

**H.R. 65, LUMBEE RECOGNITION
ACT; & H.R. 1294, THOMASINA
E. JORDAN INDIAN TRIBES OF
VIRGINIA FEDERAL RECOGNITION
ACT OF 2007**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

Wednesday, April 18, 2007

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LEGISLATIVE HEARING ON H.R. 65, TO PROVIDE FOR THE RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA, AND FOR OTHER PURPOSES. "LUMBEE RECOGNITION ACT;" AND H.R. 1294, TO EXTEND FEDERAL RECOGNITION TO THE CHICKAHOMINY INDIAN TRIBE, THE CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION, THE UPPER MATTAPONI TRIBE, THE RAPPAHANNOCK TRIBE, INC., THE MONACAN INDIAN NATION, AND THE NANSEMOND INDIAN TRIBE. "THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2007"

**Wednesday, April 18, 2007
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Young, Christensen, Napolitano, Boren, Sarbanes, Shuler, Duncan, Renzi, and Shuster.

The CHAIRMAN. The Committee will please come to order. We are going to go ahead and proceed with our list of witnesses this morning. It is the Chair's understanding that the Senate is conducting a roll-call vote at the current time, and therefore our distinguished visitor from that other body will be late in getting here. But we will go ahead, and at the very outset I want to note that Representative Bobby Scott is here with testimony and may have to leave because of circumstances that require his presence on the Floor.

We have with us several Native Americans and other individuals from Virginia who have come here this morning to give and to listen to testimony of great import. I know the Virginia community has been hit the hardest by the horror at Virginia Tech, and I can assure that community that it has touched all of us very deeply. I think it would be appropriate if we begin the morning with a

moment of silence for the students, the faculty, and the families of Virginia Tech.

[Pause.]

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

The CHAIRMAN. Thank you. The Committee is meeting to hold a hearing on two bills this morning, one pertaining to the Lumbee Tribe of North Carolina and another concerning six tribes in the Commonwealth of Virginia.

Frankly, I am embarrassed to be here this morning facing the good people of the Lumbee Tribe yet again. When 240 of us voted in the House of Representatives for the Federal recognition during the 102nd Congress, that should have resolved the question of Lumbee status. When we voted again in favor of similar legislation in the 103rd Congress, that certainly should have meant that the United States had finally taken a stand and done the right thing by acknowledging a trust relationship with the Lumbee Tribe. But it was not to be.

I personally have sat through several hearings on legislation of this nature over the course of several Congresses. Every time this Indian tribe gets close to its goal of recognition by the Federal government, there is always somebody somewhere ready to knock them down.

The Lumbee Tribe has been trapped inside a cruel carnival that never ends. They have been on a roller coaster of exciting highs, always followed by devastating lows. And just like a roller coaster ride, the treatment of the Lumbee Tribe quite honestly is starting to make me sick.

Before this day is over, we will no doubt have those who say the Lumbee should go through Federal administrative acknowledgment process. Well, we all know what that is; that is the never-ending regulatory maze filled with distorted mirrors, rubber rooms, and trick doors that this committee has examined in the past.

In the face of adversity, the determination and sheer stamina of the Lumbee serve as a testament to their strong belief in who they are as a people. They have endured rejection by Congress, hostility by the Bureau of Indian Affairs, and have been snubbed in their quest by neighboring Indian tribes. All the Lumbee want is respect—the respect of being acknowledged for who they are: an American Indian tribe.

I want to commend our colleague from North Carolina, Representative Mike McIntyre for picking up the mantle for the Lumbee people. He has been very forceful on this issue, has discussed it with me a number of times, and I certainly want to commend his very effective and determined and persistent leadership on behalf of the Lumbee people.

I also want to commend Senator Elizabeth Dole for her efforts in this matter. And it is our hope that we will have her with us before the morning is out.

This is not the first time that Senator Dole has appeared before our committee on behalf of the Lumbee Tribe. However, it is my hope that it will be the last time she finds it necessary to do so.

And of course, I welcome Representative Walter Jones to the Committee, as well. A dear colleague, while perhaps on the other side of the aisle, still a very good friend, and helps us a great deal on many non-partisan issues.

As for the Virginia tribes, the bill is being advanced by my good friend, Jim Moran. As we approach the 400th anniversary of the founding of Jamestown, it is strange, to say the least, that the very Native Americans who greeted the English settlers are still not fairly recognized Indian tribes today.

The members of these tribes have faced decades of deliberate discrimination from policies aimed at stripping them of their identities. They were targeted and subject to having their race designation changed on their birth certificates and other legal documents. Yet they have endured, and all six tribes that are the subject of H.R. 1294 are recognized by the Commonwealth of Virginia.

There is new leadership on this committee. There is new leadership in the Congress. It is a new Congress. So let us now seriously go about the business of rectifying wrongs to the Lumbee and the Virginia tribes.

And before recognizing our witnesses, I will recognize the gentleman from Arizona, the acting Ranking Member today, Mr. Renzi.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources, on H.R. 1294, The Lumbee Recognition Act, and H.R. 65, The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act

The Committee will come to order. We have with us several Native Americans and other individuals from Virginia who have come here this morning to give and listen to testimony of great import. I know the Virginia community has been hit the hardest by the horror at Virginia Tech, but I assure you that it has touched us all deeply. I want to begin this morning with a moment of silence for the students, faculty, and families of Virginia Tech. Thank you.

The Committee is meeting to hold a hearing on two bills this morning, one pertaining to the Lumbee Tribe of North Carolina and another concerning six Tribes in the Commonwealth of Virginia.

Frankly, I am embarrassed to be here this morning, facing the good people of the Lumbee Tribe yet again.

When 240 of us voted for Federal recognition during the 102nd Congress, that should have resolved the question of Lumbee status. When we voted again in favor of similar legislation in the 103rd Congress, that certainly should have meant that the United States had finally taken a stand and done the right thing by acknowledging a trust relationship with the Lumbee Tribe. But it was not to be. I personally have sat through several hearings on legislation of this nature over the course of several Congresses.

Every time this Indian Tribe gets close to its goal of recognition by the Federal government, there is always somebody ready to knock them down.

The Lumbee Tribe has been trapped inside a cruel carnival that never ends. They have been on a roller coaster of exciting highs always followed by devastating lows. And just like a roller coaster ride—the treatment of the Lumbee Tribe is starting to make me sick.

Before this day is over, we will, no doubt, have those who say the Lumbee should go through the Federal administrative acknowledgement process. You know what that is—that is the never-ending regulatory maze filled with distorted mirrors, rubber rooms, and trick doors that this committee has examined in the past.

In the face of adversity, the determination and sheer stamina of the Lumbee serve as testament to their strong belief in who they are as a people. They have endured rejection by Congress, hostility by the Bureau of Indian Affairs, and have even been snubbed in their quest by neighboring Indian Tribes.

All the Lumbee want is the respect of being acknowledged for who they are—an American Indian Tribe.

I want to commend our colleague, Mike McIntyre, for picking up the mantle for the Lumbee people. I also want to salute Senator Elizabeth Dole for her efforts in this matter. This is not the first time Senator Dole has appeared before this Committee on behalf of the Lumbee Tribe. It is my hope, however, that this will be the last time she finds need to do so.

As to the Virginia Tribes, and the bill being advanced by my good friend Jim Moran as we approach the 400th anniversary of the founding of Jamestown, it is strange to say the least that the very Native Americans who greeted the English settlers are still are not federally recognized Indian Tribes today.

The members of these tribes have faced decades of deliberate discrimination from policies aimed at stripping them of their identities. They were targeted, and subjected to having their race designation changed on their birth certificates and other legal documents.

Yet they have endured, and all six tribes that are the subject of H.R. 1294 are recognized by the Commonwealth of Virginia.

There is new leadership in this Committee, this is a new Congress. Let us now seriously go about the business of rectifying wrongs, to the Lumbee and to the Virginia Tribes.

Thank you.

**STATEMENT OF THE HON. RICK RENZI, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA**

Mr. RENZI. Thank you, Mr. Chairman, and good morning to you all. The decision to recognize a tribe is one of the most important decisions this committee will ever make, and there are many reasons for this.

Recognition entitles a tribe to services and benefits, immunities and powers that can have profound impacts on the tribe's members, the surrounding communities, the states in which they live. But most importantly, it is a nation-to-nation recognition of independence and sovereignty.

It affects the Departments of Interior, Health and Human Services, Justice, and every agency that interacts with the tribes, whether it is meeting a trust responsibility, dealing with water rights, land claims or studying impacts of Federal actions.

Although the Department of Interior would prefer Petitioners to meet the seven mandatory criteria of the Office of Federal Acknowledgement, Congress reserves the power to have the final say. And given the inherent delays in the administrative process, Congress may well have to step in and make that decision for some of these tribes.

I want to thank the Chairman for again holding a hearing on this issue. I look forward to the testimony of the witnesses today, and thank you all for coming by.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The Chair did fail to recognize as well another colleague of ours that is here, a very important Member of the Appropriations Committee, Representative Frank Wolf. We do welcome you, as well.

Before going further, though, I do want to recognize a new Member of our committee, I guess I should say, and a very superb Member of the Freshman class—not the Freshman class, I take it back. We don't call them Freshmen, we call them new Members, right, Heath?

Mr. SHULER. Majority.

The CHAIRMAN. Majority Members, right. Majority makers; they make us who we are, I guess. So I do want to recognize the gentleman from North Carolina; indeed, a valued Member of this committee, Mr. Heath Shuler.

STATEMENT OF THE HON. HEATH SHULER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. SHULER. Thank you, Mr. Chairman. I want to thank Chairman Rahall and Ranking Member Young for holding this hearing today, and for all the good work that they have done on behalf of Native Americans throughout their careers.

I also want to welcome Principal Chief Michell Hicks and other leaders of the Eastern Band of Cherokee Indians who have traveled from western North Carolina to the hearing today.

Mr. Chairman, I grew up in North Carolina near the Eastern Band of Cherokee Indian Reservation. I have heard the Cherokee speak their native language. I have seen them play a game that belongs to them they call stickball. I conducted youth camps on the Eastern Band Reservation for young men and women who attend the reservation school.

The Cherokee people have a distinct living culture that makes them different from any other people in the world. I am embarrassed to say that our Federal government at one time tried to take their language and their culture away from them. I respect the Cherokee people because the resistance of these efforts, and continue to maintain these separate cultures.

Mr. Chairman, in 1978 the United States Department of Interior recognized the need to end the inconsistent process of native recognition, and adopted uniform guidelines for Federal acknowledgement.

H.R. 65, the Lumbee Recognition Act, would circumvent that process. I cannot support such legislation. I believe that the Federal government's process allows for the uniform and rigorous evaluation necessary to make an informed and accurate decision. This process requires that any petition group must meet mandatory criteria in order to become Federally recognized.

This process is a thorough one, managed and overseen by qualified experts in the field of genealogy, anthropology, this establishment process by any group, including Lumbees. Members of Congress should not arbitrarily rule on the identity of a people without establishing the facts.

And the best way to establish those facts is to let the system work, and let the experts do their job. The fair way to address this situation is to allow the Lumbees to complete the administrative process at the Office of the Federal Acknowledgement in the Department of Interior. This process protects not only the interests of the United States, but allows the political and cultural integrity of established Indian tribes.

Mr. Chairman, thank you, and I yield back my time.

[The prepared statement of Mr. Shuler follows:]

**Statement of The Honorable Heath Shuler, a Representative in Congress
from the State of North Carolina, on H.R. 65**

I want to thank Chairman Rahall and Ranking Member Young for holding this hearing today and for all the good work they have done on behalf of Native Americans throughout their careers.

I also want to welcome Principal Chief Michell Hicks and the other leaders of the Eastern Band of Cherokee Indians who have traveled from Western North Carolina to be here for this hearing.

Mr. Chairman, I grew up in North Carolina near the Eastern Band of Cherokee Indian Reservation.

I have heard the Cherokee people speak their native language, and I have seen them play a game that belongs to them they call "stick ball."

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I respect that the Cherokee people resisted these efforts and continue to maintain their separate culture.

Mr. Chairman, in 1978, the United States Department of Interior recognized the need to end the inconsistent process of native recognition, and adopted a uniform guideline for federal acknowledgement.

H.R. 65, the "Lumbee Recognition Act," would circumvent that process. I cannot support such legislation.

I believe the federal acknowledgement process allows for the uniform and rigorous evaluation necessary to make an informed and accurate decision.

This process requires that any petitioning group meet seven mandatory criteria in order to become federally recognized.

The process is a thorough one, managed and overseen by qualified experts in the fields of genealogy, anthropology, and Native American history.

I strongly oppose any attempts to circumvent this established process by any group, including Lumbees. Members of Congress should not arbitrarily rule on the identity of a people without establishing the facts.

And the best way to establish those facts is to let the system work, and let the experts do their job.

The fair way to address this situation is to allow the Lumbees to complete the administrative process at the Office of Federal Acknowledgement in the Department of the Interior.

This process protects not only the interests of the United States but also the political and cultural integrity of established Indian tribes.

Thank you.

The CHAIRMAN. The Chair thanks the gentleman from North Carolina, and also wishes to recognize another of our Members of the House that has joined us today: our colleague, Mr. Patrick McHenry. And we will look forward to his testimony, as well.

At this point, the Chair will recognize a gentleman from North Carolina, Mr. Mike McIntyre.

**STATEMENT OF THE HON. MICHAEL McINTYRE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
NORTH CAROLINA**

Mr. McINTYRE. Thank you, Mr. Chairman and Members of the Committee. Thank you for this opportunity to testify before you regarding Federal recognition for the Lumbee Indians.

Chairman Rahall and Ranking Member Young, the members of the Lumbee Tribe and I greatly appreciate your support of the Lumbee Tribe in the past, your willingness to conduct this hearing today, and your support in the present; and also your willingness to let us act and move forward in the future.

The Lumbee Tribe has two true friends on this committee—Chairman Nick J. Rahall and Representative Don Young, the Ranking Member. We greatly appreciate your commitment and your concern about this situation.

I also want to thank my North Carolina colleagues who have joined us, and especially Senator Dole, who will be joining us, for her leadership, as well as Senator Burr's commitment to this. And to my colleague, Congressman Robin Hayes, whose district adjoins mine, and who also has a large constituency of the Lumbee people.

Chairman Rahall, I would like to unanimous consent to place into the record three letters from the last three Governors for the last 31 years in North Carolina, both Republican and Democrat, who have written letters in support of the recognition of this tribe. For 31 years our top official in our state from both parties have recognized the need to allow Federal recognition to go forward. Thank you, Mr. Chairman.

Over the last four years the Lumbee Tribe and many of its members have faithfully traveled to Capitol Hill. They are now attending their fourth hearing in the last four years to present this strong and solid case for Federal recognition. And this doesn't even take into account the numerous other times that members of the tribe, over the last several decades, have come up here to seek recognition. They have been patient, they have been respectful, and yes, they have been persistent.

But Mr. Chairman, the time for action has come now. The time has come for moving this legislation. And I greatly appreciate your allowing this hearing to be this early in this session, so we can do just that. The time has come for discrimination to end, and recognition to begin.

During the past few hearings the Lumbee Tribe has heard concerns raised about whether or not they are "true Indians," and I am certain that will be raised here again today.

Chairman Rahall, that question is a dagger in the heart of the good, decent, and honorable citizens who compose the Lumbee Tribe. It represents a weak attempt to try and confuse the issue of Federal recognition.

Mr. Chairman, the record and the facts are crystal clear that the Lumbee Tribe exists as an Indian tribe, and has done so over its long history. In fact, the U.S. Department of Interior has on several occasions concluded that the Lumbees are a distinct Indian community.

You will also hear comments today about the names that they have had. The various names by which the tribe has been known were the result of state law. In no case, except for the name Lumbee, were these other names chosen by the tribe itself. All of these other names were imposed on the tribe, or chosen for them.

Furthermore, the BIA regulations on acknowledgement of Indian tribes specifically provide—again, the BIA regulations specifically provide that changes in name are not relevant to Indian identity.

Now, why the need for Federal legislation? Why not let the tribe go through the regular process? We are going to hear that today; in fact, it has already been alluded to. Because in 1956 Congress passed the Lumbee Act, which acknowledged the Lumbee as

Indians in name only, but denied them any further Federal recognition or benefits.

Since then, the tribe has tried to go through the BIA process, faithfully following the regulations put forth. But in 1989, the Solicitor General of the United States himself ruled that only Congress could extend full recognition because of the 1956 Act. That in a nutshell is why we are here today.

There is exact precedent for this case. The Tiwa Tribe of Texas were recognized in name only in 1968, just as the Lumbee Tribe. In fact, that bill was patterned after the 1956 Lumbee bill. And the Department of Interior said it could not proceed with the regular process because of the fact of the Solicitor General's opinion, that they would have to go back before Congress to correct this unfortunate and unfair situation.

And so in 1987, Congress did enact legislation to grant the Tiwas full recognition. So now what are we left with? The only Indian tribe in America in this unique situation, the only tribe where Congress has recognized the tribe in name only, but then never granted the full recognition, and left this tribe in perpetual limbo.

Now, the Lumbee Indians have been inhabitants of this land since Englishmen first arrived on the coast of North Carolina and discovered Native Americans in the late 1500s. In fact, included among those Native Americans were both the Cheraw and Pee Dee Indians, who are direct ancestors of the Lumbees.

