The Powhatans' islands of territory, by that time, had been nibbled down to three small reservations. The smallest was occupied by ancestors of the Chickahominies and Upper Mattaponis, among others. The Rappahannocks had been pushed off their reservation in 1705 and went to live a few miles away. The Nansemonds, assigned a poor, sandy tract far from their Nansemond River home in 1664, declined to live on it and sold it away by 1685; in the late 17th or early 18th century they migrated to the northern rim of the Great Dismal Swamp. Sometime in the 18th or early 19th century, the ancestors of the Chickahominies and Upper Mattaponis left the Mattaponi Reservation and established separate enclaves.

The reasons for the moves are unknown but probably involve the increasingly hostile scrutiny to which the Virginia reservation communities were being subjected because of their—overly liberal" treaty rights.

After the American Revolution, the new Commonwealth of Virginia assumed the responsibility of the English Crown in the treaty of 1677 that guaranteed the reservation Indians' rights. No law was passed to that effect, but the state's position was not (and has not been) challenged, a fact that would have seriously negative repercussions for the surviving Virginia tribes in the 20th century.

Landless Indian communities do not show up in the colonial- and state-level records in 18th and early 19th century Virginia, since the government assumed that the 1677 treaty no longer applied to them. Official interpreters to Indian communities were let go in 1727, since most Indian people the government dealt with spoke good English. Indian communities' populations were small enough that after 1722 no account was taken of them in peace negotiations between Virginia and the Iroquois. Groups that lacked reservations and who were too small to make trouble militarily were no longer officially "Indian," in the eyes of the colonial/state government.

Landless Indian communities and individuals rarely show up in the surviving local records in Virginia, either. For one thing, many of those records were destroyed, especially during the Civil War.

There are other problems in finding Indian people in the local records. The 18th and early 19th centuries were a time of Indian people's adopting Anglo–Virginian names, language, and customs in order to survive, which made them less visibly "Indian" (i.e., exotic) to their neighbors. Another hindrance to appearing in local records was the Indian people's position in Virginia society. Until late in the 19th century they lived in a social stratum of people who tended to rent land, contract common-law marriages, and die in testate. People from that level got into the records mainly if they got into trouble with the law, and the Virginia Indians did not do that, either. They were law-abiding, stayed among their family groups, not wanting to cause attention to themselves. When more detailed records began either surviving or being made, especially from the 1850 U.S. Census onward, geographical clusters of Indian families show up, living where the six tribes do today. And the local records show them choosing spouses from within their own groups to a very significant degree. The Nansemond Indian community became visible for another reason in 1833.

A state law was passed, at the behest of their local member of the House of Delegates, creating a special racial category in which they could (and did) get certified by the local county court. The category was officially called "Persons Of Mixed Blood, Not Being Free Negroes or Mulattoes" (POMBNBFNOMs). The county clerk making out the certificates simply called the Nansemonds "Indians."

After the Civil War, it was not enough to live quietly among one's own people and preserve a tradition of Indian ancestry. Virginia Indian communities had to begin responding actively and publicly to new pressures from outside.

Formal institutions such as churches and schools changed after the Civil War. Churches in Indian-inhabited areas had been tri-racial but with segregated seating; now they became segregated altogether, with non-white congregations budding off.

Indians who attended "colored" churches got labeled "colored" (i.e., black) themselves. Public schools were sketchily funded in Virginia before the Civil War, and they admitted only whites - in fact, it was illegal to teach non-whites to read between 1831 and 1865. During Reconstruction, schools became a serious matter for each county, and segregated schools were established all over the state. White schools did not admit Indians; black schools did, but any Indian children attending them - and their families - lost any credibility they had as Indians. Counties were reluctant to fund Indian schools if the Indian population was small or if the local white population was skeptical about the people's "Indianness.

The post–Civil War era therefore was a time of struggling to establish separate, "Indian" churches and schools.

The Chickahominy Tribe, being relatively large as well as closely clustered, achieved a church, a county-funded school, and incorporation as a tribe in the early 20th century. For others of the six tribes, the church came first. The Nansemond and Monacan churches were established in the mid–19th and early 20th centuries, respectively, by sympathetic whites as missions. The other groups formed their own Baptist congregations and joined the predominantly white Dover Baptist Association. For still other tribes, the formal organization came first, as in the case of the Rappahannocks and Upper Mattaponis who were encouraged in the 1920s to formalize their tribal government by Dr. Frank Speck, an anthropologist from the University of Pennsylvania. The Rappahannocks were the last to achieve a county-funded school, since they were spread thinly over no fewer than three counties. Very few of the tribal schools ever offered any high school courses. Indian young people either went without or went out-of-state to earn a diploma.

Tribal officials found that they were expected to "look Indian" when they represented their people in an official capacity. Unfortunately, 17th century Indian attire was so skimpy - even when Chief Powhatan himself "dressed up —that the officials would have gotten arrested if they tried to look authentic. So the practice became established of modern Virginia Indian people wearing Plains-inspired regalia on special occasions. Two non–Indians who understood early on why this was so were the anthropologists taking an interest in the tribes: James Mooney of the Smithsonian Institution (in 1899) and Frank Speck of the University of Pennsylvania (in 1919–1942): their work would be continued by Helen Rountree of Old Dominion University (in Norfolk, VA), beginning in 1969.

When the Racial Integrity era arrived in 1924, and the "one-drop rule [any trace of non-white "blood" making a person "colored] became law in Virginia, the Indian communities became the targets of a humiliating public campaign. Here were people who insisted that they were American Indians, not whites or blacks, and who were willing to put up resistance when pushed into "colored" facilities. The state's Bureau of Vital Statistics attempted to put an official racial label on everyone in the state. The Bureau's white-supremacist Registrar was especially vocal about any "mongrels" (as he called them) that tried to use the "Indian" label as a "way-station to whiteness" (his words). There were numerous skirmishes between the Registrar and the Indians, as well as the Indians' white allies who included several high-ranking state officials in other departments.

Both in the 1930s and during World War II, when the racial classification of draftees into the segregated U.S. Armed Services created an especially messy situation, the Chickahominy Chief and several friends of the Virginia tribes wrote to John Collier, Commissioner of Indian Affairs in Washington, asking if his Bureau could not intervene on the Virginia tribes' behalf. Collier had to reply that the federal government had "no responsibility" for the Virginia tribes, since the tribes had no treaty with the U.S. government. He therefore had no power to intervene, although he did write a series of strong letters to the Vital Statistics Registrar as a private citizen. The Chickahominy Chief became one of the first members of the National Congress of American Indians.