Later, in 1888, the Lumbees made their first effort at gaining Federal recognition. What does that mean? It means for over half the time that our country has been in existence, 119 of the 231 years of our great American history, the Lumbee Indians have been seeking the recognition and respect they deserve from our U.S. Government. As the largest tribe east of the Mississippi and the largest non-recognized tribe in America, it is unfathomable that this tribe of 55,000 people do not have the dignity to be recognized by our Federal government.

I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home virtually every weekend. I have the honor of representing approximately 40,000 members of the Lumbee Tribe who live in my home county. In fact, there are more Lumbees in Robeson County than there are any other racial or ethnic group.

The Lumbee Indians, many of whom are here in the audience today, many of whom are lining the halls who came up here by the busloads for this hearing, as they have done in the past, are honorable friends, many friends who I have known all my life. And they are supportive to the success of everyday life in southeastern North Carolina, and indeed, to our nation.

From medicine and law, to banking and business, from farm and factories to the schools and the churches, from the government, military, and community service to entertainment and to athletic accomplishments, as you will hear from our friend, Coach Kelvin Sampson, the Lumbees have made tremendous contributions to our county, state, and nation. In fact, in my home county, the former Sheriff, the current Clerk of Court, the Registrar of Deeds, the school superintendent, several county commissioners and school board members, and my own representative in the State

Legislature up in Raleigh are all members of the Lumbee Tribe, as well as two of our District Court Judges and one of our Superior Court Judges.

The Lumbees are fully incorporated into society. I have Lumbee members in every facet of society that are involved, as I know, even in my own church. Friends of mine that I have known all my life.

Mr. Chairman, the contributions recognized by our colleagues here in the U.S. House through their support of H.R. 65 have been to let this recognition proceed. I am pleased that we have 206 Members of the U.S. House from both parties who have cosponsored the Lumbee recognition.

Mr. Chairman, in conclusion, let me urge this committee and this Congress not to delay any more on this issue. Justice delayed is justice denied. And as we will hear from the next panel, on the evidence, it is clear, cogent, and convincing. It is time to say yes to dignity. It is time to say yes to respect, yes to fundamental fairness, yes to decency, yes to honor; indeed, yes to Federal recognition.

As I said earlier, it is time for discrimination to end, and recognition to begin.

Thank you, Mr. Chairman, for this opportunity to testify. I look forward to working with you and the Committee for this long-overdue recognition. Indeed, may God grant that justice will finally be done. And with your help, I am confident it will. Thank you.

[The prepared statement of Mr. McIntyre follows:]

Statement of The Honorable Mike McIntyre, a U.S. Representative from the 7th Congressional District of North Carolina, on H.R. 65

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify before you today regarding federal recognition for the Lumbee Indians.

Chairman Rahall and Ranking Member Young, the members of the Lumbee Tribe and I appreciate your support of the Lumbee Tribe in the past, your willingness to cosponsor our bill for federal recognition in this Congress, and your willingness to listen again today as the tribe presents its case for federal recognition. The Lumbee Tribe has two true friends in Representatives Nick Joe Rahall and Don Young, and I know that I speak on behalf of all the Lumbee members when I say, "thank you."

A special thanks to my North Carolina colleague—Senators Dole for her leadership and work on this important effort and for being here today to testify.

Chairman Rahall, I would like to ask unanimous consent to place into the record 3 letters from North Carolina's only Governors over the last 31 years—Jim Hunt, James Martin and Mike Easley. These letters show bipartisan support for federal recognition for the Lumbee Tribe from our state's highest official.

Mr. Chairman, over the last four years, the Lumbee Tribe and many of its members have faithfully traveled to Capitol Hill. They are now attending their fourth hearing in four years to present their strong and solid case for federal recognition by the U.S. Congress. And this does not take into account the numerous times the Congress has discussed this issue prior to this time. The Lumbees have been patient. They have been respectful. And, yes they have been persistent.

But Mr. Chairman, the time has come for action. The time has come for movement of legislation. The time has come for discrimination to end and recognition to begin! The time for Lumbee recognition is now!

During the past few hearings, the Lumbee Tribe has heard concerns raised about them as to whether they are "true Indians," and I am certain that it will be raised again here today. Chairman Rahall, that question is a dagger in the heart of the good, decent, and honorable people who compose the Lumbee Tribe! It represents a weak attempt to try and confuse the issue of federal recognition.

Mr. Chairman, the record and the facts are crystal clear—the Lumbee Tribe exists as an Indian tribe and has done so over its long history. The Department of Interior has, on several occasions, concluded that the Lumbees are a distinct Indian community. The various names by which the tribe has been known were the result of State law. In no case, except for the name Lumbee, were the names chosen by the tribe

itself. All the other names were imposed upon the tribe or chosen for them! Furthermore, the BIA regulations on acknowledgement of Indian tribes specifically provide that changes in names are not relevant to Indian identity.

In the late 1500's, when English ships landed on the shores at Roanoke Island on the North Carolina coast, the Englishman discovered Native Americans. Included among those Native Americans were both the Cheraw and Pee Dee Indians, who are direct ancestors of the Lumbee Indians. Later, in 1888, the Lumbees made their first effort at gaining federal recognition. For at least 500 years, Lumbee Indians have been inhabitants of this land, and for over half of the time that our country has been in existence, 119 (First petition to Congress was in 1888) of the 231 (2007-1776 = 231) years, the Lumbee Indians have been seeking the recognition and respect that they deserve. As the largest tribe east of the Mississippi and the largest non-recognized tribe in America, it is unfathomable that this tribe of 55,000 people has never been fully recognized by our government.

I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home there virtually every weekend, and I have the high honor of representing approximately 40,000 of the 55,000 Lumbees who live in my home county. In fact, there are more Lumbees in Robeson County than any other racial or ethnic group. The Lumbee Indians, many of whom are in the audience today, are my friends, many of whom I have known all my life. They are important to the success of everyday life in Southeastern North Carolina, and their contributions to our society are numerous and endless. From medicine and law to business and banking, from the farms and factories to the schools and the churches, from government, military, and community service to entertainment and athletic accomplishments, the Lumbees have made tremendous contributions to our county, state, and nation. In fact, in my home county, the former sheriff, the current clerk of court, the register of deeds, the school superintendent, several county commissioners and school board members, and the representative in the state legislature of the area where I live, as well as two of the district court judges and one of the superior court judges are all Lumbee Indians.

Mr. Chairman, those contributions are being recognized by our colleagues here in the U.S. House through their support of H.R. 65, legislation that I have introduced to grant the Lumbees federal recognition. I am pleased to report to the Natural Resources Committee, that 206 members of the U.S. House from both parties have cosponsored Lumbee recognition!

Lumbee contributions are also being recognized at home by both the public and private sector. From City Councils to County Commissioners, from the Chamber of Commerce to the Southeastern Regional Medical Center—all have endorsed the effort to grant the Lumbees federal recognition.

Mr. Chairman, in conclusion, let me urge this Committee, and this U.S. Congress, not to delay any more on this issue. Justice delayed is justice denied! As you will hear from the next panel, the evidence is clear, cogent, and convincing. It is time to say "yes"—yes to dignity and respect; yes to fundamental fairness; yes to decency; yes to honor; yes to federal recognition! And as I said earlier, it's time for discrimination to end and recognition to begin!

Thanks again for the opportunity to testify, and I look forward to working with you and the committee for this long over-due recognition. May God grant that justice finally be done! With your help, I am confident that it will!

[NOTE: Letters submitted for the record by Mr. McIntyre follow:]



STATE of NORTH CAROLINA

Michael F. Easley
Governor

April 18, 2007

The Honorable Nick J. Rahall, II, Chair
Natural Resources Committee
United States House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Don Young, Ranking Member
Natural Resources Committee
United States House of Representatives
1329 Longworth House Office Building
Washington, DC 20515

Dear Congressman Rahall and Congressman Young:

Thank you for the opportunity to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America. I believe full federal recognition of the Lumbee Tribe by Congress is long overdue.

Recognition of and interaction with the Lumbee people as a unique, distinct Indian tribe began when settlers from Virginia, South Carolina and Europe first arrived in the Cape Fear and Pee Dee River Basins after the Tuscarora War (1711-1715). There, the settlers encountered a well-populated, cohesive American Indian tribal group situated mostly along and to the west of what is now known as the Lumber River in Robeson County. As early as 1890, the U.S. Department of Interior acknowledged this fact among others as evidence that the Lumbee people are American Indians.

A proclamation by colonial Governor Matthew Rowan on May 10, 1753 stated that Drowning Creek (Lumber River in Robeson County) was "the Indian Frontier." Other historical records of the eighteenth and early nineteenth centuries, including Revolutionary War pensions for Lumbees who fought for American independence, attest to the Lumbees as American Indians.

Congressmen Rahall and Young
Page 2
April 18, 2007

In 1885, North Carolina's General Assembly passed a bill recognizing and naming the Lumbee tribe "Croatan." In 1911 the General Assembly changed their name to the "Indians of Robeson County" and in 1913 to "Cherokee Indians of Robeson County." None of these names was chosen by the tribe. In 1953, the State officially changed the tribe's name to "Lumbee Tribe of North Carolina" following a 1952 tribal referendum requested by the Lumbees and paid for by the State in which this name was overwhelmingly chosen. These names all apply to the same American Indian tribe.

For more than a century, North Carolina's Governors, various state legislators and Members of the North Carolina Congressional delegation have supported the effort by the Lumbee Tribe to obtain federal recognition, beginning with a petition to Congress in 1888. Enclosed are copies of letters by former Governors James G. Martin (R) and James B. Hunt, Jr. (D) – my immediate predecessors – attesting to the strong bi-partisan support for federal recognition that the Lumbee Tribe has enjoyed during the last generation.

In the past, federal recognition has been denied because of opposition by the Bureau of Indian Affairs and Department of Interior on budgetary grounds. Each of several federal investigations into the Lumbees' history, genealogy and ethnicity has concluded that the Lumbees are in fact American Indians. It follows that federal recognition should be authorized for this long-standing American Indian Tribe.

Personally and on behalf of North Carolina, I offer to our fellow Lumbee citizens and to the Congress our full, unqualified support for Congressional recognition of the Lumbee Tribe. I encourage your support for the Lumbee Tribe and for the adoption of this bill.

I thank the House and the Natural Resources Committee for holding this hearing and for allowing me to offer written comments about the Lumbee Tribe recognition bill.

With warm personal regards, I remain

Very truly yours,



Michael F. Easley



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

July 30, 1991

JAMES G. MARTIN
GOVERNOR

Senator Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building, Room 838
Washington, D.C. 20510

Dear Senator Inouye:

I have asked James S. Lofton, Secretary of the North Carolina Department of Administration to represent me at the Joint Hearing regarding S. 1036, the Lumbee Recognition Bill, which will be held on August 1. Secretary Lofton will be accompanied by Henry McKoy, Deputy Secretary of the Department of Administration, Patrick O. Clark, Chairman of the North Carolina Commission of Indian Affairs, and A. Bruce Jones, the commission's executive director.

I fully support the passage of S. 1036 and am requesting the support of the Senate Select Committee on Indian Affairs. The State of North Carolina has recognized the Lumbee Tribe as a separate and viable Indian entity since 1885. The passage of S. 1036 will entitle the Lumbee to enjoy the same rights, privileges and services enjoyed by other federally recognized tribes in the nation and will, further, be a major step toward rectifying the inequities suffered by the Lumbee people for centuries.

I thank you for your attention to this matter and will appreciate your favorable consideration of my request.

Sincerely,

Jim Martin
James G. Martin

cc: Senator Jesse Helms
Representative Charlie Rose
Representative Charles Taylor



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

October 18, 1991

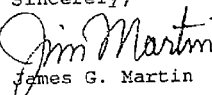
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The United States House of Representatives recently passed H.R. 1426 which provides for full federal recognition of the Lumbee Tribe of Cheraw Indians of North Carolina.

I am in support of this legislation as evidenced by the enclosed testimony given on my behalf by Secretary James S. Lofton of the North Carolina Department of Administration at a joint hearing of the Senate Select Committee on Indian Affairs and the House Interior and Insular Affairs Committee held August 1, 1991. H.R. 1426 is now before the United States Senate, as is its companion bill, S. 1036.

I am requesting your support of the passage of this legislation and its subsequent signing into law following its successful passage.

Sincerely,

James G. Martin

JGM:lf

Enclosure

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-6001

JAMES B. HUNT, JR.
GOVERNOR

March 11, 1993

The Honorable Bruce Babbitt
Secretary
U. S. Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

I am pleased that you were able to be in our recently and I appreciated the opportunity to meet with

There are approximately 40,000 Lumbee Indians in North Carolina and they have been officially recognized by the State of North Carolina since 1885. The Lumbee have been seeking federal recognition since 1888. Seven times we have shown them to be an independent Indian community.

I would like to reiterate my strong support of the Congressional process for federal recognition of the Lumbee Indian tribe in North Carolina. As you know H. R. 1085 introduced by Congressman Charlie Rose of North Carolina would provide such recognition. We support that legislation as stated in my letter of January 28, 1993.

Federal recognition of the tribe has been endorsed by the N.C. Commission of Indian Affairs, the Governor, the Interstate Indian Council, and the National Congress of American Indians which is the oldest and largest Indian organization in the country.

In 1956 a bill was passed by the Congress to recognize the Lumbee tribe, but it denied the tribe the benefits and protections afforded to Indians by the U.S. of America.

For over 100 years the Lumbees have tried to obtain federal recognition, but to no avail. It is my opinion that the administrative recognition process that was proposed by the previous administration simply is too cumbersome, time-consuming, costly and has not worked effectively. Therefore, I would urge you to support the Congressional recognition process as proposed by Congressman Rose.

I want to work with you and the President in every way possible to help the Lumbee Tribe receive Congressional recognition. I am confident that this recognition is in the best interest of our state and the tribe's best interest, but also in the interest of the United States as well.

Sincerely,



James B. Hunt, Jr.



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT, JR.
GOVERNOR

January 28, 1993

The Honorable Bruce Babbitt
Secretary
U.S. Department of Interior
Washington, DC 20240

Re: Federal Recognition of the Lumbee Indians

Dear Bruce,

This letter is to ask for your assistance in obtaining federal recognition for the Lumbee Indian tribe, which has many members in North Carolina. Congressman Charlie Rose (D-N.C.) has introduced a bill (H.R. 334) that would provide such recognition.

Before the House Subcommittee on Indian Affairs considers H.R. 334, I understand that the Clinton Administration will release its position on the bill. I ask that you and the President support the bill.

The Lumbee have 40,000 enrolled members in the United States and should be recognized. In fact, seven studies in this century have shown them to be an independent Indian community.

I appreciate your consideration of this letter. Please contact Congressman Rose or me if we can assist you in any way with this matter.

My warmest personal regards.

Sincerely,

James B. Hunt, Jr.

The CHAIRMAN. Thank you, Mike. The Chair at this time will ask unanimous consent that all Members' testimony will be made part of the record as if actually read, and they are encouraged to summarize. And we are going to recognize Members in the order that is listed here. And that would be Robin Hayes next, but there needs to be room made for Robin at the testimony table.

Mr. RENZI. A lot of room.

The CHAIRMAN. I didn't say that. Your friend, Rick, up here said a lot of room, Robin.

Mr. RENZI. Make some space over there.

The CHAIRMAN. Welcome. You may proceed.

**STATEMENT OF THE HON. ROBIN HAYES, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. HAYES. Thank you, Mr. Chairman. I was fortunate enough to hail from Robinson County until recent redistricting, so this is very special to work with Mike McIntyre and others to get this done.

Chairman Rahall and Ranking Member Young, and in this case, Ranking Member Renzi, thank you for taking time to hold this hearing on the Lumbee Recognition Act, H.R. 65.

Since I have been a Member of Congress I have worked hard to see that the Lumbee Tribe receives full Federal recognition. I am very pleased that Lumbee Tribal Chairman Jimmy Goins is able to join us today and testify on this important issue, as well.

As you know, I am an original cosponsor of H.R. 65, which was sponsored by my friend and colleague, Congressman Mike McIntyre. Mike has been a very strong advocate of the Lumbee Tribe for years. It has been an honor to work with him on this important issue, as well.

Senator Dole and Senator Burr are working hard to garner support for the Lumbee Recognition Act in the Senate, and I appreciate their leadership on this issue.

The Lumbee Indian Tribe has an extensive history in North Carolina, ranging back to 1724 on Drowning Creek, which is now referred to as the Lumbee River. The Lumbee Tribe has been recognized by the State of North Carolina since 1885.

The Lumbee Tribe has over 40,000 members, the largest tribe in the state. I think Mike corrected it to 65,000. Eighth District, which I serve, is home to many of the Lumbees that reside in North Carolina, primarily in Hoke, Scotland, and Cumberland Counties. These important members of my constituency should be Federally recognized so they are able to receive various Bureau of Indian Affairs and other Federal government services and programs that they rightly deserve.

The heritage of the Lumbee Tribe is as strong today as when first recognized by North Carolina. And the tribe should be proud of the rich and valued cultural contribution they have given to our communities.

My hope is that we, as a Congress, do what the Federal government should have done decades ago, and give the Lumbee Tribe the distinction of a Federally recognized tribe.