The pressure on Virginia Indian people to disappear into the "colored" category continued until well into the Civil Rights Era. It is proof of the genuineness of their feelings of being Indian that once "whiteness" could be legally claimed by anyone, they went right on saying publicly that they were Indians.

The Civil Rights Era also brought an end to segregated schools, so that the Indian tribes lost theirs. They compensated for this loss of a major symbol of their ethnic separateness by applying for - and getting - ethnically-based grants to improve homes and school programs, as well as becoming active in several pan–Indian organizations. However, the new major symbol of the Indian communities became buildings used as tribal centers, whether these were newly built or former Indian schoolhouses reclaimed and renovated. The centers have become not only places for tribal meetings and Saturday schools, but also focal points for events that are open to the public, such as powwows, fish fries, and country music festivals.

Thanks to the educational and job opportunities opened up in the Civil Rights Era, the six tribes requesting federal acknowledgment in the bill have nearly full employment today. The majority of them are working-class people, with an increasing number of white-collar employees. Like other Americans in their position, they often find themselves falling between two stools - not being poor enough or prosperous enough - when they face heavy educational and medical expenses. That is one of their major reasons for wanting federal recognition for their tribes: federal programs. The other major reason is because they have kept their Indian identity for four centuries now, and they are tired of all the skepticism they have met in the last two.

The six Virginia Indian tribes asking for federal acknowledgment today have encountered several periods of serious adversity since the Jamestown colony was founded. The striking thing about their history is that their responses have been overwhelmingly constructive ones. They all but lost a foothold in their own home territory, and yet they have abided by treaties and in the 20th century they have shown themselves, by the number of their men in military service both in and out of war-time, to be very patriotic citizens indeed. The United States is indubitably "home" to them. The tribes were put under tremendous pressure to be something other than "Indian" in the last two centuries, so their leaders made themselves adept at networking and using the mass media to try to preserve their people's "Indian" status. The Indian communities lost the tribal schools they had struggled so long and hard to attain, so they replaced them with tribal centers where they could sponsor outreach events for the general public.

The early Jamestown colony wanted Virginia's native people to become good, functioning citizens of an English speaking community. That is what the Virginia tribes have done - while remaining Indian.

[Note: attachments have been retained in the Committee's official files.]

NACS

September 23, 2002

The Honorable John J Duncan
United States House of Representatives
2400 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Duncan:

I am writing to you on behalf of the National Association of Convenience Stores ("NACS") to let you know why NACS opposes Rep. Jim Moran's legislation, HR2345, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001.

NACS is an international trade association representing nearly 2,200 convenience store companies. There are over 124,000 convenience stores in the United States. This industry employs nearly 1.4 million Americans and is built upon the small, family-owned convenience store. In fact, nearly 70 percent of NACS' members are small businesses operating 10 or fewer stores.

The Moran bill extends federal recognition to the Chickahominy Tribe, the Chickahominy Indian Tribe--Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe. NACS opposes recognition of any additional tribes until Congress can fix the process for tribal recognition. Currently, the tribal recognition process does not allow for the input of members of local communities, local and state governments, and others who may be affected by a recognition decision or have information relevant to the process. The inability of affected citizens to comment runs counter to important principles of American government, which typically seek to encourage citizen involvement. The American people should have the ability to participate in this process.

Tribal recognition decisions affect small businesses and communities throughout the nation, and directly impact the convenience store and petroleum marketing industry. Native American tribes are exempt under Federal law from charging state excise taxes on sales of tobacco and motor fuels to members of their own tribes. Many tribes and tribal retailers are abusing this special tax exemption by expanding it to sales of tobacco and motor fuels to non-Native Americans. These tribal retail enterprises have refused to collect lawful state excise and sales taxes when they sell these products to non-Native Americans. The results of these abuses can include injury to local businesses (who have trouble competing with the large price advantages unfairly bestowed when taxes are not collected) and big losses of state and local tax revenues. Many convenience stores have been put out of business because of these tax abuses, and the proliferation of the problem needs to be addresses prior to the recognition of additional tribes.

It does not make sense to continue to recognize additional Native American tribes under a flawed system when these decisions can have such dire consequences for local communities and businesses.

Let Congress and the Bureau of Indian Affairs assess the current system and reform it without the pressure of recognizing additional tribes and potentially making mistakes with negative consequences for all Americans. NACS urges you to oppose HR2345 until the flawed recognition process is repaired.

Sincerely,

Allison Shulman
Director, Government Affairs

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Statement of Jack F. Trope, Executive Director, Association on American Indian Affairs

The Association on American Indian Affairs appreciates this opportunity to submit testimony for the record of the hearing on H.R. 5155, a bill to protect sacred Native American Federal lands from significant damage.

Background

As you may know, the Association on American Indian Affairs (AAIA) is the oldest American Indian advocacy organization in the United States, founded in 1922. AAIA is a citizens' organization governed by an all–Native American Board of Directors, with members in all 50 states and offices in South Dakota, Arizona, and Maryland.

Currently, our projects focus to a considerable extent in the areas of cultural preservation (protection of sacred sites, repatriation of Indian human remains and cultural items and language preservation), youth (Indian Child Welfare, scholarships and youth summer camps), health, particularly diabetes prevention, and federal recognition for unrecognized Indian tribes.

Specifically, with regard to the protection of sacred places, AAIA has provided assistance in a number of specific sacred sites disputes, beginning in the 1960s and the effort to return the sacred Blue Lake to the Taos Pueblo. More recent sites for which AAIA has provided assistance include Mt. Graham in Arizona, and Devils Tower and Medicine Wheel/Medicine Mountain in Wyoming. In the case of the Bighorn Medicine Wheel, AAIA assisted in the formation of the Medicine Wheel Coalition, a coalition of Plains Tribes who have a traditional history of using the Medicine Wheel and Medicine Mountain for spiritual purposes. With the assistance of AAIA, the Coalition negotiated and signed in 1996 a landmark Historic Preservation Plan (HPP) with the Forest Service, as well as state and local government agencies, designed to ensure that the site would be managed in a manner that protects the integrity of the site as a sacred site.