Thank you all again for holding this hearing. I look forward to continuing to work with you on this important issue.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hayes follows:]

**Statement of The Honorable Robin Hayes, a Representative in Congress
from the State of North Carolina, on H.R. 65**

Chairman Rahall and Ranking Member Young, I appreciate you taking the time to hold this hearing on the Lumbee Recognition Act, H.R. 65. Since I have been a Member of Congress, I have worked hard to see that the Lumbee Tribe receives full federal recognition. I am very pleased that Lumbee Tribal Chairman Jimmy Goins is able to join us today and testify on this important issue as well.

As you know, I am a proud original cosponsor of the H.R. 65, which was sponsored by my friend and colleague Congressman Mike McIntyre. Mike has been a strong advocator of the Lumbee Tribe for years and it has been an honor to work with him on this important issue as well. I know Senator Dole and Senator Burr

are working hard to garner support for the Lumbee Recognition Act in the Senate, and I appreciate their leadership on this issue.

The Lumbee Indian Tribe has an extensive history in North Carolina ranging back to 1724 on Drowning Creek, which is now referred to as the Lumbee River. The Lumbee Tribe has been recognized by the state of North Carolina since 1885. The Lumbee Tribe has over 40,000 members and is the largest Tribe in the state of North Carolina.

The 8th District, which I serve, is home to many of the Lumbees that reside in North Carolina, primarily in Hoke, Scotland and Cumberland counties. These important members of my constituency should be federally recognized so they are able to receive various Bureau of Indian Affairs and other federal government services and programs they rightly deserve.

The heritage of the Lumbee Tribe is as strong today as when first recognized by North Carolina and the Tribe should be proud of the rich and valued cultural contribution they have given to our communities. It is my hope that we as a Congress do what the federal government should have done decades ago and give the Lumbee Tribe the distinction of a federally recognized Tribe.

Thank you all again for holding this hearing. I look forward to continuing to work with you all on this important issue.

The CHAIRMAN. All right. The next witness is Representative Jim Moran from the State of Virginia.

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

Mr. MORAN. Thank you very much, Mr. Chairman. Thank you for your leadership. And the other Members of the Committee, Mr. Renzi, the Ranking Member.

I do appreciate your willingness to hold this hearing and provide me with an opportunity to tell the story of six of Virginia's Native American tribes.

This is one of the worst cases of injustice that was perpetrated by the European settlers upon Native Americans. And this is a long and very troubling history. But I think you will find that this is one of the unique aspects of that history.

Back in 1607 it was these six tribes that welcomed the English settlers at Jamestown, and in fact, enabled them to survive. In 1677, however, after having been subdued and pushed off their land, they did sign a treaty with what was then the government; of course, there was no sovereign United States at that time. It was with England, King Charles II.

This treaty is the longest existing treaty. It spans 329 years. It has been recognized by the Commonwealth of Virginia every year, and by the English Government.

But unfortunately, throughout the history of these tribes, they have been treated in a fashion that gave them no rights, treated them in the same despicable manner that the children of slaves were treated in the Commonwealth of Virginia; denied them the ability to live on their land, denied them the ability to get an education, a public education; denied them the ability to hold down jobs. And yet, they survived, these six Indian tribes.

Now, in addition to the uniqueness of having the longest treaty, which incidentally was ratified by Chief Justice John Marshall, and will be recognized this year in Jamestown when we celebrate the Jamestown Settlement, the 400th Anniversary of the Jamestown Settlement, there is a second unique circumstance with regard to these tribes. And that is the paper genocide that was allowed to occur.

In 1924, at the time that Native Americans were being given the right to vote in other states, the Eugenics Movement, which was this racial superiority concept, was very strong in Virginia, and it culminated with the enactment of the Racial Integrity Act of 1924. And that empowered state officials to go into state and local court-houses, and to destroy the records that pertained to these Indian tribes. If they didn't destroy them, they changed their designation as, in the language of that day, colored. The actual term was issued.

As a result of this Act in 1924, every resident of the state had to check a box whether you were white or colored or issued. And they were put in the same category as the descendants of slaves, which obviously is another aspect of Virginia's history that is despicable.

But Native Americans were particularly targeted in order to eliminate their identity. The guy that was pushing this movement bragged about having eliminated the Indian population. And in fact, it was a crime to identify yourself as an Indian, punishable with a year's jail time.

If you wanted to take your child out of a hospital, you could not take your child out of a hospital if you were an Indian spouse without identifying them as non-white or colored. And by the implementation of that law, which incidentally in Virginia existed for more than 50 years—it was not struck down until 1967—it, as a result, denied the existence of these tribes. And they have tried now, as a result of legislation that Governor George Allen signed back in 1997, to try to recoup these records, but most of them have been destroyed.

They have gone to the Bureau of Acknowledgement in BIA to get recognition, but it is extraordinarily difficult because their records were legally destroyed. And they had been told by the Bureau of Acknowledgement that the process cannot be completed within their lifetimes.

They have suffered. They were not allowed education, they were not allowed employment. They are very conservative in a cultural sense, because the only people who were willing to educate them were Christian missionaries. I know gambling is an issue. They believe gambling is a sin.

Down the street from where they live, there are Bingo parlors run by the American Legion, the VFW, whatever. They don't participate. As far as I have been told, they don't even participate in the state lottery, which Virginia uses to finance its education system, because they believe gambling is a sin.

But nevertheless, the last seven years they have been denied recognition.

Mr. Chairman, there is no doubt that the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Rappahannock, the Upper Mattaponi Tribes all exist. They have existed on a continuous basis since before the Western European settlers stepped foot in America. They are here with us today.

Helen Rountree, who will testify today, has spent her career verifying their history and their existence. Her publications are well known and well regarded. Her expertise on Virginia tribes cannot be matched at the Bureau of Indian Affairs.

I know there is great resistance from some Members in 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' perspective on tribal recognition issues. But I think the circumstances of the situation that these tribes have endured, and the legacy that they still confront today, outweigh these concerns, which have little to do with these Indians, but are a larger issue.

These are Native American people who have been subject to grievous injustice for hundreds of years. In this legislation we have made substantial compromises to give the Governor of Virginia and the Virginia General Assembly, who I think anyone would recognize is a pretty conservative Legislature, the option to say no to any kind of gaming compact.

So I stand ready to work with you to find the right equation that is respectful of tribal sovereignty and rights, and the Members' concerns about this issue. But the 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.

The Jamestown Settlement is going to be celebrated very soon. It would be almost criminal to be celebrating that settlement without recognizing the very Indian tribes that enabled that settlement to survive.

Mr. Chairman, I thank you for your cosponsorship of this. I had a very good talk with Mr. Young last night. He has told me he is strong in favor of this. This is the right thing to do, and I have every confidence that this committee will do the right thing with regard to these six Indian tribes.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Moran follows:]

Statement of The Honorable James P. Moran, a Representative in Congress from the State of Virginia, on H.R. 1294

Good morning and thank you, Mr. Chairman and Members of this Committee.

I appreciate your willingness to hold this hearing and provide me with an opportunity to help tell the story of six of Virginia's Native American tribes. This is not the first time this story has been told. Nor is it the first time I or my fellow witnesses have been on a panel before this committee to plead our case that Virginia's historic tribes should be recognized by the federal government.

Like most Native Americans, the Virginia tribes first welcomed western settlers, but quickly became 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 economic security and to preserve their cultural identity. Their story of survival doesn't encompass decades, it spans centuries of racial hostility and coercive state and state-sanctioned actions.

Their story, however, is unique in two ways:

First, unlike most tribes that resisted encroachment and obtained federal recognition when they signed peace treaties with the federal government, Virginia's 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. This treaty has been observed by Virginia every year for the past 329 years when the Governor accepts tribute from the tribes in a ceremony now celebrated at the State Capitol every November. I understand that this is the longest celebrated treaty in the United States.

In the intervening years between 1677 and the birth of this nation, however, these six tribes were dispossessed of most of their land and became too weak pose a threat. They were never in a position to negotiate with and receive recognition from our nascent federal government. Last year, the English government reaffirmed its recognition and hosted a visit by the modern Virginia tribes. But, as we are

about to kick off the 400th anniversary of Jamestown, scheduled for early next month, these same tribes, who ensured the survival of this first English permanent settlement in the new world, have yet to be recognized by the federal government.

The second unique circumstance for the Virginia tribes, and this point speaks to the reason why Congress must act to recognize them, is that the Virginia tribes have experienced what has been called a “paper genocide” perpetrated by the Commonwealth of Virginia. At the time when the federal government granted Native Americans the right to vote, Virginia’s elected officials were embracing the eugenics movement and began adopting racially hostile laws targeted at those classes of people who did not fit into the dominant white society.

These actions culminated with the enactment of the Racial Integrity Act of 1924. This act empowered zealots, like Walter Plecker, a state official, to destroy state and local court house records and reclassify in Orwellian fashion all non-whites as “colored.” It targeted Native Americans and sought to deny them their identity. To call yourself a “Native American” in Virginia was to risk a jail sentence of up to one year. The law remained in effect until it was struck down in the federal courts in 1967.

For up to 50 years, state officials waged a war to destroy all public and many private records that affirmed the existence of Native Americans in Virginia. Historians have affirmed that there is no other state that compares to Virginia’s efforts to eradicate its citizens’ Indian identity. All of Virginia’s state-recognized tribes have filed petitions with the Bureau of Acknowledgement seeking federal recognition.

But it is a very heavy burden the Virginia tribes will have to overcome and one fraught with complications that officials from the bureau have acknowledged may never be resolved in their lifetime. The acknowledgement process is already expensive, subject to unreasonable delays, and lacks dignity. Virginia’s legacy of paper genocide only further complicates these tribes’ quest for federal recognition, making it difficult to furnish corroborating state and official documents and aggravating the injustice already visited upon these tribes.

It wasn’t until 1997 when Governor George Allen signed legislation directing state agencies to correct state records that the tribes were given the opportunity to correct official state documents that had deliberately been altered to list them as “colored.” The law allows living members of the tribes to correct their records, but the law cannot correct the damage done to past generations. Two years later, the Virginia General Assembly adopted a resolution calling upon Congress to enact legislation recognizing the Virginia tribes. I am pleased to have honored that request and beginning in 2000 and in subsequent sessions, I and Virginia’s Senators have introduced legislation to recognize the Virginia tribes. I also greatly appreciate the fact that you, Mr. Chairman, and several Members of this Committee have agreed to cosponsor this year’s bill.

Mr. Chairman, there is no doubt that the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Rappahannock and the Upper Mattaponi tribes exist. These tribes have existed on a continuous basis since before the first western European settlers stepped foot in America, and, they are here with us today. Helen Rountree, who will testify today, has spent her career verifying their history and their existence. Her publications are well known and well regarded. Her expertise on Virginia tribes cannot be matched at the Bureau of Indian Affairs.

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. We have made significant compromises to give the Governor and the Virginia General Assembly the option to say “no” to a gaming compact. And, I stand ready to work with you to find the right equation that is respectful of tribal sovereignty and rights and Members’ concerns about this issue.

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. I stand ready to work with you and this committee to make it happen.

Thank you.

The CHAIRMAN. Thank you, Mr. Moran. The Chair has already recognized the gentlelady from North Carolina, the Senator, Ms. Dole. We welcome you to the Committee. If a gentleman would yield his seat there, maybe we can have you up to testify.

We always welcome you to the Committee. We know this is not your first time on this issue. We hope it will be the last time on this issue, but we welcome you back all the time.

STATEMENT OF THE HON. ELIZABETH DOLE, A UNITED STATES SENATOR FROM THE STATE OF NORTH CAROLINA

Senator DOLE. Chairman Rahall, thank you very much. And my apologies. Two votes were scheduled in the Senate this morning, and so I am a bit late. But I want to thank you very much for holding this important hearing today. I want to thank you for your leadership on so many issues affecting Native Americans, in particular for your attention to the plight of the Lumbees, and for strongly considering full Federal recognition of this tribe.

I deeply appreciate the hard work and the leadership of Congressman Mike McIntyre on this issue. Mike's district includes Robinson County, the traditional home of the Lumbee Tribe. This recognition effort enjoys bipartisan support both in the House, including Congressman Robin Hayes and others, with, of course, Robin's adjacent district has many Lumbee residents, and in the Senate, where I have introduced companion legislation to the bill we are considering today.

I welcome the support of my good friend, Senator Richard Burr, who is a cosponsor of my bill. Senator Burr wishes he could be here today, and Mr. Chairman, I request that his statement be included in the record.

The Lumbee Recognition Act was the very first bill that I introduced as a Member of the U.S. Senate. I have since continued to champion this cause because I passionately and fervently believe that Congress must act to provide full Federal recognition for the Lumbees.

With more than 50,000 members, the Lumbee Tribe is the largest east of the Mississippi River, as well as the largest non-Federally recognized tribe in America. For more than a century the Lumbees have been recognized as American Indians. North Carolina formally recognized the tribe in 1885, and three years later, in 1888, the tribe began what has become a very long quest for recognition and assistance from the Federal government.

Over the years many bills were introduced in Congress to provide the Lumbees with Federal recognition, but these bills were never acted upon, or they were passed by only one Chamber. Finally, in 1956, Congress passed the Lumbee Act, which recognized the tribe, but it included a terribly unfair caveat. The Lumbees were denied the benefits that every other Federally recognized tribe receives.

Refusing to accept this partial nod to their legitimacy, the Lumbees and their allies in Congress have remained dedicated to the quest for the full recognition that this tribe deserves.

I know there are those who have argued, and will do so again today, that the Lumbees should be required to go through the Bureau of Indian Affairs, rather than receive full recognition through an Act of Congress. However, the Lumbee Act of 1956 actually prohibits the tribe from going through the BIA process. As the law now stands, the Lumbee Tribe can only be recognized by an Act of Congress.

Just one other tribe, the Tiwas of Texas, faced a similarly unfair situation following the passage of a comparable bill in 1965. But in 1987, Congress enacted special legislation to recognize them. This makes the Lumbees the only tribe in this country still trapped in this legal limbo, and ineligible for the administrative acknowledgement process because of an earlier Act of Congress.

But the BIA process is actually reserved for tribes whose legitimacy must be established. And as we know, that is certainly not the case with the Lumbees. Their legitimacy has been established time and time again, Mr. Chairman. There have been numerous studies by the U.S. Department of the Interior, beginning as early as 1912 and again in 1914, and yet again in 1943. And each time it has been determined that the Lumbees are indeed an Indian tribe, descended from the historic Cheraw Indians.

There is no need to waste the tribe's time and money or the government's time and money again. It has also been documented by GAO that getting through the BIA process can be arduous and extensive. A 2001 GAO report revealed that it can take up to 15 years to resolve petitions for recognition. And a 2005 follow-up report underscored that even with some improvements to the BIA process, it would still take years for BIA to work through its current backlog of recognition petitions, and even longer to consider new petitions.

It is clear that even if the Lumbees could legally go through BIA, this would only impose yet another lengthy delay.

I have had many opportunities to visit with the Lumbees. They are a people of great pride, and I am in awe of their steadfastness on this issue, even after years of disappointments. One occasion in particular stands out in my mind. This is a 2003 rally in Roberson County with Congressman McIntyre.

This rally brought together the entire community, folks from all backgrounds and walks of life uniting for a common goal: getting the Lumbee Indians the full recognition and benefits they deserve.

Today we continue working to achieve that goal, Mr. Chairman. Since my arrival in the Senate in 2003, this is the third committee hearing that Lumbee Chairman Jimmy Goins and members of the Lumbee Tribe have journeyed to Washington to attend. Each time they have made their case for Federal recognition. Even though we have been delighted, and I must say I have been very proud that a number of times the Senate Committee has approved this legislation, the full House and Senate have yet to take positive action.

Undeterred, the Lumbee tribal leadership is here once again. And I am inspired, and again immensely proud, to continue this fight alongside them.

I am confident that after hearing testimony today, this committee will agree that the Lumbee Tribe deserves full Federal recognition. And I urge you to report out this legislation as expeditiously as possible. The long record compiled by the Congress and the Department of the Interior demonstrates the legitimacy of the Lumbee Tribe. And let me again underscore, the State of North Carolina has acknowledged the Lumbee Tribe's existence for well over a century.

Simply put, this is about righting a wrong and allowing future generations of Lumbees to benefit from the recognition for which

their ancestors have tirelessly fought. The time is now, Mr. Chairman, the time is now. It is time for decisive action by Congress. Providing the tribe full recognition and benefits is the only fair and just course.

So I thank you again for giving this issue the attention it deserves, Mr. Chairman. And I thank you for the privilege, and all the Committee Members, thank you for the privilege of presenting my heartfelt concerns regarding the need for full Lumbee recognition.

Thank you, Mr. Chairman.

[The prepared statement of Mrs. Dole follows:]

Statement of The Honorable Elizabeth Dole, a U.S. Senator from the State of North Carolina

Chairman Rahall and Ranking Member Young, thank you very much for holding this important hearing today. Thank you for your leadership on so many issues affecting Native Americans—in particular, for your attention to the plight of the Lumbees and for strongly considering full federal recognition of this tribe.