Nationally, together with Native American Rights Fund and National Congress of American Indians, AAIA coordinated the effort in the early 1990s to obtain American Indian religious freedom legislation. More recently, AAIA has once again joined with other national organizations and Indian tribes to establish the Sacred Lands Protection Coalition (also sometimes referred to as the Coalition to Protect Native American Sacred Places). The Coalition's purposes are to:

- strengthen administrative procedures and regulations relevant to sacred sites protection,
- encourage government decisions that will protect sacred sites and ensure adequate tribal consultation, and
- enhance legal protection for native sacred places.

The Need to Protect Sacred Places

As you have heard in powerful testimony from President Jackson of the Quechan Indian Tribe and the Lieutenant Governor Keel of the Chickasaw Nation, protection of sacred places is of profound importance to Native Americans whose very ability to practice their cultures and religions can be severely affected by development at places that they hold sacred. Indeed, it is often difficult for non–Indians unfamiliar with traditional tribal culture to understand how deeply felt and integral these beliefs are for those who practice and believe in these traditional ways. The continuation of traditional native religions and tribal cultures over time is dependent upon the performance of ceremonies and rituals, many of which have been performed for time immemorial at specific sites and which must be performed at those sites in order to be effective. Thus, there is a moral imperative present here that we urge Congress to recognize as it considers whether to provide stronger legal protections to these sacred places.

As the testimony of the National Congress of American Indians made clear, there are many other places in addition to Indian Pass that are affected by planned development. For example, permits have recently been issued for a coal strip mine in New Mexico that has the potential to drain water from an aquifer that is essential for the continued existence of Zuni Salt Lake, an irreplaceable site that is sacred to Zuni Pueblo. At Snoqualmie Falls in Washington State, hydroelectric development has already diminished water flow at the falls and there are plans to expand that development and, as part of a flood control project, to blast other areas around the falls that are sacred to the Snoqualmie Tribe. At Medicine Lake in California, a case with a procedural history similar to the case of the Quechan, the Telephone Flat Geothermal Project was at first denied in May 2000 on the basis that it would have an adverse cultural impact on Native Americans, but the BLM subsequently agreed to reconsider that Record of Decision and plans to issue a new decision by November 1, 2002. And for almost 15 years, the Western Apache have fought the

building of a nine telescope complex by the University of Arizona on the summit of their sacred Mount Graham.

Unfortunately, existing law recognizes the value of accommodating the religious needs of Native Americans to only a limited extent. With respect to constitutional law, the United States Supreme Court has ruled that the Free Exercise clause of the First Amendment is not available to restrict federal agency land management decisions for the purpose of protecting Indian sacred places on federal lands. Lyng v. Northwest Indian Cemetery Protective Assn, 485 U.S. 439 (1988). Some statutes do provide a measure of protection through procedural requirements. Most notably, the National Historic Preservation Act (NHPA) provides that "a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance" to a historic property when a federal or federally assisted undertaking may affect that property. 16 U.S.C. 470a(d)(6), 470f, implemented through regulations at 26 C.F.R. part 800. In addition, the Native American Graves Protection and Repatriation Act (NAGPRA) provides for notice and consultation when grave sites are concerned. 25 U.S.C. 3001 et seq., implemented by regulations at 43 C.F.R. part 10. The American Indian Religious Freedom Act, 42 U.S.C. 1996, and Executive Order 13,007 declare that it is federal policy to protect the integrity of and access to sacred sites, but neither is judicially enforceable. These laws are helpful tools, but none of them provide the kind of enforceable, substantive legal protection that would ensure that these sites are protected. And notwithstanding these laws, the reality is that the goals and wants of those who seek to extract resources from (or otherwise "develop") lands are more readily incorporated into government land management policies and decision-making than are the religious beliefs of Native Americans affected by that development.

Nonetheless, it is important to recognize that these federal laws have allowed for strengthened protection of sacred sites on tribal lands through the recognition of Tribal Historic Preservation Officers and the negotiation of some agreements to protect sacred places located on non–Indian lands—for example, the Bighorn Medicine Wheel in Wyoming. Thus, properly implementing and, where possible, strengthening these laws is one important aspect of protecting sacred places.

Protection of Native sacred places, however, continues to be a case-by-case struggle to convince land managers that it is necessary and possible to protect these places. In general, where enough political pressure can be brought to bear and mitigation is possible without a substantial cost to powerful economic actors, existing laws may be utilized to develop agreements to protect specific sacred places. Where powerful economic interests are involved, however, and where protection of the site can be obtained only through prevention of the proposed activity, as opposed to modification, existing laws will generally not adequately protect sacred sites.

The fight over Mount Graham is a good example of this. The political influence of the main proponent of the project, the University of Arizona, has been great and in spite of a consistent and documented record of Apache opposition to the project dating back to 1989, two telescopes have been constructed and activities relating to the construction of a third are currently underway. The law itself has been of little help, particularly because of a legal rider specific to Mount Graham approved by Congress, See P.L. 100–696, 102 Stat. 4597–99 (1988); rather the more successful approach has been to convince potential participants in the project—both United States universities and international organizations—not to become part of the project out of respect for the Apache's traditions and beliefs. While many have been convinced not to participate, the struggle continues as both the Universities of Minnesota and Virginia are considering involvement with the project. That the Apache have been able to slow down the development at this site is a tribute to the strength of their beliefs and the tenacity of the Apache and their supporters in the face of great obstacles.

H.R. 5155—Constitutionality

Before we comment on the substance of the bill, we would like to address the claims of the attorney for Glamis Gold that the bill is unconstitutional. Contrary to the assertions of the attorneys for Glamis Gold, the bill is clearly constitutionally permissible.

Nowhere in the analysis of the Establishment Clause by the attorneys for Glamis Gold does the word "accommodation" appear. Yet, as the United States Supreme Court has said, it has been "long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." Hobbie v. Unemployment Appeals Comm n of Fla., 480 U.S. 136, 144 (1987). In the case of Native American sacred sites, there are several compelling reasons why legislative accommodation of Native American free exercise

through the protection of sacred places is appropriate and constitutionally permissible.

First, such legislation falls clearly within the special trust relationship of the federal government to Indian people, including the responsibility to protect traditional Indian cultures. At was stated in Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210, 1217 (5th Cir. 1991), "the unique guardian-ward relationship between the federal government and Native American tribes precludes the degree of separation of church and state ordinarily required by the First Amendment. The federal government cannot at once fulfill its constitutional role as protector of tribal Native Americans and apply conventional separatist understandings of the establishment clause to that same relationship.

Second, the ownership of Native sacred places of worship by the government provides the government with greater latitude to accommodate Native religions. In short, the government has control of the religious facility and if it does not take special action, accommodation of religious practice cannot occur. An analogous situation would be those circumstances where the government has control over individuals, thereby leading to a situation where their right to freely worship is dependent upon special solicitude by the government. In such circumstances, the courts have consistently upheld government actions seeking to accommodate those individuals under their control. See, e.g., Katcoff v. Marsh, 755 F.2d 223 (2nd Cir. 1985) (providing chaplains to those in the military); Remmers v. Brewer, 494 F.2d 1277 (8th Cir. 1974), cert. den. 419 U.S. 1012 (chaplains for prisoners); Carter v. Broadlawns Medical Center, 857 F.2d 448 (8th Cir. 1988), cert. den. 489 U.S. 1096 (1989) (chaplains for patients in a county-run hospital). If the government cannot provide special consideration for religious practitioners who need to use federal land for the exercise of their religion, then perhaps the government has a duty to turn such lands over to those who need them for religious use.

Third, there is a long history of suppression of Indian religions by the federal government. For example, from the 1890s until the 1930s, the Bureau of Indian Affairs outlawed the "'sun dance" and all other similar dances and so called religious ceremonies as well as the "usual practices of so-called "medicine men ". See generally Trope, "Protection Native American Religious Freedom: The Legal, Historical, and Constitutional Basis for the Proposed Native American Free Exercise of Religion Act", 20 N.Y.U. Rev. L. & Soc. Change 373, 374 (1993) and sources cited therein. Even after the right to free worship was recognized for Indian religions, many obstacles to free religious practice remained—for example, the denial of access to sacred sites located on federal lands. The degree to which government has interfered with Native religions is without parallel and a law to protect sacred sites can be seen simply as redress for two centuries of discriminatory treatment. See Westside Community Bd. Of Ed, 496 U.S. 226, 249 (1990) (to prevent discrimination against religion is "undeniably secular").

Finally, there are a number of clearly secular purposes advanced by the legislation. Protecting Indian cultures is a secular purpose, indeed one that falls squarely within the government's trust obligations. In addition, the law on accommodation of religious free exercise is clear that removing government-placed obstacles to the ability of individuals to practice their religions or of religions themselves to function is also a valid secular purpose. See, e.g., Corporation of Presiding Bishop v. Amos, 483 U.S. 327, 335–336 (1987). Indeed, the Courts have indicated that it is not an "endorsement" of a religion if the governmental action is removing an "identifiable burden" on the exercise of religion. Id. at 348 (O Connor, concurring). Land management decisions that destroy or damage sites used for ceremonial uses would certainly be classified as "government-placed obstacles" to the free exercise of religion by Native American traditional religious practitioners and actions to protect those sites serve to "alleviate identifiable burdens" that such government land management decisions have placed upon that exercise.

The language from Lyng v. Northwest Indian Cemetery Assn., 485 U.S. 439 (1988) that Glamis cites to support its assertion that H.R. 5155 is unconstitutional is quoted entirely out of context. That language can be understood only in the context of the case itself—a Free Exercise claim seeking to compel as a matter of constitutional law a certain governmental action. Glamis pointedly does not mention that the Court in that case went on to state that notwithstanding the Court's ruling on the Free Exercise claim, "[t]he Government's rights to the use of its own land need not and should not discourage it from accommodation of religious practices like those engaged in by the Indian respondents." Id. at 454.

For all of these reasons, H.R. 5155 is constitutionally permissible legislation.

H.R. 5155—General comments

The interest of Representative Rahall in protecting sacred places, as evidenced by his recent editorial, fight to protect the Valley of the Chiefs and his introduction of H.R. 5155, is most welcome. We know that others on the Committee are also very supportive and we are greatly appreciative of this interest and support as well.

In terms of the specific approach provided for by H.R. 5155, the goal of prohibiting incompatible development on federal lands that are sacred to Native Americans is a goal that we support and we believe that this bill's approach is one that has the potential to provide tribes with a mechanism to protect at least some of their sacred places. We also agree with the overall land management policies that the bill recognizes.

However, we believe that the bill needs some refinement in order to achieve its goals and that other types of protections are also needed if the fullest possible protection of sacred sites is to be achieved. We also believe that a close look at the inadequacies of existing laws is necessary as the legislative process goes forward. Looking forward to the next Congress, AAIA hopes to work closely with Rep. Rahall and the Committee, as well as the Sacred Lands Protection Coalition (Coalition to Protect Native American Sacred Places), to develop legislation that will address all of the issues relevant to sacred sites protection

Among the important issues that are not addressed in H.R. 5155 are the following: (1) protection of sacred sites of tribes that have religious prohibitions against revealing certain information; (2) the lack of a general cause of action in the case of an agency's failure to comply with the law; (3) the lack of legal redress when there is a federal undertaking that would affect sacred land that has not been withdrawn pursuant to the procedures in the bill; (4) federal undertakings that affect non-federal lands are not covered by H.R. 5155; (5) both traditional practitioners and members of non-federally recognized tribes lack standing under the bill. We elaborate further on these issues in our section-by-section comments.

H.R. 5155—Section-by–Section Analysis

In terms of the specific sections of the bill, we have the following comments and questions:

Section 2—The general management goals laid out in the section are ones that we endorse. However, if the federal agency or department does not follow the mandates of section 2, tribes and traditional practitioners do not appear to have legal recourse to force compliance. Moreover, it is unclear what happens where there are potentially conflicting statutes—for example, the mandate in this section conflicts with a right provided by another statute to an individual or entity to obtain a permit if certain requirements are met? Does this statute take precedence in all circumstances? If so, the clause "notwithstanding any law to the contrary" should be added to section 2. If not, how are such conflicts to be resolved?

In general, there is a need for a clause providing for specific jurisdiction in the federal district court over a cause of action to enforce this section, with specific standards of review, in order to provide for clarity and a more definite remedy.

Also, it would be desirable to add to clause (1) language providing for "temporary short-term closures where necessary to protect the privacy of religious or cultural activities". See 16 U.S.C. 460uu–47 and 16 U.S.C. 410pp–6.

Section 3 (a)–(c)—The idea of preventing development of sacred lands through a withdrawal process has great potential. However, the actual process laid out in section 3 is unclear. Does this section contemplate an adjudication before an administrative law judge? Or is the petition made directly to an appointed policymaker (who issues a record of decision or the equivalent) and not a quasi-judicial proceeding? The provision allows for "any person" to file an allegation of facts, with supporting evidence. Does that person become a party to the proceeding? The requirement for a "public hearing" in section (c) is a particular source of uncertainty—does it mean an administrative law proceeding open to the public or a public hearing of the sort usually held in conjunction with consultation related to rulemaking or some other non-adjudicatory decision-making process?