I greatly appreciate the hard work of Congressman Mike McIntyre on this issue. Mike McIntyre's district includes Robeson County, the traditional home of the Lumbee Tribe. This recognition effort enjoys bipartisan support both in the House—including Congressman Robin Hayes, whose adjacent district has many Lumbee residents—and in the Senate, where I have introduced companion legislation to the bill we are considering today. I welcome the support of my good friend Senator Richard Burr, a cosponsor of my bill. Senator Burr wishes he could be here today, and Mr. Chairman, I request that his statement be included in the record.

The Lumbee Recognition Act was the very first bill I introduced as a member of the United States Senate. I have since continued to champion this cause because I passionately and fervently believe that Congress must act to provide full federal recognition for the Lumbees. With more than 50,000 members, the Lumbee Tribe is the largest east of the Mississippi River, as well as the largest non-federally recognized tribe in America. For more than a century, the Lumbees have been recognized as American Indians. North Carolina formally recognized the tribe in 1885, and three years later, in 1888, the tribe began what has become a very long quest for recognition and assistance from the federal government.

Over the years, many bills were introduced in Congress to provide the Lumbees with federal recognition, but these bills were never acted upon or were passed by only one chamber. Finally, in 1956, Congress passed the Lumbee Act, which recognized the tribe “but it included a terribly unfair caveat: the Lumbees were denied the benefits that every other federally recognized tribe receives. Refusing to accept this partial nod to their legitimacy, the Lumbees—and their allies in Congress—have remained dedicated to the quest for the full recognition that the tribe deserves.

I know there are those who have argued—and will do so again today—that the Lumbees should be required to go through the Bureau of Indian Affairs, rather than receive full recognition through an act of Congress; however, the Lumbee Act of 1956 actually prohibits the tribe from going through the BIA process. As the law now stands, the Lumbee Tribe can only be recognized by an act of Congress. Just one other tribe, the Tiwas of Texas, faced a similarly unfair situation following the passage of a comparable bill in 1965. But in 1987, Congress enacted special legislation to recognize them. This makes the Lumbees the only tribe in the country still trapped in this legal limbo and ineligible for the administrative acknowledgement process because of an earlier act of Congress.

The BIA process is reserved for tribes whose legitimacy must be established, and as we know, that is certainly not the case with the Lumbees. Their legitimacy has been established—time and time again. There have been numerous studies by the U.S. Department of the Interior, beginning as early as 1912, then again in 1914, and yet again in 1933. Each time, it has been determined that the Lumbees are indeed an Indian tribe, descended from the historic Cheraw Indians. There is no need to waste the tribe's or the government's time and money again.

It has also been documented by GAO that getting through the BIA process can be arduous and extensive. A 2001 GAO report revealed that it can take up to 15 years to resolve petitions for recognition. And a 2005 follow-up report underscored that even with some improvements to the BIA process, it would still take years for BIA to work through its current backlog of recognition petitions, and even longer

to consider new petitions. It is clear that even if the Lumbee could legally go through BIA, this would only impose yet another lengthy delay on this tribe.

I have had many opportunities to visit with the Lumbees. They are a people of great pride, and I am in awe of their steadfastness on this issue, even after years of disappointments. One occasion in particular stands out in my mind, a 2003 rally in Robeson County with Congressman McIntyre. This rally brought together the entire community—folks from all backgrounds and walks of life—uniting for a common goal: getting the Lumbee Indians the full recognition and benefits they deserve.

Today, we continue working to achieve that goal. Since my arrival in the Senate in 2003, this is the third committee hearing that Lumbee Chairman Jimmy Goins and members of the Lumbee tribe have journeyed to Washington to attend. Each time they have made their case for federal recognition. Even though we've been delighted a number of times by the Senate committee approval of this legislation, the full House and Senate have yet to take positive action. Undeterred, the Lumbee tribal leadership is here once again, and I am inspired and immensely proud to continue this fight alongside them.

I am confident that after hearing testimony today, you will agree that the Lumbee Tribe deserves full federal recognition, and I urge you to report out this legislation as expeditiously as possible. The long record on this effort compiled by the Congress and the Department of the Interior demonstrates the legitimacy of the Lumbee Tribe. The State of North Carolina has acknowledged Lumbee tribal existence for well over a century.

Simply put, this is about righting a wrong—and allowing future generations of Lumbees to benefit from the recognition for which their ancestors have tirelessly fought. The time is now Mr. Chairman. The time is now. It is time for decisive action by Congress—and providing the tribe full recognition and benefits is the only fair and just course.

Thank you again, Mr. Chairman and Mr. Ranking Member, for giving this issue the attention it deserves. And thank you for the privilege of presenting my heartfelt concerns regarding the need for Lumbee recognition.

[The statement submitted for the record by Senator Burr follows:]

Statement of The Honorable Richard Burr, a U.S. Senator from the State of North Carolina

Good morning Chairman Rahall and Ranking Member Young, and Members of this Committee. I appreciate the Committee's time and effort regarding federal recognition of the Lumbee tribe. I would also like to thank my North Carolina colleagues, Senator Elizabeth Dole and Representative Mike McIntyre, for their passion and dedication to this issue. Upon taking office, Senator Dole made it her first legislative priority that the issue of Lumbee recognition be resolved. In the House of Representatives, Mike McIntyre has relentlessly pursued federal recognition of the Lumbees. Unfortunately, committee votes in the Senate prevent me from being at the hearing in person today. But it is a pleasure to share my support for federal recognition of the Lumbee tribe with Senator Dole and Representative McIntyre.

To me, the most important aspect of the Lumbee recognition issue is simple—fairness. In 1956 Congress designated the Indians "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Lumbee Act. However, this Act also prevented the Lumbees from being eligible for any services performed by the federal government or any benefits derived by law on behalf of other recognized tribes.

When the Bureau of Indian Affairs (BIA) established its process for formal recognition of Federal Indian tribes, the Lumbees were effectively denied from pursuing this option. In 1989, the Department of Interior decided that the 1956 Act prevented the Lumbees from being considered for federal recognition under the BIA process. Therefore, the limited federal recognition of the Lumbees in the 1956 Act has been as much a detriment as a benefit. Simply put, this is not fair.

Congress should consider the difficult situation the Lumbees have been in since 1956, and finally fulfill its commitment to achieve fairness and justice in the federal recognition process for the tribe. Congress has indeed fixed these situations before. For example, in 1987 Congress enacted special legislation to recognize the Tiwa Tribe of Texas, a tribe that was similarly prevented from gaining recognition through the BIA process due to a previous Act of Congress. As a result of the Tiwa's eventual Congressional recognition, the Lumbees find themselves as the only tribe

in the United States who are prevented from gaining recognition through the BIA process. How can that be fair?

The Lumbees have been part of eastern North Carolina's history for centuries. They have served their community as farmers, doctors and lawyers, small business owners and bankers. They have provided their county with sheriffs and clerks of courts; served our state as legislators and judges; and have protected our nation by serving in the U.S. Armed Forces.

Although some members of this Committee may prefer to resolve this issue by changing the BIA recognition criteria to allow the Lumbees to work through this process, I believe this option is simply too little, too late. How long must this go on? It is clear to me that after fifty years the Lumbees deserve to have their status quickly, and finally, resolved.

I appreciate the opportunity that this Committee has provided to the Lumbees today, and I hope that their pursuit of fairness, again this Congress, will be successful.

The CHAIRMAN. Thank you, Senator Dole, for your testimony. And I did note your leadership on this issue. And once again, welcome you back to the Committee. We hope it is your last time, as I said, although you are welcome again any time.

And I want to also recognize a former colleague of ours and a dear friend of mine, Charlie Rose, with whom we worked very much on this issue when he was in the Congress. And I failed to mention his strong leadership on this issue in the past, as well.

We understand your schedule. You are free to stay if you like, you are free to leave if you would like.

The Chair would like to recognize out of order very quickly the gentlelady from the Virgin Islands for a unanimous consent request.

Ms. CHRISTENSEN. Thank you. Mr. Chairman, as you noted, Congressman Scott had to leave. That is why I would like to ask unanimous consent to include his statement into the record.

The CHAIRMAN. Without objection, so ordered. Thank you, Donna.

[The prepared statement of Mr. Scott follows:]

Statement of The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, on H.R. 1294

Good Morning and thank you, Chairman Rahall, Ranking Member Young, and members of this Committee for holding this hearing on H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, introduced by my fellow Virginian, Congressman Jim Moran.

This year marks the 400th Anniversary of the founding of Jamestown, Virginia, the first permanent English settlement in North America. Jamestown is the cornerstone of our great republic and its success relied heavily on the help of the indigenous people of Virginia. Virginia's Native Americans played a critical role in helping the first settlers of Jamestown survive the harsh conditions of the New World.

After the Jamestown colony weathered its first couple years in the New World, the colony expanded and the English pushed further inland, and the same Native Americans that helped those first settlers were coerced and pushed from their land without compensation. Treaties, many of which precede our own Constitution, were often made in an effort to compensate the Virginia Native Americans. As history has shown, these treaties were rarely honored or upheld.

Like many other Native Americans, the Virginia Indian Tribes were marginalized from society. They were deprived of their land, prevented from getting an education, and denied a role in our society. Virginia's Native Americans were denied their fundamental human rights and the very freedoms and liberties enshrined in our Constitution.

The bill before this Committee will finally grant federal recognition to the Chickahominy, the Eastern Chickahominy, the Upper Mattaponi, the Rappahannock, the Monacan Indian Nation, and the Nansemond tribes. Some may argue that H.R. 1294 supersedes the standard process of federal recognition through the

Bureau of Indian Affairs. Unfortunately this route towards federal recognition by an act of Congress is necessary and long overdue because of the actions of one state government official in the early 20th century. During that time, Virginia's leaders experimented with eugenics, the so-called science of improving the human race by controlled breeding to increase the occurrence of desirable heritable traits, and implemented harsh racial laws. These laws led to the actions of Walter Plecker, State Registrar for the Commonwealth of Virginia, who purged Virginia's birth and marriage records of "Indian" and other non-white classifications. Virginia's Native Americans refer to Plecker's actions as the "paper genocide." Without this paper trail, standard federal recognition through the BIA is all but impossible. The legacy of Walter Plecker's actions and Virginia's regrettable harsh racial laws should no longer stand. The legislation before this Committee will be the first step in correcting this injustice.

The tribes in Virginia have made great strides in protecting their culture and history, even without the aid of federal recognition. During my time in the Virginia General Assembly, I had the privilege to serve on the study committee that looked into state recognition of Virginia's tribes. Based on the study committee's recommendations, the Commonwealth of Virginia recognized these tribes in the 1980s and has made great efforts to correct these injustices at the state level. H.R. 1294 will ensure the rightful status of Virginia's tribes in our national history. Federal recognition will provide housing and educational opportunities to those who cannot afford it. Federal recognition will also promote tribal economic development that will allow Virginia's tribes to become self-sustaining. These new opportunities will allow Virginia's tribes to flourish culturally and economically, which will lead to a brighter future for a whole new generation.

In 2002, this Committee held hearings on a similar bill to grant federal recognition to Virginia's tribes and many of my colleagues on this panel have heard about the struggles of Virginia's Native Americans before. As the Commonwealth of Virginia, our entire Nation, and the international community commemorate the 400th anniversary of the founding of Jamestown, there is no better time to grant federal recognition to the descendants of the Native Americans who were first to welcome the English settlers at Jamestown.

We have waited too long to recognize Virginia's tribes. The time has come for this Congress to act and I urge you to support H.R. 1294. Thank you again for allowing me to address you on this issue.

The CHAIRMAN. The Chair now recognizes the gentleman from Virginia, whom I recognized in the beginning as a very powerful Member of the House Appropriations Committee, and a dear friend to myself, Mr. Frank Wolf.

**STATEMENT OF THE HON. FRANK WOLF, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF VIRGINIA**

Mr. WOLF. Thank you, Mr. Chairman. I want to begin by thanking you for your comments about the Virginia Tech at the beginning. It has impacted our community, our state, and quite frankly, the nation, and I appreciate that very much.

I want to thank you and Mr. Young for the hearings, and for the other Members for giving us the ability to testify.

The Virginia Indian tribes were the first to greet the settlers at Jamestown when they arrived 400 years ago. Without the Indians' friendship, the Jamestown Settlement very likely would not have survived. We owe the Virginia tribes a huge debt of gratitude.

I don't think it is an exaggeration to say that without them, our great nation may not have been born, or born at that time. However, I remain very concerned that Mr. Moran's legislation to provide sovereign status for six Virginia Indian tribes could lay the foundation for casino gambling in the Commonwealth, and threaten Virginia's long history of clean government, economic growth, and low crime.

Specifically, the legislation does not, unfortunately, shut the door on the opportunity for these tribes to acquire land, and eventually establish tribal casinos. I know, and I believe that the current tribal leadership has indicated they do not want to pursue gambling, and I believe them. I believe them when they say that. But I worry that future leadership of the tribes may not share their views, and will pursue establishing tribal casinos.

There is no guarantee that a future generation of Virginia's tribes would hold the same view as the current leaders. Case in point, and I have attached two stories to the testimony, an Indian tribe in the Michigan area reassured Congress that it did not intend to pursue gambling when it was granted Federal recognition in the early 1990s. And yet, only months after, the tribe voted unanimously to pursue the gambling. And if you can look at testimony and the articles that attach to it, both of these Members were shocked, because at the time they were promised that there would not be any gambling.

More recently, Mr. Chairman, an Indian tribe in California, whose chairman in 2000 said they weren't interested in gambling, changed his mind in 2003, and moved to develop off-reservation casino sites. I am submitting with my statement newspaper articles about both tribes.

Why won't the tribes accept a law that would prevent gambling on tribal lands? If the tribes are not interested in gambling, why not make the law? I want to support the legislation to recognize the tribes, and have offered, when Congressman Hanson was the Chairman here, the lobbyists for the tribes came around, and we said fine, put the prohibition with regard to gambling. And that was not of interest at that time, and unfortunately efforts were rebuffed.

If gambling casinos come to our state, we will be opening a door to the myriad of financial and social ills associated with gambling. Virginia's tourism sector, its economy, and its communities are some of the strongest in the country. Places such as Williamsburg, Yorktown, Jamestown are national treasures that draw visitors from all over the world. Small businesses thrive in Virginia. The Commonwealth should not risk tarnishing its reputation by allowing casino-style gambling within its borders.

There are examples of places across the country which have been overwhelmed with problems attendant to gambling since the arrival of gambling casinos. Virginia does not have casino gambling. And because we do not, we have avoided the crime, the corruption, and the scandal that a number of other states have fallen victims to.

A few years ago I asked the Library of Congress to provide me with a list of all the government officials across the country who have been implicated in gambling-related corruption cases or have been forced to resign due to gambling-related activities during the year. I haven't had it updated. I was sickened by what I saw.

The package was about two inches thick. It was page after page after page of media reports of officials being caught in gambling-related schemes. And I am submitting with my statement the list of officials.

And we ought not forget, this Congress was rocked over the last several years, and this city was rocked, and this country was rocked by the Abramoff scandal. And it resided and began on this very, very issue. And so we in the State of Virginia do not want that to come to our state.

We have great respect for whatever other states want to do, but we do not want that. And we say you can have recognition, but let us have that prohibition. As the author of the legislation which created the National Gambling Impact Study Commission that released its two-year study in 1999, a bipartisan commission that looked at this in depth, I know first-hand about the devastating social and financial costs of gambling. Crime, prostitution, corruption, suicide, destroyed families, child abuse, bankruptcy. Probably a week or two don't go by that I still get calls from people all over the country saying that their son or their daughter or their husband or their wife, because of the effort that we did in that time, have gotten addicted by this, and cannot control it. And there is convenience gambling and destination gambling. And the closer it is to that location, the greater the danger.

But just look at that report. Just look at the report, what it said in a bipartisan way. My concern is not with the Federal recognition of the Virginia Indian tribes. My concern, and hopefully you can recognize them, that provide us with this opportunity. But my concern is with the explosive spread of gambling and the potential for casino gambling to come to Virginia, no bill should become law unless it protects the interests of the Commonwealth.

I stand ready to work with my Virginia colleagues and the tribes seeking recognition to make sure the proud state that is home to presidents and many other well-known Americans is not vulnerable to the political and the social corruption, the destruction of families that it leaves in the wake. And so I would ask you, and I sense that Mr. Moran feels pretty confident with regard to this bill, and Jim is a good friend. We worked closely on a lot of issues. You live out in my area. You know my record. You know my interests, you know my concerns.

But what I would ask as you move this bill, if you do move it, that you protect us, so that whatever others may want to do around the country they will be able to do. But that we not get calls here in this state with regard to the potential of what I see, where you generally will have a situation whereby a wealthy non-Indian will come in. Sometime it will be a big billionaire from South Africa, sometime it will be a Donald Trump, sometime it will be somebody else, and begin to bring these influences here that we do not want.

So Mr. Chairman, I thank you for the hearing. I thank you for the opportunity to testify.

[The prepared statement of Mr. Wolf follows:]

**Statement of The Honorable Frank Wolf, a Representative in Congress
from the State of Virginia, on H.R. 1294**

Good morning. Mr. Chairman, thank you for allowing me to testify today.

The Virginia Indian tribes were the first to greet the settlers at Jamestown when they arrived 400 years ago. Without the Indians' friendship, the Jamestown settlement very likely would not have survived.