Also, in terms of standing, we are concerned that the right to petition is limited to federally-recognized Indian tribes (and Native Hawaiian organizations) and that traditional religious practitioners and non-federally recognized tribes would not have the right to file a petition. In some tribes, religion and the tribal government are inseparable. In others, however, there is a strong separation of "church and state". The tribal government does not deal with traditional cultural issues; rather traditional authorities deal with those issues. Ideally, the legislative remedy should be broad enough to address the varied needs and different tribal norms and practices of those who practice traditional tribal religions. Moreover, this is a human rights issue and all those who practice these religions should have the right to pro-

tection, whether or not they are federally recognized for the purpose of exercising sovereignty.

Section 3(e)—The cause of action to challenge the administrative decision is important. However, the standards for judicial review are not specified. Moreover, since the section includes the remedy of damages, it is important to be clear that a damage remedy in lieu of injunctive relief is not acceptable. Otherwise, this provision could give rise to an Indian Claims Commission-type scenario where money is awarded, but lands are not protected.

In addition, we think that it would be more appropriate to utilize the attorneys' fee provision in the National Historic Preservation Act, 16 U.S.C. 470w–4, as opposed to the Equal Access to Justice Act provision, since the NHPA is the statute most frequently used today to address sacred sites issues.

Section 3(f)—In subsection (f)(2), requiring the consent of the department or agency (if other than Interior) is consistent with the existing FLPMA statute, 43 U.S.C. 1714(i), but inconsistent with the notion of the hearing in section 3 having binding effect (unless the finding in that hearing is considered to be consent of the department as a matter of law). Moreover, and more importantly, the bill provides that the withdrawal occurs "subject to valid and existing rights". This limits the efficacy of the remedy and invites confusion. In short, the withdrawal remedy will work only if tribes are proactive in protecting sites before competing rights have become vested. Often, however, tribes do not act until an actual threat is present—they prefer not to draw attention to sites unless absolutely necessary. H.R. 5155 does not appear to provide a remedy for tribes in this situation. For example, it appears that this bill would not have provided a tribal remedy in the case of the Valley of the Chiefs. Moreover, the section on land use planning refers only to the Departments of Interior and Agriculture. Thus, it is unclear if this section would provide any relief to those whose sites are threatened by activities of agencies other than Interior and Agriculture, for example, the Army Corps of Engineers, Department of Defense, Department of Energy and Federal Energy Regulatory Commission, to name a few.

Accordingly, if adequate protection is to be ensured, it is necessary to provide tribes and traditional practitioners with additional remedies under existing laws, as well as complementary new statutory provisions, in addition to the approach of H.R. 5155. For example, Congress might consider making tribes mandatory signatories under the National Historic Preservation Act to any Memoranda of Agreement that are developed to mitigate impacts to a sacred site. Moreover, the bill would be stronger if it included a broader cause of action provision allowing aggrieved tribes and practitioners to challenge federal undertakings that have the potential to frustrate their religious free exercise. Contracting with tribes to manage sacred places and/or transferring specific sites to tribes are also approaches that are worth exploring. These and other remedies identified through future consultation with tribes and traditional practitioners would greatly enhance the likelihood that the bill will provide adequate legal protection for Native sacred places.

Section 4—We agree strongly that this confidentiality provision is essential. We suggest adding a reference indicating that this section does not supersede other provisions dealing with confidentiality, particularly section 304 of the National Historic Preservation Act (and it would a good idea to take this opportunity to fix the inadvertent failure of section 304 to reference the Freedom of Information Act).

Also, we have a larger concern about confidentiality, particularly the concern expressed by some pueblos back in the early 1990s when this issue was last considered by Congress. At that time, there was testimony indicating that there are religious prohibitions against revealing certain information even if there are some guarantees that it will not be publicly released. As a result, an alternative process was proposed whereby agencies and pueblos could negotiate sacred lands protection agreements which could be incorporated into forest plans and other land management planning documents. This could be done without specifically revealing "inappropriate" details about ceremonies and locations. This approach not only helps protect confidential information, but also has the advantage of encouraging agencies and tribes to sit down at the earliest possible point in the planning process. We would suggest that this be included as another "administrative" option for tribes seeking to protect sites.

Conclusion

We thank Rep. Rahall once again for his great interest in protecting sacred sites and look forward to working with him and his staff on this issue. We also thank the Committee for its interest and the opportunity to submit this testimony.

Response to Questions Submitted to Chief Kenneth Adams, Upper Mattaponi Indian Tribe

1. Why should the six tribes seeking recognition through this legislation not be subjected to the same scrutiny to which other tribes are subjected as a result of their following the administrative process?

Answer to question 1:

This question implies that the tribes are opposed to a process that requires standards such as what is referred to as the "seven criteria." The fact is we were scrutinized by the State of Virginia when we received State Recognition that had similar standards to the federal criteria. Therefore, we are not opposed to such a process, and in fact have submitted petitions to the BIA/BAR that contain outlines, enrollment lists and documentation that support those criteria.

Our historians Danielle Moretti–Langholtz and Helen Rountree will address in a separate answer the specific documentation and support we have submitted to meet the seven criteria, which authenticate our heritage. We believe that the evidence clearly shows that all six tribes meet those criteria and have been in continuous community for the last hundred years. The families that make up our tribal communities, whose surnames have long been associated with the

Virginia Indians are the direct descendants of their historic tribes.

Our tribes sought recognition through Congress for two primary reasons: 1) Circumstances beyond our reasonable control unjustly delayed our ability to overcome the state action that segregated our race, altered our records, and otherwise made it unsafe to assert our identity; and 2) only Congress, through timely action, can correct the wrong to the Indian people of Virginia that the delay in the recognition of our identity has perpetuated. This is a matter of fairness and justice.

Over an extended period during the last century, state action discriminated against past generations of Virginia Indians by denying our people the right to claim their Indian heritage. Documents were altered and destroyed, and families and record keepers were threatened if they objected. The adverse effect of state laws carried over into the current generation, and made our communities reluctant, until very recently, to take the steps necessary to seek federal recognition.