We owe the Virginia tribes a huge debt of gratitude. I don't think it's an exaggeration to say that without them, our great nation may not have been born. However, I remain concerned that Mr. Moran's legislation to provide sovereign status for six Virginia Indian tribes could lay the foundation for casino gambling in the Commonwealth and threaten Virginia's long history of clean government, economic growth and low crime.

Specifically, the legislation does not shut the door on the opportunity for these tribes to acquire land and eventually establish tribal casinos. I know that the current tribal leadership has indicated that they do not want to pursue gambling—and I believe them—but I worry that future leadership of the tribes may not share their views and will pursue establishing tribal casinos.

There is no guarantee that future generations of Virginia's tribes would hold the same view as the current leaders. Case in point: an Indian tribe in the Michigan area reassured Congress that it did not intend to pursue gambling when it was granted federal recognition in the early-1990's, yet only months later the tribe voted unanimously to pursue gambling. More recently, an Indian tribe in California whose chairman in 2000 said they weren't interested in gambling, changed his mind in 2003 and moved to develop off-reservation casino sites. I am submitting with my statement newspaper articles about both tribes.

Why won't the tribes accept a law that would prevent gambling on tribal lands? If the tribes are not interested in gambling, why not make that the law? I want to support legislation to recognize the Virginia tribes and have worked with the tribes to find language that would accomplish their aim of recognition without opening the door to casino gambling in Virginia. Unfortunately, my efforts have been rebuffed.

If casino gambling comes to our state we will be opening the door to the myriad of financial and social ills associated with gambling. Virginia's tourism sector, its economy and its communities are some of the strongest in the country. Places such as Williamsburg, Yorktown and Jamestown are national treasures which draw visitors from all over the world. Small businesses thrive in Virginia. The Commonwealth should not risk tarnishing its reputation by allowing casino-style gambling within its borders. There are examples of places across the country which have been overwhelmed with problems attendant to gambling since the arrival of Indian casinos.

Virginia does not have casino gambling, and because we do not, we have avoided the crime, corruption and scandal that a number of other states have fallen victim to. A few years ago I asked the Library of Congress to provide me with a list of all the government officials across the country who had been implicated in gambling-related corruption cases or had been forced to resign due to gambling-related activities during the year.

I was sickened by what I saw. The package was about two inches thick. It was page after page after page of media reports of officials being caught in gambling-related schemes. I am submitting with my statement the list of officials.

As the author of legislation which created the National Gambling Impact Study Commission that released its two-year study in 1999, I know firsthand about the devastating social and financial costs of gambling. Crime. Prostitution. Corruption. Suicide. Destroyed families. Child and spouse abuse. Bankruptcy.

My concern is not with the federal recognition of Virginia's Indian tribes. My concern is with the explosive spread of gambling and the potential for casino gambling to come to Virginia. No bill should become law unless it protects the interests of the Commonwealth. I stand ready to work with my Virginia colleagues and the tribes seeking recognition to make sure the proud state that is home to presidents and many other well known Americans is not vulnerable to the political and social corruption that gambling leaves in its wake.

NOTE: Additional information submitted for the record by Congressman Wolf has been retained in the Committee's official files.

The CHAIRMAN. Thank you, Frank, for your testimony. The Chair recognizes the gentleman from North Carolina who has been very patient with us all morning, Walter Jones.

STATEMENT OF THE HON. WALTER JONES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. JONES. Mr. Chairman, thank you very much. And I thank the Ranking Member, as well, and the Members of this committee.

I miss not serving on this committee, but circumstances sometimes are beyond our control.

Mr. Chairman, thank you for the opportunity to make a statement today on H.R. 65, the Lumbee Recognition Act. Like many in North Carolina, I feel strongly about this bill. My view is that the Lumbees should be given a fair opportunity to attain Federal acknowledgement as an Indian tribe through the Interior Department's Office of Federal Acknowledgement. We should leave these complicated matters to the expert agency.

It would be unfair to the United States and other Indian tribes to pass H.R. 65 and circumvent the established administrative process.

Mr. Chairman, I have met with another Indian group from North Carolina, the Tuscarora, who find themselves in a similar situation to the Lumbee. And I understand there might be a few here of the Tuscarora Tribe.

The Tuscarora also want to be Federally recognized as a tribe, but are constrained from accessing the process because of the 1956 Lumbee Act. They, too, oppose this bill because it would undermine their efforts to maintain their separate identity as Tuscaroras. Their solution, Mr. Chairman, give us access to the process.

Another North Carolina organization, the North Carolina Family Policy Council, also opposes this bill, but for different reasons. Mr. Chairman, I have a letter from the Policy Council that I would like to be part of the record. I ask unanimous consent that it be submitted.

From that letter I would like to briefly read a paragraph. This is a letter that was sent to Congressman Mike McIntyre, and he is my friend, he is my brother in Christ. I have a lot of respect for him, and on this issue we just disagree.

From the letter from the North Carolina Family Policy Council, and I read. "I am writing to express our concern over H.R. 65, Lumbee Recognition Act. The North Carolina Family Policy Council does not oppose full Federal recognition for the Lumbee Tribes of North Carolina, but we strongly oppose the potential that full Federal recognition would have toward the expansion of gambling in North Carolina.

"In its current form, H.R. 65 could set the stage to allow the Lumbee Indians to establish gambling operations along the I-95 corridor in Robinson and perhaps Cumberland, Hoke and Scotland Counties. As a result, we ask that you amend H.R. 65 to expressly prohibit the Lumbee Tribe from obtaining the authorization to conduct any form of gambling in North Carolina should this legislation move forward."

I am pretty much asking the same thing that Congressman Wolf was asking. The Family Research Council is very concerned that I-95, which is a major corridor between north and south, south and north, that what could happen in four counties, that there could be gambling created that would create a serious problem to the people of North Carolina, in my humble opinion.

Mr. Chairman, in addition, another organization of Federally recognized tribes, the United South and Eastern Tribes known as USET, also oppose this bill. I have a letter from this group, and

I ask unanimous consent that this might be submitted, as well. Thank you.

Mr. Chairman, in closing, I would hope that this committee would consider legislation that would give the Lumbee, the Tuscarora, and other Indian groups in North Carolina and across this nation a fair opportunity for tribal acknowledgement through the appropriate administrative process.

And Mr. Chairman, again I want to thank you for the opportunity to make these brief statements. Again I want to say that I believe that the process should be expedited, so that not only the Lumbees but other tribes could have an opportunity to present their case to the proper agency, and the agency have the authority to move in an expeditious way toward a final decision as to these tribes and their recognition.

So with that, Mr. Chairman, I close my comments. And thank you again for this opportunity.

[The prepared statement of Mr. Jones follows:]

**Statement of The Honorable Walter Jones, a Representative in Congress
from the State of North Carolina**

Mr. Chairman, thank you for the opportunity to make a statement today on H.R. 65, the "Lumbee Recognition Act." Like many in North Carolina, I feel strongly about this bill. My view is that the Lumbee should be given a fair opportunity to attain federal acknowledgement as an Indian tribe through the Interior Department's Office of Federal Acknowledgement. We should leave these complicated matters to the expert agency. It would be unfair to the United States and other Indian tribes to pass H.R. 65 and circumvent the established administrative process.

I have met with another Indian group from North Carolina, the Tuscarora, who find themselves in a similar situation to the Lumbee. I understand representatives of the Tuscarora are here today. The Tuscarora also want to be federally recognized as a tribe, but are constrained from accessing the process because of the 1956 Lumbee Act. They too oppose this bill because it would undermine their efforts to maintain their separate identity as Tuscaroras. Their solution: give us access to the process.

Another North Carolina organization, the North Carolina Family Policy Council, also opposes this bill, but for different reasons. I have a letter from the Policy Council that I would like to be a part of the record, Mr. Chairman. The Policy Council is concerned about the proliferation of gambling in North Carolina, and I share their views. This bill would open the door to an enormous expansion of gambling in North Carolina and could harm many communities in the region.

Another organization of federally-recognized tribes, the United South and Eastern Tribes (USET), also opposes this bill. I have a letter of opposition from USET, Mr. Chairman, that I would like to include in the record. USET also supports the idea of the Lumbee having access to the administrative process.

My House colleagues, let's address this issue fairly. I urge the Committee to reject this bill, and to consider legislation that would give the Lumbee, the Tuscarora, and other Indian groups in North Carolina and across this nation a fair opportunity for tribal acknowledgement through the appropriate administrative process.

Thank you.

[Letters submitted for the record by Mr. Jones follow:]



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April 16, 2007

The Honorable Nick Rahall, Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Don Young, Ranking Member
House Natural Resources Committee
186 Ford House Office Building
Washington, DC 20515

RE: Lumbee Recognition Act H.R. 65

Dear Chairman Rahall and Ranking Member Young:

On behalf of the United South and Eastern Tribes, an inter-Tribal organization comprised of 24 federally recognized Tribes located in 12 states from Maine south to Florida and west to Texas, I am writing to express opposition to H.R. 65, the Lumbee Recognition Act.

Opposition to legislative recognition has been the longstanding position of USET as evidenced in previous resolutions and testimony. USET has supported Tribes seeking recognition through the Bureau of Indian Affairs (BIA) Branch of Acknowledgment and Research (BAR) process. The BIA/BAR process serves to protect the cultural identity of established Tribes, as well as the government-to-government relationship that such Tribes have with the United States. Further, the process protects the United States from arbitrary decisions concerning federal acknowledgment, by relying on experts in the genealogy, history, and anthropology fields.

Tribes who have received recognition through legislation have expressed problems related to understanding the Congressional interpretation of their recognition. These Tribes have been more closely scrutinized, for example, regarding whether Congress bestowed full or partial rights and Tribal sovereignty. For this reason, USET supports recognition through the BIA/BAR process whereby the recognition and inherent rights will be implicit.

If Congress believes that the BIA/BAR process is in need of repair, then legislation should be developed to review and strengthen the BIA/BAR procedures; not allow certain groups in political favor to circumvent the process. Further, because the 1956 Lumbee Act leaves the Lumbee in a position of being unable to complete the administrative process to obtain federal recognition; Congress should enact legislation that would remove this limitation.

Thank you for the opportunity to share USET's views regarding this important topic. I am available to discuss this matter at your convenience and can be reached at (615)872-7900.

Scan^ - In Peace,


Brian Patterson
President

"Because there is strength in Unity"

April 16, 2007



The Honorable Mike McIntyre
 United States House of Representatives
 2437 Rayburn House Office Building
 Washington, DC 20515

Dear Congressman McIntyre:

Thank you for your commitment to the people of North Carolina through your continued service in the United States Congress.

I am writing to express our concern over H.R. 65—Lumbee Recognition Act. The North Carolina Family Policy Council does not oppose full federal recognition for the Lumbee Tribe of North Carolina, but we strongly oppose the potential that full federal recognition would have toward the expansion of gambling in North Carolina. In its current form, H.R. 65 could set the stage to allow the Lumbee Indians to establish gambling operations along the I-95 corridor in Robeson, and perhaps Cumberland, Hoke, and Scotland counties. As a result, we ask that you amend H.R. 65 to expressly prohibit the Lumbee Tribe from obtaining the authorization to conduct any form of gambling in North Carolina should this legislation move forward.

For more than a decade, the North Carolina Family Policy Council has researched the issue of gambling and its impact on citizens and our State. The addiction that results from the presence of gambling damages individual lives and destroys families. Research consistently shows a very high correlation between gambling addiction and increases in crime, domestic violence, child abuse, divorce, personal debt, bankruptcy, embezzlement, and even suicide.

This is why the North Carolina Family Policy Council fought for over a decade to prevent North Carolina from entering the gambling business through a state-run lottery, why we have fought to eradicate from North Carolina what many refer to as the “crack cocaine” of gambling—video poker, and why we have consistently opposed efforts to expand gambling by the Eastern Band of Cherokee Indians—the only Indian tribe in the state to possess full federal recognition.

This is also why we are concerned that H.R. 65 will lay the groundwork for the Lumbee Tribe to establish one or more gambling casinos near Interstate 95 in Robeson County, North Carolina and possibly in Cumberland, Hoke and Scotland counties, as well.

The federal Indian Gaming Regulatory Act (IGRA) specifies the circumstances under which federally recognized Indian tribes are allowed to operate Class III gaming activities, such as video poker, table games with live dealers, etc. As you know, the Eastern Band of Cherokee Indians operates a Class III gaming facility in western North

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Carolina—the Harrah's Cherokee Casino. While this casino is currently limited to video machine gambling, the Eastern Band is actively seeking an expansion into Las Vegas-style gambling.

According to 25 U.S.C. § 2710 (d)(1), Class III gaming activities are lawful on "Indian lands" only if such activities are:

- (A) authorized by an ordinance or resolution that—
 - (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
 - (ii) meets the requirements of subsection (b) of this section, and
 - (iii) is approved by the Chairman,
- (B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and
- (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

The term "Indian lands," according to 25 U.S.C. § 2703(4), means:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restrictions by the United States against alienation and over which an Indian tribe exercises governmental power.

Regulations adopted by the National Indian Gaming Commission, 25 C.F.R. § 502.12, further define "Indian lands" as:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either --
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

H.R. 65 contains two relevant provisions concerning this issue. The primary provision, in Section 4 of the bill, reads:

"Fee lands which the Tribe seeks to convey to the United States to be held in trust shall be treated by the Secretary of the Interior as 'on-reservation' trust acquisitions under part 151 of title 25 of the Code of Federal Regulations (or a successor regulation) if such lands are located within Robeson County, North Carolina."

This provision would allow the Lumbee Tribe to petition the United States to hold land in trust on behalf of the Tribe. Any land in Robeson County could be

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considered "on-reservation" land for these purposes. Unless otherwise prohibited, once land is taken into trust on behalf of a federally recognized tribe, the tribe is then free to seek a compact with the state to authorize gambling operations on the trust land.

Because North Carolina has already entered into a Tribal-State Compact with the Eastern Band of Cherokee Indians and is required by 25 U.S.C. § 2710 (d)(3)(A) to "negotiate...in good faith to enter into such a compact" at the request of any tribe having jurisdiction over Indian lands, in practice, the state would be unable to deny a similar compact to the Lumbee Tribe.

The second relevant provision, Section 3 (a) of H.R. 65, reads:

"The Lumbee Tribe of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as members of a federally recognized tribe. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation."

While the intent of this provision may be to allow members of the Lumbee Tribe who live in Robeson County and the named adjacent counties to receive the government services and benefits offered by the United States to federally recognized tribes, the extent of the provision is unclear. If Tribe members living in these counties are "deemed to be residing on or near an Indian reservation," and therefore are considered to be living on "Indian lands," then they may be eligible to pursue compacts for gambling operations not only in Robeson County, but also in Cumberland, Hoke and Scotland counties.

According to the legal opinion of Mr. Derril B. Jordan, Associate Solicitor, Division of Indian Affairs, as communicated to Kevin K. Washburn, Esq., General Counsel, National Indian Gaming Commission, in a letter dated March 2, 2000, reservation lands are not required to be held in trust and are considered "Indian lands" under IGRA. According to Mr. Jordan, "It [IGRA] does not require that lands within the boundaries of a reservation be held in trust. By providing that 'all lands' within a reservation are Indian lands, it is clear that Congress did not intend to include an additional requirement that the lands also be held in trust. Therefore, the land is 'Indian lands' under IGRA and may be used if they are within the boundaries of a reservation for an Indian gaming facility."

In summary, the granting of full federal recognition of the Lumbee Tribe of North Carolina by the U.S. Congress through passage of H.R. 65 would remove the major obstacle in the process of authorizing the Lumbee Tribe of North Carolina to operate a gambling casino or casinos in Robeson, Cumberland, Hoke and Scotland counties. If H.R. 65 were approved, members of the Lumbee Tribe could: (1) seek to have the United States government hold land within Robeson County in trust on behalf of the Tribe, and (2) claim that they reside on an Indian reservation if they live in Robeson, Cumberland, Hoke or Scotland counties. In either event, federal recognition

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as a tribe, along with the designation of "Indian lands" would qualify the Lumbee Tribe to negotiate a gambling compact with the state.

Such operations along the highly traveled, heavily populated Interstate 95 corridor in eastern North Carolina would change the face of our state forever, and as some have argued, the entire eastern seaboard. While some may claim that a casino in Robeson and adjacent counties may provide some economic benefit for that particular region, it would do so by cannibalizing commerce and tourism in other areas of the state. In fact, one or more casinos in the tribal area would be about a one-hour drive or less from the Triangle, Triad, Charlotte and Wilmington. Gambling casinos would also bring the myriad of social ills that are inherent with gambling and present in every such community across the country. This is not in the best interest of our state or its citizens. Surrounding states and communities would also see these dollars leaving their local economy and would likely press for gambling venues of their own.

Again, should you decide to pursue the passage of H.R. 65, we urge you to include a provision in the bill to clearly state that the eligibility "for all services and benefits provided to Indians because of their status as members of a federally recognized tribe" does not include the authority to conduct gambling of any kind, and that the Lumbee Tribe is prohibited from establishing gambling operations in North Carolina.

It is worth noting that when Senator John McCain asked Jimmy Goins, the Tribal Chairman of the Lumbee Tribe of North Carolina, during the U.S. Senate Indian Affairs Committee hearing on S 660 (a bill identical to H.R. 65) on July 12, 2006, whether gambling has been a consideration by the Tribe during the process of seeking full federal recognition, Mr. Goins responded to Chairman McCain that it has not. If gambling is not a consideration of the Lumbee Tribe, then it would seem logical that the Tribe would have no objections to this recommendation.

Thank you for your consideration of these concerns. Please contact me, or our director of government relations, John Rustin, at (919) 807-0800 if you have any questions or would like to discuss this matter in detail.

With kindest regards.

Sincerely,



William J. Brooks, Jr.
 President

Copy: The Honorable G.K. Butterfield
 The Honorable Howard Coble
 The Honorable Bob Etheridge

The CHAIRMAN. Thank you, Walter. The Chair recognizes the gentleman from North Carolina, Mr. McHenry.

STATEMENT OF THE HON. PATRICK McHENRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. McHENRY. I thank the Chairman. Thank you for having us here today, and for having a lot of opening statements or a lot of testimony from colleagues that are interested in this issue.

Being from North Carolina, I have a distinct interest in this issue. And thank you for letting me testify today on H.R. 65, the Lumbee Recognition Act.

My position on this bill is very straightforward. All groups seeking Federal acknowledgement as Indian tribes should go through the administrative process at the Department of Interior's Office of Federal Acknowledgement.

The Chairman spoke passionately about the need to reform that department, and that is a whole separate issue that is so important to the larger context of Federal recognition. And I will get to that in a second.

At the Office of Federal Acknowledgement, it is staffed with expert historians, anthropologists, and genealogists whose focus is to evaluate data provided by petitioning groups, and determine the merits of the group's claim for Federal recognition as an Indian tribe, including whether the group existed since historical times as a distinct political entity.

In this case the Department of Interior has said the 1956 Lumbee Act prevents Lumbee from going through this process, as my colleague from eastern North Carolina, Mr. McIntyre, said. Congress should lift this restriction.

Like all other groups, Lumbee should have the opportunity to attain Federal recognition as a tribe. But I cannot support this legislation, which would allow the Lumbee, or any other group for that matter, to circumvent the process, while other groups diligently work toward the goal of Federal acknowledgement through the Office of Federal Acknowledgement.

This would be unfair to those groups. And also, there have been internal groups within the Lumbee that have raised serious questions about the tribal identity of the Lumbee. In fact, the name Lumbee is based on the group's proximity to the Lumbee River. The same Lumbee group has sought Federal acknowledgement, as my colleague Mr. McIntyre mentioned, they have sought Federal acknowledgement from Congress on numerous occasions as Cherokee, Croatan, Cheraw, among other names.

As a matter of fact, I, along with other Members of Congress, in order to remedy this problem, this issue that is before us here today, have sponsored legislation that would put the Lumbee at the front of the line and allow them to go through the Federal acknowledgement process. Put them at the front of the line, remove the burden of the 1956 Lumbee Act.

In the previous Congress, my colleagues from North Carolina, including Mr. Jones, as well as Representatives Foxx and Myrick, co-sponsored a bill written by Charles Taylor. His successor in the 11th District, Mr. Heath Shuler, as I understand it, intends to file the same bill, which I will be proud to cosponsor. A bipartisan bill that would remedy this problem, and actually adheres to the Office of Federal Acknowledgement's role in recognizing Indian tribes.

Additionally, it is unfair to existing Federally recognized tribes, such as the Eastern Band of Cherokee Indians, who simply don't want to diminish or undermine their cultural identity by legislation such as this. The Eastern Band has a tremendous cultural and historical impact on western North Carolina and the region in large. And you will soon hear testimony by Principal Chief Michell Hicks about the interest at stake for the Eastern Band.

Look, Federal recognition is really an emotional issue, I understand that. There is a lot of politics at play here. But this

legislation I think would diminish the longstanding government-to-government relationship the United States has with established tribes. We should take the politics out of Federal recognition, and allow the experts at the Office of Federal Acknowledgement to do their job.

If there is concern about the Office of Federal Acknowledgement and their ability to get through the backlog of cases that they have, that is the duty of this committee to remedy this process through the oversight process. And to clean up that process for all those that seek recognition.

I don't believe that going around and circumventing that process is the right way to go. And I concur with my colleague in the 11th District on this matter, and that it is important that we actually look for a remedy for the Lumbee group to have Federal recognition. But in order to do that, they should go through the longstanding process that we have established as a Congress, and it is a regulatory process. As we know, regulatory processes are not very easy to comply with, but it is intended to have the experts within the bureaucracy work their will and understand the details and the historical records in this case and all cases involving Indian tribe recognition.

And I urge my colleagues to vote down the Lumbee Recognition Act, and support what my colleague in the 11th District is seeking to do, which is another way to remedy this Lumbee group's concerns.

Thank you for the opportunity to testify, and I appreciate your patience.

[The prepared statement of Mr. McHenry follows:]

**Statement of The Honorable Patrick T. McHenry, a Representative in
Congress from the State of North Carolina, on H.R. 65**

Thank you for the opportunity to testify today on H.R. 65, the Lumbee Recognition Act. My position on this bill is very straightforward and fair.

ALL groups seeking federal acknowledgement as Indian tribes should go through the administrative process at the Department of the Interior's Office of Federal Acknowledgement.

The OFA is staffed with expert historians, anthropologists and genealogists whose focus is to evaluate data provided by petitioning groups and determine the merits of a group's claim that it is an Indian tribe, including whether the group existed since historical times as a distinct political entity.

In this case, the Department Interior has said the 1956 Lumbee Act prevents the Lumbee from going through the process, Congress should act to lift that restriction. Like all other groups, the Lumbee should have the opportunity to attain federal recognition as a tribe.

I CANNOT support this legislation, which would allow the Lumbee or any other group, to circumvent the process, while other groups diligently work toward the goal of federal acknowledgement through the Office of Federal Acknowledgement.

This would be unfair to those groups, and in addition there have been internal groups within the Lumbee that have raised serious questions about the tribal identity of the Lumbee.

In fact, the name "Lumbee," is based on this group's proximity to the Lumber River. The same "Lumbee Group" has sought federal acknowledgement from Congress on numerous occasions as Cherokee, Siouan, Croatan and Cheraw Indians.

As a matter of fact, I, along with other members of the North Carolina delegation, cosponsored legislation by Former Congressman Charles Taylor that would have cleared the way for ALL groups in North Carolina seeking federal acknowledgement under the 1956 Lumbee Act to complete the process through the Office of Federal Acknowledgement.

Additionally, it is unfair to existing federally recognized tribes, such as the Eastern Band of Cherokee Indians, who does not want to see its cultural identity undermined by legislation such as this.

The Eastern Band has a tremendous cultural and historical impact on Western North Carolina and you will soon hear the testimony of Principal Chief Michell Hicks about the interests at stake for the Eastern Band.

Federal recognition matters get caught up in emotion and, let's face it, politics. This legislation would diminish the longstanding government-to-government relationship the United States has with established tribes. We should take the politics out of federal recognition and allow the experts at the Office of Federal Acknowledgement to do their job.

Thank you.

The CHAIRMAN. Thank you, Patrick. The Chair at this time would ask unanimous consent that our colleagues who have been on the witness table this morning, any of them that wish to join us on the dais be allowed to do so and participate in the remainder of the hearings today.

The Chair will now recognize The Honorable Carl Artman, I am sorry. Carl J. Artman, the Assistant Secretary for Indian Affairs, Bureau of Indian Affairs in Washington. And at this point, while he is coming to the table, I would like to congratulate Mr. Artman on his confirmation as Assistant Secretary of Indian Affairs. I enjoyed meeting you a few weeks ago, and appreciate your coming by my office, and I'm looking forward to your testimony today.

**STATEMENT OF CARL J. ARTMAN, ASSISTANT SECRETARY,
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. ARTMAN. Good morning, Mr. Chairman, Ranking Member Young and Members of the Committee.

I am here today to provide the Administration's testimony on H.R. 65 and H.R. 1294. I would also like to take a moment to introduce the Director of our Office of Federal Acknowledgement, Leif Fleming, to my right. I think he has been here before.

I will summarize my statements and ask that my entire written statement be entered into the record.

The CHAIRMAN. Without objection. And the Chair would ask that of all the panelists today.

Mr. ARTMAN. Thank you, Mr. Chairman.

The CHAIRMAN. You may proceed.

Mr. ARTMAN. We recognize that under the United States Constitution Commerce Clause that Congress has the authority to recognize a distinctly Indian community as an Indian tribe. Congress has plenary power.

But along with that authority, it is important that all parties have the opportunity to review all of the information available before recognition is granted. That is why we support a recognition process that requires the groups to go through the Federal acknowledgement process found under 25 CFR, part 83, because it provides a deliberative and uniform mechanism to review and consider groups seeking Indian tribal status. Legislation, such as H.R. 65 and H.R. 1294, allows the groups to bypass the Federal acknowledgement process.

In reference to H.R. 65, Congress designated Indians then residing in Robeson and adjoining counties of North Carolina as the Lumbee Indians of North Carolina in the 1956 Act. In 1989, the Department's Office of the Solicitor advised that the 1956 Act

forbade Federal relationship within the meaning of the Federal Acknowledgement Regulations, thereby precluding the Lumbee Indians from consideration under the acknowledgement process. Legislation is necessary for the Lumbee Indians to petition for tribal status under those regulations.

If Congress enacts H.R. 65 as drafted, we do have some comments. H.R. 65 extends Federal recognition to the Lumbee Tribe of North Carolina, and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to join the Lumbee Tribe, or to petition under the acknowledgement process. We recommend Congress clarify the Lumbee group that would be granted recognition under this bill. Not doing so could potentially expose the U.S. Government to numerous lawsuits, and possibly delay the acknowledgement process.

We are concerned with the provision requiring the Secretary to, within one year, to verify a membership roll and develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. H.R. 65 is silent as to the meaning of verification for inclusion on the Lumbee group's membership roll.

And H.R. 65 may raise a constitutional problem, by requiring the President to submit annually to the Congress, as part of his annual budget submission, a budget that is recommended by the heads of departments for programs and services and benefit to the Lumbee. Under the Recommendations Clause of the Constitution, the President submits for consideration of Congress such measures as the President judges necessary and expedient.

In the alternative, the Department supports an amendment to the 1956 Act to afford the Lumbee Indians the opportunity to petition for tribal status under the acknowledgement process.

In our review of H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act provides Federal recognition for Indian tribes for six Virginia Indian groups. To date, none of these petitioning groups have submitted completed documented petitions demonstrating their ability to meet all seven of the criteria under the acknowledgement process. In addition, there are six additional petitioners that are not included within the legislation, and two state-recognized tribes within the reservations are also missing from the legislation.

We ask that the Office of Federal Acknowledgement be a resource as you deliberate H.R. 65 and H.R. 1294.

That concludes my remarks, and I would be happy to take questions.

[The prepared statement of Mr. Artman follows:]

**Statement of Carl J. Artman, Assistant Secretary—Indian Affairs,
U.S. Department of the Interior**

Good morning, Mr. Chairman and Members of the Committee. My name is Carl Artman. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Administration's testimony on H.R. 65, the "Lumbee Recognition Act" and H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007."

The acknowledgement of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgement enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United

States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgement carries with it certain immunities and privileges, including exemptions from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

We recognize that under the United States Constitution, Congress has the authority to recognize a “distinctly Indian community” as an Indian tribe. But along with that authority, it is important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support a recognition process that requires groups go through the Federal acknowledgement process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

Legislation such as H.R. 65 and H.R. 1294 would allow these groups to bypass this process—allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish this goal, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process.

The Administration strongly supports all groups going through the Federal acknowledgement process under 25 CFR Part 83. The Administration believes that the Federal acknowledgement process set forth in 25 CFR Part 83, “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe,” allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship. Before the development of these regulations, the Federal government and the Department of the Interior made determinations as to which groups were Indian tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately, treaty rights litigation on the West coast, and land claims litigation on the East coast, highlighted the importance of these tribal status decisions. Thus, the Department, in 1978, recognized the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgement.

Under the Department’s regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

- (1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) show 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) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (4) provide a copy of the group’s present governing document including its membership criteria;
- (5) demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;
- (6) show 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) demonstrate 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 the Department to acknowledge the continued tribal existence of a group as an Indian tribe. Currently, the Department’s workload of 17 groups seeking Federal acknowledgement consists of 8 petitions on “Active Consideration” and 9 petitions on the “Ready, Waiting for Active Consideration” lists.

H.R. 65

In 1956, Congress designated Indians then “residing in Robeson and adjoining counties of North Carolina” as the “Lumbee Indians of North Carolina” in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the Federal relationship within the meaning of the acknowledgement regulations, and that the Lumbee Indians were, therefore, precluded from consideration for Federal acknowledgement under the administrative process. Because of the 1956 Act, legislation is necessary for the Lumbee Indians to be afforded the opportunity to petition for tribal status under the Department's regulations. The Department would welcome the opportunity to assist the Congress in drafting such legislation.

If Congress elects legislative recognition of the Lumbee, then the Department makes the following comments on H.R. 65, as currently drafted.

H.R. 65 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to join the Lumbee Tribe or to petition under the Department's acknowledgement regulations. The Department's Office of Federal Acknowledgement (OFA) has received letters of intent to petition from eight groups that may overlap with each other: the Cherokee Indians of Robeson and Adjoining Counties, the Lumbee Regional Development Association, the Cherokee Indians of Hoke County, Inc., the Tuscarora Nation of North Carolina, the Tuscarora Nation East of the Mountains, the Hatteras Tuscarora Indians, the Tuscarora Indian Tribe—Drowning Creek Reservation, and the Tuscarora Nation of Indians of the Carolinas. In addition, OFA has identified over 90 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be the "Lumbee" Tribe. Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill. Not doing so could potentially expose the Federal government to unwarranted lawsuits and possibly delay the Federal acknowledgement process.

Under H.R. 65, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Lumbee Tribe."

We are concerned with the provision requiring the Secretary, within one year, to verify the membership roll and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. Under the provisions of this bill, the "Lumbee Tribe", which the Department understands includes over 53,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by members of other Federally recognized Indian tribes. In our experience verifying a membership roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller Indian tribes. While we believe there are approximately 53,000 members, we do not currently have access to the Lumbee's current membership roll and thus do not have the appropriate data to estimate the time to verify them nor do we know how many Lumbee members may be eligible to participate in Federal needs based programs. Moreover, H.R. 65 is silent as to the meaning of verification for inclusion on the Lumbee group's membership roll.

In addition, H.R. 65 may raise a constitutional problem by purporting to require the President to submit annually to the Congress as part of his annual budget submission a budget that is recommended by the head of an executive department for programs, services and benefits to the Lumbee. Under the Recommendations Clause of the United States Constitution, the President submits for the consideration of Congress such measures as the President judges necessary and expedient.

Should Congress choose not to enact H.R. 65, the Department feels, at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians the opportunity to petition for tribal status under the Department's Federal acknowledgement regulations.

H.R. 1294

H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007," provides Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgement as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department's Federal acknowledgement regulations. As stated above, the purpose of the technical assistance review is to provide the groups with opportunities to supplement their petitions due to obvious deficiencies and significant omissions. To date, none of these petitioning groups have submitted completed documented petitions demonstrating their ability to meet all seven mandatory criteria.

We look forward to working with you as you deliberate H.R. 65 and H.R. 1294.

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

The CHAIRMAN. Thank you, Carl. I just have one question. I do thank you for your testimony this morning, particularly your specific recommendations to language in the Lumbee Bill affecting certification of membership rolls and future presidents' budget.

As we move forward, we will take a hard look at addressing your concerns. Your testimony is silent, almost silent, on the Virginia tribes recognition. And I am not sure what to make of that, but I think that I will not push our luck on that issue and just move on.

I do want to ask you about the proposal to pass a law to permit the Lumbee Tribes access to the administrative Federal acknowledgement process. I happen to reject the notion by some that legislative recognition is fraught with emotions and potential politics, but the administrative process is not. I don't know how you can differentiate that. But if people in this town are involved, you know, both are possible in both the processes.

The Lumbees are certainly not the only tribe which is prohibited from going through that process. There are, to take one example, several terminated tribes in California, which are also prohibited from going through the process.

Do you support changing the law to permit all of those tribes to go through the process, as well? And what would that do to the decades-long wait tribes have in the process now? Would you be able to guarantee that the President would request the needed number of positions in funding in future budgets to accommodate such a process? I know that is a couple questions, more than one.

Mr. ARTMAN. Well, if I miss any, please let me know, Mr. Chairman. And thank you for the question.

The Federal acknowledgement process can be sometimes cumbersome and seemingly opaque, but it does lead to a very important result. Either if the tribe, the petitioners are acknowledged or if they are denied acknowledgement, the end result is, if positive, is a sovereign relationship with the United States Government; a government-to-government relationship. Something that is a solemn responsibility on both parties. So we view it as a very serious deliberative, investigative, and sometimes academic process.

The staff currently in the Office of Federal Acknowledgement not only stays within the narrow bounds of reviewing it, but also helps tribes, helps petitioners through the process as well, through the technical assistance letters, extensions, what-have-you. So it is something that is, there is a dedicated group of individuals over there, to be sure.

In terms of how the process works, its efficiency, whether or not there are the right number of people there, that is something that I mentioned during the confirmation process, that is something of great importance to me. And I will be spending a lot of time with the Office of Acknowledgement to look into that matter. And I will be looking forward to working with Mr. Fleming on that matter.