The communities did not seek state recognition until 1983–1989, and were not successful in passing a state law to help correct state altered birth records until 1997. It was not until after the tribes gained the support of then Governor George Allen, and increased awareness of their situation was brought about by the passage of the state legislation, that they began to organize an effort to seek federal acknowledgment.

Unfortunately, the BIA/BAR cannot prioritize the Virginia tribes, despite the compelling reasons for our delay in participating in the administrative process. It is especially important to the tribes and to the state of Virginia that we honor our heritage through federal recognition as the state begins its preparations to commemorate the 400th anniversary of the establishment of Jamestown.

Our history that is so uniquely intertwined with the colonial history of this country has indeed been read and written about more than almost any other group of Indian people in the country. We have had contact with English-speaking Europeans longer than any other Indians in the country. But despite our priority in history, many tribes that had federal treaties from the late eighteenth century on through the nineteenth century became federally recognized tribes ahead of us, without our being awarded any scrutiny by a federal agency. As tribes with colonial treaties we were overlooked and neglected. We did not receive the priority we deserved.

Only Congress has the ability to address in a timely manner the inequities the state laws and the social/political atmosphere of earlier times created. During prior centuries it was not safe in Virginia for Indian people to assert their identity. Congress can right a wrong and restore the dignity of our communities by acknowledging our Indian heritage, which the state and federal governments have denied for too long, and which for decades during our modern history the state tried to destroy. It is a matter of what is just and fair. It is a matter of honor.

Therefore in answer to your question, we have submitted to the BAR and the committee evidence that supports that we are the authentic descendants of the historic Indian tribes of Virginia, that have lived in continuous communities in the State over the last 100 years. We believe the congressional process is the only process that can, by acknowledging our heritage without further delay, adequately address the wrong that was committed against our people. Further delay through an administrative process would not address that wrong and cannot fully address the state action that altered documentation and otherwise denied our identity. The wrong committed against us was far greater than the evidence of the destruction of documents.

Therefore, we believe Congress is the appropriate body to affirm our identity and give us the priority that we deserve.

2. In your testimony you mention a number of individuals and organizations in support of federal recognition for the six tribes. To your knowledge is there anyone opposed to this effort?

Answer to question 2:

The Committee may be aware of more organizations that have opposed the legislation. To our knowledge, only the Petroleum Marketers Association and the American Land Title Association have approached some of our sponsors and raised concerns.

Response to a Question Submitted to Rev. Jonathan M. Barton, General Minister, Virginia Council of Churches

How will federal recognition remedy the discrimination that has taken place in the past?

Federal recognition will not alter the past, nor will it eliminate all discrimination in the future. Federal recognition will affirm the existence and identity of these tribes. It will say to these tribes and to the world, Plecker was wrong in what he did. Sadly too many Virginians do not realize there are Native Americans in Virginia today. They see the Indians as something that was part of the past and not a presence in society today. This recognition will legitimize the presence of these six tribes, and their continued presence amongst us. This is of particular import as we approach the 400 anniversary of the establishment of Jamestown. One critical change recognition will bring are educational opportunities, needed to help improve the future of each tribe. Recognition will allow these tribes to take their rightful place among the more than 500 tribes already recognized by the U.S. Government. Ultimately discrimination is an action of the human heart. Changing the human heart is a long-term process. It requires that we must first recognize each other's right to exist. Failure to do so would be to perpetuate the discrimination of the past.

I hope this addresses your questions. Should you have any additional questions please feel free to contact me directly.

Response to Questions Submitted to Mike Jackson, Sr., President, Quechan Nation.

Question 1. In your testimony you voice support of California State Bill SB 1828, which allows for the reclamation of a surface mining operation near a Native American sacred site. Would you support similar reclamation provisions being added to H.R. 5155 to mitigate damages to sacred sites?

Response 1. No, because we don't have clarification. Even though the Tribe opposes open pit gold mining in or near our sacred places within the Indian Pass area, we are not opposed to complete reclamation of open pit mines. Complete backfill could be a reasonable environmental measure to help lessen the visual, land use and other impacts of a proposed open pit mine. As you know, approval of a reclamation plan is not the sole step required in considering a plan of operations for a surface mining operation. Other factors to be considered include measuring the project against the governing land use plans, policies such as Executive Order 13007, statutes such as the National Historic Preservation Act, historic uses by the Tribe and Constitutional protections. Accordingly, we might support similar reclamation provisions being added to an appropriate federal law, such as the General Mining Law, or the regulations that implement that Law, if backfill is safe and healthful and our sacred places can be protected. Thank you for acknowledging in your question that we do have sacred places.

Question 2. Did members of the Quechan Nation participate in exploratory drilling for gold in the vicinity of the Imperial Project within the past 15 years? If so, please explain.

Response 2. No, to our knowledge, members of the Quechan Nation have not participated in exploratory drilling in the vicinity of the Imperial Project within the past 15 years. In the past, the mining company has made unsubstantiated assertions about modern gold mining by the Tribe. As we have previously pointed out in the project record, perhaps the company is confused or speculating. In the 1990's and 1980's, the BIA conducted a compilation and summary of available information on mineral resources related to the Fort Yuma and Cocopah Indian reservations. It found that there was no modern gold mining on the reservations or immediately ad-

jacent to them. It found that in the 1700's, 1800's and early 1900's that limited historic and placer mining by the Spanish and later by steamboat travelers had occurred, including on areas that are now part of the Quechan reservation. In any case, the Nation is not opposed to all mining or all economic development by itself or others in Imperial County. Rather, the Tribe strongly believes that sacred places such as the Indian Pass area must be protected and preserved in perpetuity from destruction and desecration, such as that proposed by the current mining proposal.

The Tribe hopes that these responses are useful to your Committee. We appreciate your Committee scheduling the hearing on HR 5155 and welcome your Committee's future efforts to meaningfully protect our bona fide Native American sacred places. Attached to this letter are additional comments on the testimony provided by other witnesses on HR 5155.

[Note: The additional comments have been retained in the Committee's official files.]

Response to Questions Submitted to R. Timothy McCrum, Crowell and Moring LLP

Why would Glamis have proceeded with investments in mineral development so near protected wilderness areas?

In the 1976 Federal Land Policy and Management Act, the Congress identified the California Desert Conservation Area as a special management area with significant resource values including historical, scenic, archaeological, environmental, cultural and economic resources including valuable mineral resources. See 43 U.S.C. § 1781. Congress directed the Bureau of Land Management ("BLM") to prepare land use plans for the California Desert which would conserve these resources and allow appropriate use of the economic resources including mineral resources. BLM carried out this planning process and prepared its initial California Desert Protection Plan by 1980, which recommended significant areas in the California Desert for permanent wilderness protection.

Two of those areas, the Indian Pass Wilderness and the Picacho Peak Wilderness, are in close proximity to the Imperial Project lands, but the Imperial Project was never located within those areas that BLM proposed for wilderness designation nor in the areas actually designated for wilderness protection by the Congress in the California Desert Protection Act of 1994. In that landmark 1994 legislation, Congress expressly stated that the designation of wilderness areas was not intended to create "buffer zones" preventing multiple use development including mineral development, outside the congressionally designated areas.

Although Glamis had confirmed its discovery of a valuable mineral deposit by 1991, it made the bulk of its multimillion-dollar investments in this project after the passage of the 1994 legislation, which was intended to settle these land status issues after many years of study and public consideration. In sum, Glamis proceeded with its investments in accordance with the laws of the United States and land use planning decisions of the Interior Department which were all made with substantial public input.

Why would Glamis be willing to proceed with a mining project in an area considered sacred by an Indian tribe?

Glamis respects the cultural traditions and religious beliefs of the Quechan Tribe and other Native Americans whose ancestors lived or traveled through the western United States, including in the California Desert. The 1994 California Desert Protection Act, mentioned above, specifically designated vast areas of public lands (a total of approximately 7.7 million acres) as closed to all development activities for environmental preservation purposes and to protect Native American cultural values. In those designated wilderness areas including the Indian Pass Wilderness and the Picacho Peak Wilderness, near the Imperial Project, Native Americans have statutory access rights to those areas for Native American religious purposes.

When Glamis proceeded with the bulk of its investments at the Imperial Project, it had no way of knowing that this particular area was considered to be sacred by some members of the Quechan Tribe. In fact, Glamis funded two substantial cultural resource studies at the Imperial Project in 1991 and 1995 under the direction and review of the BLM. The Quechan tribal historian participated actively in each of those studies, and yet during those studies no claim was made that the project area was a sacred site. Understandably, under the circumstances, Glamis proceeded with the development of its mineral discovery. By the time the sacred site allegations were fully articulated between 1997 and 1999, Glamis could not abandon its

multimillion-dollar investment without breaching its fiduciary duties to its thousands of shareholders.

Given that the term "significant damage" is not defined in the legislation, what potential ramifications could this have if the bill were enacted?

As noted in my opening testimony, one of the major problems with this bill is the subjectivity involved in determining what is a "sacred site," and what would constitute "significant damage" to such a site. One of the problems with this bill is that it would seek to legislate and protect by law matters which are the subject of individual personal opinion and beliefs. The problems that are inherent in such an objective are the very problems which the founders of our Nation sought to prevent through the constitutional restriction upon the establishment of religion by our government. Under this bill, individual members of an Indian tribe could allege that a particular site is sacred to them and then declare that a particular development activity must not proceed because it would cause "significant damage" to it. Such allegations would be virtually unverifiable by our government officials and the courts, and they would lead to interminable divisive litigation and controversy.

Thank you very much for the opportunity to testify on H.R. 5155.

Response to a Question Submitted to Michele Mitchell, Staff Attorney, Native American Rights Fund

Q: In your testimony you reference the impacts of taking land into trust to local governments and suggest that the federal government address these impacts by providing funding to lessen the impacts of these actions. What type of funding do you envision?

As stated in our testimony, the Native American Rights Fund would oppose any Federal funding to local governments that would result in the reduction of funding for services to Indians and Indian tribes. However, one type of funding that could be utilized to offset the impacts of removing land from the local government tax base would be Payment in Lieu of Taxes (PILT). PILT are Federal payments to local governments that help offset losses in property taxes due to the existence of non-taxable Federal lands within their boundaries. The law recognizes that the inability of local governments to collect property taxes on Federally-owned land can create an adverse financial impact on local governments, particularly if those governments continue to be responsible for government services to the property removed from the tax rolls.

Public Law 94–565, as amended by Public law 97–258, authorizes PILT payments to local governments for certain types of Federally- owned land, referred to in the statute as "entitlement land." Amending this law to allow PILT funding for lands taken into trust on behalf of tribes would alleviate some of the adverse financial impacts of which local governments have complained.

Another option to offset these adverse impacts would be some type of "impact aid" legislation. As currently provided to local school districts, impact aid assists in alleviating some of the expenses of providing education to children living on existing Indian and military reservations which are not subject to property taxes. 20 U.S.C. 7701–7714.

The Native American Rights Fund emphasizes, however, that any option pursued by the Federal government to alleviate the effects of removing property from local tax rolls should be directly related to the financial impacts of such removal and should not support local opposition to the exercise of the rights of Indian tribes to seek recognition, to pursue land claims or to seek to have land put into trust.

Response to Questions Submitted to Danielle Moretti-Langholtz, Ph.D., Coordinator, American Indian Resource Center

Why are only six of the eight state-recognized Virginia tribes seeking Federal acknowledgment?1. Six of the eight state-recognized tribes are seeking federal acknowledgment at this time. In truth I do not know why two of the tribes have not joined in this legislative effort. I can say that the two tribes not named in H.R. 2345, while sharing the history and culture of the Powhatan tribes, are the two tribes who maintained their reservations lands since the seventeenth century. Since these two tribes have state reservations lands they have different circumstances and different needs. Virginia's eight state-recognized tribes are independent from one another, both historically and politically. Therefore, the tribes respect and honor each other's decision on this matter, for whatever reasons, practical or political. It is also my under-

standing that the two tribes not part of H.R. 2345 have indicated to the bill's house sponsors that they support federal recognition for the other six tribes.

In your opinion have the six Virginia tribes seeking Federal recognition through H.R. 2345 met any of the Department's seven mandatory criteria for acknowledgment?

2. All American Indian tribes receiving BAR acknowledgment to date have met the seven criteria in varying ways. This is due to differences in indigenous cultural traditions and particular historical encounters and experiences with the non–Indian majority. However, the Virginia tribes share a common heritage and similar historical experience. Each were part of or interacted with the Powhatan Chiefdom during the colonial encounter in the seventeenth century, their ancestral tribes were signatories to the same treaties, their immediate family members experienced the same treatment under racial integrity legislation (1924–1968), and a these same six tribes obtained state recognition under the identical scrutiny of the Commonwealth of Virginia. Due to their shared geographic location, the linguistic affiliation of five of the tribes, much of the scholarly research applies to all six of the tribes. Thus it makes it easy to qualify these six tribes for federal acknowledgment under one legislative act.