If, as you mentioned, we were to lift the ban on the Lumbee Tribe from petitioning for recognition, you do hit on a very important point. How that would impact the process. Not touching on the California tribes, the additional California tribes you mentioned,

but just focusing on the Lumbee for just a moment, there are potentially 50,000 members there. And determining the correct membership rolls is going to be a cumbersome process.

In the bill it notes that the Department would have one year to determine that, and then another year to determine the impact on the budget afterwards. We think that it would probably take closer to four years to determine whether or not the membership roll is correct. But if we were to get it down to one year, we would need additional funds and additional individuals to assign to that process. So that is something that we are very concerned with.

With regards to the California tribes, I haven't had a chance to review that, Mr. Chairman, but I would be happy to look into that as this process continues forward.

The CHAIRMAN. Fair enough, thank you. The Chair recognizes the gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, thank you, and I have a series of questions. I would also like to make a statement, if I could. Because what brings me up to this tribal recognition action by the Department, and I think we should be talking about another tribe that is called the Shinnecock Indians in New York.

The State of New York has formally recognized the Shinnecock Indian Nation for over 340 years. It was half the tribes and their members currently live in the reservation set aside under state law. By all intents and purposes, the State of New York, in fact the County of New York has always treated the Shinnecock as a tribe. And this, Mr. Artman, is for you because in 1978 they asked the Federal government for assistance in filing a lawsuit to obtain justice for the theft of their lands. They testified to this in some of the hearings a year ago.

The Bureau of Indian Affairs, Mr. Artman, decided they first should be Federally recognized and treated to litigation because of the petition for Federal acknowledgement. In response, they created the Shinnecock Federal Recognition Committee to manage the petition for Federal recognition with the Department of Interior. That was 30 years ago, and they are still waiting for that decision.

Despite the three decades of delay, I hope we can commit to helping them, as well. On November 7, 2005, a Federal court, in a case in which their tribal status was at issue, and after receiving a petition to the Department of Interior, thousands of pages of legal briefs and documents, issued a decision holding that the Shinnecock Indian Nation is a sovereign Indian tribe as a matter of Federal law.

It is from this perspective that the Committee needs to consider the Shinnecock as a tribe, who has played by the rules, has met with years of bureaucratic inaction, and deserves to be put on the list of Federally recognized tribes. They should not be penalized by the Department of Interior's prolonged inaction and response for the application to acknowledge a status as an Indian tribe.

In fact, Mr. Artman, I think the Shinnecock should be placed on the list of Federally recognized tribes immediately. And I say this, and I bring this up, Mr. Chairman, because I have heard about the Virginia tribes, the Lumbee tribes, and let us go back to this recognition process. It doesn't work.

We have had two hearings on this in the last two Congresses, and all I hear is excuses. I am one of these people that have been supporting the American Indian tribes for years; I have to. And if I don't, I get killed.

But the reality is the Bureau itself is non-functional. And this is why—and by the way, Mr. Artman, how many tribes have been recognized by the legislative process?

Mr. ARTMAN. I believe nine have been recognized by the legislative process.

Mr. YOUNG. Twenty. Twenty.

Mr. ARTMAN. Twenty?

Mr. YOUNG. Twenty. And so this is not new. This is a process we have gone through. And usually it is because of inaction of the, what we call the Federal acknowledgement process. And I believe one of them said maybe we ought to change this process, maybe we need a little bit of reorganization downtown. The Bureau is not my favorite bureau right now; hasn't been for years.

You have grown, you have asked for money. It is not your fault, you just got sworn in. You have asked for money each year, and I have followed those dollars, and it doesn't get to the recipients. It stays with the Administration, and the Administration grows every year. And that is not what it should be like. That is why I support the contracting privileges in trying to get, you know, more tribes involved in running their own businesses.

I think that is something that we really ought to look at. Because, Mr. Chairman, I have not seen the growth in this agency it should have, as far as recipients receiving those dollars.

And as we go through this authorization process in asking for dollars, maybe we ought to think about where we are going.

I do support the Virginia tribes. I do support the Lumbee. I know there are some in this room who do not. But I have been on this committee long enough to know, 34 years, there has been little action downtown.

And by the way, let us go back to how many tribes have been recognized by your agency in the last 20 years?

Mr. ARTMAN. In the last 20 years I think that there have been 14.

Mr. YOUNG. Fourteen. Twenty years and 14. How many in 30 years?

Mr. ARTMAN. Forty have been determined through the acknowledgement process.

Mr. YOUNG. Forty?

Mr. ARTMAN. Forty.

Mr. YOUNG. That is better than you said the first number, yes. OK. How many about in the last 35 years?

Mr. ARTMAN. That I don't know, sir. I think that goes all the way back to, I am actually not sure.

Mr. YOUNG. OK, well, find that out. Now, how many have been recognized in the last four years?

Mr. ARTMAN. The last four, I think that is getting closer to one.

Mr. YOUNG. One.

Mr. ARTMAN. Yes.

Mr. YOUNG. In four years.

Mr. ARTMAN. Strict to the math, yes, one.

Mr. YOUNG. What I am leading up to, Mr. Artman, my problem, my concern is you are being asked, let us go through the process, go through the Federal acknowledgement process. One in four years? And how many people have applied?

Mr. ARTMAN. How many people have applied?

Mr. YOUNG. How many tribes?

Mr. ARTMAN. There have been 62 petitions. But we are not going to, the ones that have, with complete petitions, 62.

Mr. YOUNG. And you have one.

Mr. ARTMAN. In the last four years.

Mr. YOUNG. In the last four years. Mr. Chairman, my case rests.

Mr. ARTMAN. Just to clarify, though, that has been acknowledged. There have been six others that have been denied through the process, as well.

Mr. YOUNG. One in four years out of 62. My case rests.

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina, Mr. Shuler.

Mr. SHULER. Thank you, Mr. Chairman. Mr. Artman, one of the questions, we are obviously talking about the budget and restraints, and obviously to go through the recognition you would have to obviously increase the budget.

But what about if, in fact, the Lumbees are recognized as a tribe? What would the impact be on the budget of the BIA?

Mr. ARTMAN. A couple of years ago, when asked a similar question, we did a study on that. And for the year, at that time that was Fiscal Year 2006, we determined that the initial implications to the budget would be approximately \$80 million. After that, from 2007 to 2011, we determined that the impact would be \$403 million, I believe.

Mr. SHULER. So almost a half a billion dollars.

Mr. ARTMAN. Yes.

Mr. SHULER. So if Congress didn't fund the increase on that budget, what would happen to the funds with the recognitions of the new tribes? What would happen if Congress did not increase the budget?

Mr. ARTMAN. Well, we would, of course, follow the letter of the law. And as written, I suspect that we would have to push back some of the petitioners that are in the acknowledgement process right now, and focus on the needs as mandated by Congress.

Mr. SHULER. So we would actually be taking from other tribes some of the, basically the needs that they are so lacking now, as the Ranking Member Young had indicated, that some of the funds aren't necessarily getting totally to the people who need it.

Mr. ARTMAN. That is correct, Congressman.

Mr. SHULER. When was the last time a tribe received recognition?

Mr. ARTMAN. The last time the Lumbees applied, do you have that, Leif? There have been a number of letters. We have received, we can focus on eight groups that have submitted petitions throughout the process, throughout the years, that could be recognized as Lumbee. Let us focus on the Lumbee Regional Development Association, 1980.

Mr. SHULER. Was the process complete? Was it followed through completely?

Mr. ARTMAN. No, it wasn't. Right now the law prohibits us from considering them through the acknowledgement process.

Mr. SHULER. All right. Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. I understand that our colleague, Mr. Wolf, expressed some concerns about the Indian gambling process, and I was not here to hear his testimony. But I read an article in Business Week Magazine a few months ago which said that Indian gambling was just about out of control, and that it was now more than a \$30 billion industry, and growing by leaps and bounds.

And in fact, I think there would not be nearly as much interest in getting recognition by some of these Indian tribes if it was not for their interest in this very lucrative Indian gambling business.

We now have half of the land in some type of government ownership, Federal, state, or local. Yet we keep taking over more. This sounds so good for a politician to create a park, yet we can't take good care of the parks that we already have.

My point is we keep shrinking the tax base at the same time the schools and everybody else is coming to us wanting more money. And so I read a George Will column a few months ago which said that now every state but two, Utah and one other, I think, have some form of gambling. And we are just going gambling crazy in this country. And I am not opposed to some of it, but I am afraid the gambling addiction is going to become a big problem in this country in the years ahead, and maybe already is.

And what I am wondering, Mr. Artman, then, have you ever considered recognizing that Indian gambling is excessive at this point, or almost out of control, and asking some of these tribes if they would be willing to accept recognition, but waiving or giving up their right to get into the gambling business?

Mr. ARTMAN. Thank you, Congressman. Right now Secretary Kempthorne has stated his concerns with the two-part determination, which seems to be where many of the tribes are focused right now in terms of Indian gaming. And right now we are currently finishing up the development of the Section 20 regulations, which would further define the Indian Gaming Regulatory Act, specifically on areas such as allowing restored tribes, tribes with initial reservations, and tribes settling land claims, and how they would game through that, and also the two-part determination.

In addition, we are beginning the deliberative process of amending the 151, or defeated trust regulations, as well. And there will be a heavy emphasis, and there has, as already been stated by both Secretary Kempthorne and myself, that we are going to be looking at the off-reservation gaming question in particular.

So the Department of the Interior is doing what it can do within its parameters to take a look at that issue. We will be in consultation with both the tribes and the local communities that are impacted by this industry, as well.

Mr. DUNCAN. Well, I can tell you that I think it is getting out of control. I know all the states have gone to it in a desperate attempt to get more and more revenue, but it is just becoming excessive. And I think it is creating a real problem.

I would probably go along with some of these Indian recognition efforts—in fact, many of them—if these tribes would waive or give up their right to get into this lucrative gambling business in return for being granted recognition. But I don't believe they will do it. I believe that their primary goal is to get into this gambling business, and I think it has gone beyond the point of being at a reasonable level. And I wish that your department would take that into consideration.

Thank you very much, Mr. Chairman.

Mr. ARTMAN. Thank you, sir.

The CHAIRMAN. The Chair recognizes the gentleman from Oklahoma, Mr. Boren.

Mr. BOREN. Thank you, Mr. Chairman. I don't really have a lot of questions for the member of our panel, just really one.

I do want to say thank you for having this hearing. I was able to meet with Chief Hicks, and I appreciate the dialogue that we have had. I also want to recognize a former Oklahoman. He is now in Indiana, our former basketball coach at the University of Oklahoma. We do miss him. He is a former neighbor of mine, actually. I used to live just a few blocks away, and would see him working out. Of course, I was the one who was sitting in my front yard.

But anyway, I want to talk a little bit about the administrative process. I know there is a lot of motions going on right now; there are a lot of people on different sides of this issue.

I have received several letters, one from Chief Smith, another from Chief Gray, that is in my packet, expressing their concerns about the legislation. But really what I want to do is talk about the process, the recognition process and the seven criteria.

Could you describe that a little bit for some of us that are new to this recognition process? I don't want you to go in great detail, but talk a little bit about where the Lumbees would fall in if they were to go through this process, starting off with one, existence as an Indian tribe on a continuous basis since 1900; two, existence predominantly as a community, on down the list.

Could you just touch in general terms about—because we have talked about only so many tribes have been recognized through the process. A lot of people are frustrated, and that is why you see a lot of people going to the legislative route.

Could you tell us where the Lumbees would fall in? And I know you can't really go into great detail, but it would be nice to hear. Thank you.

Mr. ARTMAN. Sure. Thank you, Congressman. It would be difficult to sit here today and tell you exactly where the Lumbee are going to fall into how they would match up against the seven criteria for a number of reasons.

First of all, since 1956 the Lumbee haven't been allowed to go through the Federal acknowledgement process. So as a rule, we haven't had an opportunity to review their record. And it would be likely to expect that because of that Federal mandate, that their record at this point might be incomplete, the record that we possess. I am sure that after this many years and with that many potential members, they probably have very complete records. So I can't really say which way, how they would fall in against all the criteria.

Now, the criteria generally look at how far back is the existence, a continuous existence going back to a date certain. And you are looking at records, you are looking at government, you are looking at existence through oral history; any number of criteria. And generally, that is the core from which all seven of those criteria emanate.

So without a complete record, because of that prohibition, without us having the ability to go through that, and I think it would be predeterminative to sit here and actually go through that. But so far the process has worked with the seven criteria.

And again, just to reiterate, as I said before, the seven criteria are general rules that we follow to achieve what we consider to be, if it is a positive determination, a very solemn event. And that is the government-to-government recognition. It is a status that not many have. It is a status that is unique and special to American Indians. And it is one that we believe in protecting and making sure that it is done correctly.

Mr. BOREN. Just a real quick follow-up, and I look forward to our next panelists talking. There are some discussions about ancestry, and there is some debate. Could you tell us a little bit about, for those—I am just a second-termer on this committee—about how long the process takes?

You know, there was some mention that hey, it doesn't take very long, others are very frustrated that it is taking a long time. Just about the process in general, not specifically about the Lumbee, but anyone who is coming through the BIA and needing assistance. And our Ranking Member mentioned that earlier.

Could you talk about the timeliness of getting decisions and why it is taking so long? Or if not, if it is not taking long, could you talk to us a little bit about that?

Mr. ARTMAN. Sure. In a best-case scenario, starting with the best-case scenario, if we have a complete record and nothing, no other petitioners in front of that petitioning group, it should take about 25 months to do, to go through the process, assuming there are no challenges, no extension requests and what-have-you. But you do start looking at challenges. You have some groups split, or perhaps members will peel off and seek petition in another, seek their own petition for recognition.

At the current time, with the 17 entities ahead—that is what we have on the ready and active list right now, 17 petitioners—they have complete petitions. We have groups of four that include anthropologists, sociologists, genealogists, looking at, examining these records, and sometimes immense records: thousands of pieces of paper, reams of paper. Going through and making sure that they are accurate, that there is no fraud involved in the development of those records.

With all that, at its current pace, if someone were to come on the ready and active list right now, and again in the best-case scenario with that kind of line, you are looking at probably four to seven years for the recognition process. And I know with some there is accusations that it has taken decades, or over a decade, up to multiple decades. And I would say if you go back and look at a lot of those situations, you are looking at either incomplete records, requests for extensions. There are extenuating circumstances to that.

Again, we used to have two groups that were looking at this. It was recently expanded to four groups in the last couple of years, I believe. And those individuals are working as hard as they can, both with what is in front of them, and also helping the other petitioners get into that, potentially get into that ready and active list.

Again, I think it is probably, well, time is certainly where there is a lot of focus, and for good reason. Many of these tribes have been petitioners for many years.

But I think it is probably best to look at the results, and the reason why we take so much time. Again, we are deliberative, because it is an important result. And as has been mentioned here today, there are privileges and immunities associated with becoming an Indian tribe, one of which is the potential for gaming. Others is a potential for funds, for 638 funds for economic development, healthcare, education. A special status and standing compared to states, the United States and local governments.

So this isn't something that we necessarily want to jump into quickly. We want to make sure we are right in doing this.

Mr. BOREN. Thank you, Mr. Chairman.

The CHAIRMAN. The gentlelady from the Virgin Islands, Ms. Christensen.

Ms. CHRISTENSEN. Thank you, Mr. Chairman. Assistant Secretary Artman, the Chairman did make mention of the fact that your testimony was pretty silent on some of the issues regarding the Virginia tribes. But having heard, I want to ask a question that arises out of some of the testimony we did hear from Members of Congress.

As you know, we are going to be receiving testimony from some of the Virginia tribes documenting deplorable actions taken by various individuals and the Commonwealth of Virginia against the native people of Virginia, which may prevent them from meeting all of the Federal acknowledgement criteria. And in addition, unlike tribes in the Western United States, historical times for the Virginia tribes goes back to the 1500s, when little written documentation exists which may help them to meet the criteria. And then we heard that the other documents, much of the other documentation was destroyed.

So what allowances do the Federal acknowledgement criteria make for actions such as these?

Mr. ARTMAN. Thank you, ma'am. There was testimony about a deplorable history there, and that goes without saying. And we have not yet received complete petitions from many of the six potential tribes, the six petitioners on the list.

Ms. CHRISTENSEN. But what I am particularly referring to is that there is a lot of documentation that is just not going to be available. So what allowances?

Mr. ARTMAN. That was one statement that was made. And without a complete record, without being able to look at the complete record, it is hard for us to make the determination, if what would be missing is something that would be important to us in this determination.

For example, there was made mention of the fact that individuals would go into the records of the Native Americans and change their descendency.

Ms. CHRISTENSEN. Yes.

Mr. ARTMAN. From I for Indian to C for color. That does not prohibit that record from being used as part of the petition. That is still something that we can look at. We can verify the descendancy of the ancestors in another, through other methods. That could be a piece of the puzzle that would complete the whole picture for us.

So to say that they have been destroyed and unusable may be rushing to a conclusion. We, I guess, these records are thousands of pieces of paper. And we made these pieces together. We are looking at long and disparate histories, in some cases, and yet we still manage to put together a complete record.

Ms. CHRISTENSEN. So the lack or the changing or the destruction of the records does not have to be an obstacle to them going through the process successfully.