The six tribes seeking federal acknowledgment under H.R. 2345, the Chickahominy, Chickahominy Eastern Division, the Nansemond, Rappahannock, Monacan and Upper Mattaponi Tribes, are all of Eastern Woodland descent. For these tribes, unlike tribes in the West, "historical time" spans four-hundred years. For three centuries, from the late 17th century until the Civil Rights Era, the Commonwealth of Virginia enacted highly discriminatory policies against non-whites, much of it targeted at the Virginia Indian population. These legislative acts and governmental policies severely affected the six tribes' ability to appear consistently as "Indians" in public records and hindered the tribes' ability to compile documentary research about their respective histories. Nevertheless, it is the opinion of Dr. Danielle Moretti–Langholtz, Coordinator at the American Indian Resource Center at the College of William & Mary, Dr. Helen Rountree, Professor Emerita of Old Dominion University, and Mr. Edward Ragan, Ph.D. candidate at Syracuse University, the six tribes seeking federal acknowledgment under H.R. 2345 do meet the BAR's seven criteria. An overview of our response to the seven criteria follows:

1. Being identified as an American Indian entity continuously since 1900.

"Yes" Appearances as "Indian" in official records are irregular but consistent when viewed in light of the racially restrictive legislative history of the Commonwealth of Virginia. Anthropologists and historians have shown an interest in all six groups as American Indians since the late 19th century and several have written articles and book-length scholarly treatments about the people in all six tribes.

2. Being a distinct community over historical time.

"Yes" The earliest maps of Virginia, including Captain John Smith's 1612 map indicates the names and tribal locations of the original tribes encountered during the seventeenth century. Current archaeological work supports the accuracy of Smith's map. While the ensuing centuries led to significant culture change some of the original tribes managed to survive by withdrawing into close-knit communities in largely rural areas. Documentary evidence exists of the tribes practice of being largely inmarrying enclaves, closed to outsiders. These six tribes had separate churches and church-sponsored schools close to their traditional residence areas, further restricting their interactions with people outside of their communities. Discrimination against Virginia Indians was harsh and very public and forged a sense of solidarity and distinct identity in the community.

3. Political influence since historical times -

"YES" with qualifications. The membership of these tribes lost control of tribal lands by the 1800s thus they were "citizen" Indians rather than reservation Indians. Thus restricting the possibility of welding separate political leadership outside the tribal communities. However, it is possible to trace the lineage of the tribal chiefs during most of the last century. This research indicates that each of the six tribes chiefs were selected from particular families, thus maintaining a distinct tradition of political leadership within each of these tribes. It is worth noting that English settlers in the seventeenth century commented that Virginia Indians has the same political structure as the British since within each group positions of leadership were inherited. Currently, the position of chief and members of the tribal council are elected by the voting members of the respective tribes. It may be argued that today the tribes persist in this tradition by electing leaders who would have inherited the position of chief. It must be noted that the Commonwealth of Virginia enacted strict racial legislation that would have restricted the possibilities for tribal leaders to exercise power in a public manner. Thus public records would indicate

a bias against the tribes exercising political leadership but this may be understood as a direct result of Virginia's racial history. Moreover, until recently, the lack of tribal ownership of land limited economic endeavors, by precluding the possibility of chiefly power and decision making regarding tribal lands and businesses. Lastly, there are some scholars who argue that a limited pattern of chiefly political influence is consistent with pre-contact leadership patterns as economic and legal decisions were traditionally left to individual families. Chiefly authority was exercised most strongly in military and diplomatic situations. Thus in this instance the current situation is consistent with pre-contact patterns.

4. Bylaws - "YES" bylaws have been submitted by all six tribes.

5. Showing descent from historical tribe(s) -

"YES" with qualifications as follows:

The anthropologist James Mooney did fieldwork in Virginia in the 1890s and his work indicates that the Chickahominies, Rappahannocks and Nansemonds were known by those historical names.

The Upper Mattaponi can be shown to have come from the Mattaponi Reservation before the Civil War. The use of this tribal name was indicated by anthropologist Frank Speck in 1923.

The Monacans according to Bushnell are the descendants of this historical tribe, thus the tribal members assuming this name at time of incorporation was appropriate.

Each of these six tribes are found today within the ancestral lands of the historical tribes and their contemporary communities are family-centered and structured in much the same way as they have been for the last century—the period for which they have been studied by anthropologists and historians. In the late nineteenth and early twentieth centuries anthropologists James Mooney and Frank Speck recorded the names of the dominant families within these tribes; for example the Bass family among the Nansemonds, the Adkins Family among the Chickahominy, the Nelson family among the Rappahannocks, the Branham family among the Monacans, and the Adams family among the Upper Mattaponi were all noted in that early fieldwork. The current membership of the six tribes can be linked genealogically to the "core" families noted by these anthropologists. Also, as mentioned above in section 3, political power and influence has generally been maintained within these family groups.

6. Members not in another recognized tribe.

"Yes" These six tribes meet this criterion.

7. Tribes are not a terminated group.

"Yes" These six tribes meet this criterion.

Response to a Question Submitted to Dolores R. Schiesel, First Selectman, Kent, Connecticut

"Some states, such as New York are required by state statute to pay the cost of defense for all defendants in land claim cases. Does the state of Connecticut offer similar assistance?"

There is one statutory section that addresses this issue. Connecticut General Statutes Sec. 47–7b is entitled "Representation of interests of state when marketability of land titles threatened by claim of Indian tribe." It states in it entirety:

> "The General Assembly finds that the state has a significant interest in the stability and marketability of land titles. The Attorney General may, in his discretion, represent the interest of the state in any lawsuit where the marketability of land titles has been threatened by a claim alleging that the disputed land was originally controlled or owned by an Indian tribe and was unlawfully transferred from that tribe."

Thus, the Connecticut Attorney General has the discretion to represent the interests of the state in land claims by tribes. In some cases the state's interest may overlap with the defendants so that defense costs could be reduced when the Attorney General is involved in a suit. However, there is no provision in state law for direct state contribution to costs of defense for other defendants in such claims.

I hope this has been responsive to your question. It was my pleasure to have the opportunity to testify before the Resources Committee on this issue. I was able to see first hand the diverse interests that you must consider in a Federal issue that affects each of the fifty states so differently. If I can be of further assistance, please feel free to contact me.