Mr. ARTMAN. In the hypothetical, it does not have to be, does not have to be an obstacle. Without seeing a completed petition submitted, it is difficult to answer that question thoroughly. But in the hypothetical, it does not have to be.

Ms. CHRISTENSEN. But you do recognize that some extraordinary steps would have to be taken by the Department because of the lack of complete or accurate records, due to some of the actions of the Commonwealth of Virginia.

Mr. ARTMAN. Yes, ma'am. The history of the tribes in Virginia is not unique. This is a story that is played out all across the country, and something that our Office of Federal Acknowledgement has had to contend with.

Ms. CHRISTENSEN. OK. And my next question, in 1956 Congress specifically enacted legislation recognizing the Lumbees as Indians, and some argued then terminating them at the same time, as other people have alluded to.

Regardless, it was Congress's intent to demonstrate that in fact they are an Indian tribe. So I think you are saying that the Lumbee Tribe should go through the Federal acknowledgement process. Are you saying that the Department should have the authority to review and overturn Congress's decision to recognize the Lumbees as Indians? And if so, are you saying this power should apply to all Congressionally recognized tribes, or only the Lumbees?

Mr. ARTMAN. No, ma'am. And I would never say the Department has the ability to overturn a Congressional Act. I wouldn't even insinuate that.

In this particular case, if we are to—the Lumbees have a complex history. And we have seen that, we have received numerous letters and petitions from various groups in Robeson County and the surrounding counties. So to say that one particular tribe is, or one particular group of people are Lumbee or not, we would need to look at a complete record. And that is all we are asking for, is the ability to do that.

For example, are we to combine all of the groups, the Tuscarora, potential Cherokee, and Lumbee into one group, much as sometimes has been done in California, and recognize it as a Lumbee? Or are there distinct lines of different tribes, or perhaps even different branches of the same tribe?

This is a history we haven't had the opportunity to look at. And as mentioned at the very beginning, Congress has plenary power, and we follow the letter of the law.

Ms. CHRISTENSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Donna. The gentleman from North Carolina, Mr. McIntyre.

Mr. MCINTYRE. Thank you. I will be brief because I am eager to allow our next panel to come before the full Committee.

In summary, Mr. Assistant Secretary, you stated that you do agree that the 1956 Lumbee Act did not grant the Lumbees the full recognition that they would have as a Federally recognized tribe, correct?

Mr. ARTMAN. That is correct. There are privileges and immunities that the Lumbee cannot access.

Mr. MCINTYRE. And you agree that the Solicitor General's opinion of 1989 forbids that from proceeding under the regular process, as currently stated, is that correct?

Mr. ARTMAN. Yes, sir.

Mr. MCINTYRE. And then you also state that legislation is necessary for the Lumbee Indians to be afforded the opportunity to proceed with recognition, correct?

Mr. ARTMAN. Yes, sir.

Mr. MCINTYRE. OK. Now, you have stated, in answering to Mr. Shuler earlier, you say that benefits the tribe would be due would be approximately \$80 million per year, is that correct?

Mr. ARTMAN. That is the budget that we were required to go through the processes as mandated by the current law.

Mr. MCINTYRE. And for every year that they suffer not having recognition, that is another year that passes that they receive absolutely no Federal benefits, is that correct?

Mr. ARTMAN. That is correct.

Mr. MCINTYRE. OK. No further questions. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. I have no questions.

The CHAIRMAN. The Chair will call panel number two to the table, with testimony on H.R. 65. And the panel is composed of the following individuals. Chairman James E. Goins, Lumbee Tribe of North Carolina, Pembroke, North Carolina; accompanied by Ms. Arlinda Locklear, Esquire, the attorney for the Lumbee Tribe of North Carolina; Principal Chief Michell Hicks, Eastern Band of Cherokee Indians, Cherokee, North Carolina; Mr. Kelvin Sampson, the Indiana University head basketball coach from Bloomington, Indiana. We welcome him to the Committee, and at the outset, of course, I would like to congratulate you, Coach, for your success in your first year as the basketball coach at Indiana, leading the Hoosiers to the NCAA tournament and an undefeated record of 15 wins at home. With what is reputed to be a great recruiting class coming to Bloomington, I wish you continued success, and of course that is excluding my alma mater, Duke. I also want to welcome Dr. Jack Campisi, the anthropologist consultant for the Lumbee Tribe of North Carolina.

Lady and gentlemen, we welcome you to the Committee. We have your prepared testimonies, and they will, of course, be made part

of the record as if actually read. And Mr. Chairman, do you want to start off? Mr. Chairman Goins, sorry.

STATEMENT OF JAMES E. GOINS, CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA, PEMBROKE, NORTH CAROLINA; ACCOMPANIED BY ARLINDA LOCKLEAR, ESQUIRE, ATTORNEY FOR THE LUMBEE TRIBE OF NORTH CAROLINA

Mr. GOINS. Chairman Rahall and Members of the Committee, thank you for the opportunity to testify in support of H.R. 65, a bill to extend full Federal recognition to the Lumbee Tribe of North Carolina.

On behalf of the Lumbee people, I want to express our particular gratitude to you, Chairman Rahall and Congressman Young, for your support for our cause. Also on behalf of the Lumbee people I want to express our heartfelt appreciation to Congressman McIntyre, Congressman Hayes, Senator Dole, and Senator Burr for their leadership on this issue.

I would like also to thank my elders, my veterans, and my leaders to tribal council for their attendance and support today.

Mr. Chairman, my name is James E. Goins, and I am the Chairman of the Lumbee Tribe. I have a written testimony that I request be entered into the record.

I am the great-great-grandson of Solomon Oxendine, who, along with 45 other Lumbee tribal leaders, petitioned the Federal government for Federal recognition in 1888. Today I stand before you once again requesting that you grant full Federal recognition to my people, the Lumbee.

I am joined by Kevin Sampson, an enrolled member and celebrated basketball coach of Indiana, who will tell the Committee what Federal recognition means to our people. Dr. Jack Campisi will testify that we are in fact an Indian tribe. Finally, I am accompanied by the tribe's attorney, Ms. Arlinda Locklear, who will be available to answer any technical questions for the Committee.

Some people try to create confusion about our name. These were the state-imposed names, not ours. The only thing we have chosen is the Lumbee Tribe, which derives from the river from where we have always lived. This short series of film clips that was taken earlier this month will show you key parts of our community and history. It has always amazed me how critics of the Lumbee people become believers once they visit Lumbee territory.

So this morning I bring to you the land of the Lumbee, and I respectfully request that this short video segment be entered into the record.

This panoramic view of St. Anna Church is we see the Lumbee River Holiness Methodist Conference. Excuse me, let me start over. I am a little nervous there.

St. Anna Church, a historical Indian church, and one of more than 120 in our territory, shown here has been led by the Lumbee pastors for more than 100 years. This church is located in the Cheraw settlement, and was the perfect staging area for Fred Baker, a special Indian Agent ordered by the Commission of Indian Affairs to study the history and conditions of my people.

The Indians report, one of 12, by the Department of Interior, stated that over 2,000 Lumbee met him at St. Anna. Mr. Chair-

man, I have these 12 reports here, and I would like to request they be made part of the record.

Every single one of these reports identify us as Indian, and notes the strength of our community and leadership. In this panoramic view of St. Anna Church we see the Lumbee River Holiness Methodist Conference, created in 1900, and today this association remains the only all-Indian religious conference in the country.

Education has always been important to our people. When the state recognized us in 1885, it established a school system controlled by the tribe, and lended it eligibility to our children. It is one of the earliest pictures of our Indian schools.

Here is Prospect School that today sits on a portion of a Cheraw settlement. Prospect School has a student population of 99.8 percent Indian. The principal, most of the teachers, and yes, even the superintendent of the Robeson County Public Schools are all Indian. This school is very dear to my heart. My grandfather attended this school, my father attended this school, I attended this school, even my children and now my grandchildren attend this school.

The Indian Normal School, founded in 1887, established to educate Indian teachers, is now in the University of North Carolina at Pembroke. Due to the efforts of early leaders, our youth today attend predominantly Indian schools and live in Indian communities.

This is the family home and burial site of the tribe's most noted hero, Henry Berry Lowrie. Lowrie led the effort to protect our people against constriction and to hard labor by the local militia during the Civil War. Lowrie watched militia execute his father and brother in 1865, and it is here where they are buried. This began his 10-year quest to protect his family and the Indian community against tyranny.

Here you see Red Banks. This is where the BIA proposed to establish a resettlement program for our people in 1935. But the BIA transferred the program to the Department of Agriculture. Even so, the Red Banks Mutual Association, a long-running all-Indian agricultural farming co-op, was established here.

Now you see scenes of Lumbee homecoming, held annually in Pembroke, where over 25,000 Lumbee people gather to celebrate our culture and heritage. It is during this time that I give my state-of-the-tribe address, as mandated by our tribal constitution. These streets were closed to celebrate the passage of the 1956 Lumbee Act. We thought we had been recognized at last, only to discover that Congress had instead terminated Federal responsibility for our tribe.

Finally, our veterans. Honor, duty, and love of country are qualities our brothers, our Lumbee veterans instill in our youth. These are not just empty words, but this is our way of life. My father, who served in World War II, passed these same qualities down to me. Lumbee veterans have defended your way of life and our way of life. No words can truly express my sincere appreciation for all Lumbee veterans who have served in every war and conflict since Bennett Locklear, one of my ancestors who fought in the Revolutionary War. As a result, I proudly served my country by enlisting in the Army, and served in Vietnam. For my service in Vietnam

I was awarded the Purple Heart, the Bronze Star, and the Air Medal.

We think it is time for Congress to complete what it started in 1956. In the words of my dear friend, Congressman Mike McIntyre, it is time for discrimination to end and recognition to begin.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Goins follows:]

**Statement of Chairman James E. Goins,
Chairman, Lumbee Tribe of North Carolina**

Chairman Rahall, Congressman Young, and members of the committee, thank you for the opportunity to testify today in support of H.R. 65, a bill to extend federal recognition to the Lumbee Tribe of North Carolina. On behalf of the Lumbee people, I want to express our particular gratitude to you, Chairman Rahall and Congressman Young, for your support for our cause. Also on behalf of the Lumbee people, I want to express our heartfelt appreciation to Congressman McIntyre, Senator Dole, and Senator Burr for their leadership on this issue. With their efforts, the Lumbee people are hopeful that we will finally reach our goal of federal recognition this Congress.

Mr. Chairman, my name is James Ernest Goins and I am the Chairman of the Lumbee Tribe. I am joined by Kelvin Sampson, an enrolled member and Head Basketball Coach for Indiana University, who, after my statement, will tell the Committee what the prospect of federal recognition means to our people. Finally, Dr. Jack Campisi, an expert anthropologist who has worked with the Tribe for more than twenty years, will testify that the Lumbee qualify as an Indian tribe. We are accompanied by the Tribe's attorney on recognition, Arlinda Locklear, who will be available to answer any technical questions for the committee.

The Lumbee Tribe is well known in Indian country, both because of the Tribe's long quest for federal recognition and the number of prominent Lumbees who work throughout Indian country—political appointees in Indian affairs, educators, doctors, lawyers, and others, like Coach Sampson. In our relations with other tribes, we sometimes encounter people with questions about the Tribe's entitlement to federal recognition. We always invite these people to visit the Lumbee community, to walk among us in all Lumbee churches and schools, and to see where our history took place and continues to be made every day. When they do this, they are struck by the fact that Lumbee territory is Indian country: it is visible in the faces of our people and in the strong community ties that bind the Lumbees.

Mr. Chairman, we wish the committee could visit our community and see these things as well. Since that is not possible, we have done our best to bring our community to you. I will present a series of short film clips, all of which feature key parts of our community and history. We believe you'll see through these clips that Lumbee territory is Indian country. As such, we are entitled to the same federal recognition enjoyed by the rest of Indian country.

Before I show the film clips, though, I want to address something that the committee members are likely to hear a lot about today, and that is the name Lumbee Tribe. We Lumbees have not always been known by that name. In 1885, the State of North Carolina first recognized our ancestors as the Croatan Indians of Robeson County. In 1911, the State changed the law to recognize our ancestors as the Indians of Robeson County. And in 1913, the State again changed the law to recognize our ancestors as the Cherokee Indians of Robeson County. The Tribe did not choose any of these names. Instead, they were chosen by members of the State Legislature at the time who thought of themselves as amateur historians. Our people grew tired of all these names imposed by state law and, in 1952, asked the State to conduct a referendum on the adoption of the name Lumbee, drawn from the Lumber River where our people have always lived. The State agreed and the referendum passed overwhelmingly. In response, the State changed the law once again in 1953 to recognize the Tribe as the Lumbee Indians of Robeson and adjoining counties. We have been recognized by the State as the Lumbee Tribe ever since. But whatever name the State called us, we are the same people that the State first recognized in 1885. In fact, I am a lineal descendant of one of the Croatan leaders who the State recognized in 1885 and who first petitioned the Congress for federal recognition in 1888. So the Lumbee community that you are about to see is the same Indian community that the State of North Carolina has recognized since 1885.

St. Anna's Church

The first video clip shows St. Anna's Church. This church is more than a hundred years old. It has today and has always had a Lumbee minister and an all Lumbee congregation. There are more than 120 such churches in Lumbee territory. They are an important part of our community, with most people's social lives organized around their church and their families. This particular church is significant because this is one of the places where Fred Baker, then the BIA Superintendent for the Sisseton Indian Agency, held meetings with the Lumbee people in 1935. Agent Baker was sent to Lumbee territory by the Commissioner of Indian Affairs to study the history and condition of the Lumbee people. He reported that 2,000 Indians showed up at his meeting at St. Anna Church and that he was deeply moved by their hope for federal involvement in the Indian community there. His report on the Lumbees was one of twelve that the Department of the Interior has done, starting as early as the 1912 Pierce Report. All these reports document the Indian ancestry of the Lumbees, our tight knit communities, and the need for assistance for federal Indian services.

The panoramic view around St. Anna's Church is also important. It shows other all Indian institutions in our community, for example, the Pembroke Volunteer Fire Department and the headquarters of the Lumber River Holiness Methodist Conference established in 1900, an all Indian conference of Holiness Methodist churches. This panoramic view also shows that our people continue to live in the same areas as their ancestors. The family settlement of Reverend Zimmie Chavis is here. The Chavis family has owned this land since before the Civil War and remains there today.

Prospect Elementary School

This school is located in what the early land records identify as the Cheraw Old Field, the heart of the eighteenth century Cheraw community. Today, that community is known as Prospect. This school has an Indian principal, Indian teachers, and virtually all Indian student population. I attended this school as a child and my grandchildren attend it today.

There are many other schools like this in our community. Indian education and schools have been an important part of our history. Our people first sought recognition from the State because our children were not allowed to attend white schools after the Civil War. So, in the 1885 state statute that first recognized the Tribe, the state established a separate school system just for Lumbee children. Tribal leaders were authorized to control the schools and determine eligibility to enroll; our people established what we called blood committees for this purpose. As far as we know, the Lumbee Tribe is the only one in the country to control its own school system under state law. And we did so for nearly a hundred years. We use the records of those blood committees today as one of the base documents to establish eligibility for tribal enrollment.

In 1887, our people petitioned the State for a normal school to train Lumbees as teachers for our school system. In response, the State authorized and gave us some funding for the Pembroke Indian Normal School; today, the Normal School is the Pembroke campus of the University of North Carolina. The State gave us too little money, though, to maintain the Normal School, so we first asked for federal recognition in 1888 so that we could get federal Indian education assistance. We continued to operate our school system until the early 1970's, when a federal judge ordered North Carolina to desegregate its schools. That judge told the Tribe that it could not maintain a separate school system since it was not federally recognized. So we lost our separate school system, but because most of our communities are predominantly Indian, many of our schools remain predominantly Indian.

A particular incident in the history of our Indian schools shows the strength of Lumbee leadership and independence. In 1913, the North Carolina Attorney General issued an opinion saying that the county board of education could overrule decisions by the Tribe's blood committees on who was eligible to attend Lumbee schools. This was not acceptable to the Tribe. The Tribe's leaders convinced the North Carolina Legislature to effectively set aside the Attorney General's opinion by passing a statute which established a committee of all Lumbees, named in the statute, with exclusive authority to hear challenges to enrollment decisions in our schools.

Lowrie site

This next film clip shows the homesite of Allen Lowrie, the father of Henry Berry Lowrie who led the Lowrie gang. This site is an important part of the Tribe's history dating back to the Civil War. Tribal members were prohibited from serving in the Confederate Army, but the Home Guard in the county conscripted our people into labor gangs and assigned to build fortifications to protect the City of Wilmington.

Those who could escape did so and returned home where they hid out in the swamps of Robeson County, with the protection of other tribal members. Tension increased to the point of open hostilities by the end of the Civil War. Eventually the Home Guard captured Allen Lowrie and his son, William, at the Lowrie home-site, and executed them. This was in the winter of 1865. Henry Berry Lowrie, Allen's other son, launched a virtual war against the Home Guard and, by 1870, was able to strike the local authorities with impunity because of the protection of the Indian community. This continued until 1872, when Henry Berry disappeared in the swamps, never to be seen again. Henry Berry Lowrie is a folk hero among our people and we celebrate his exploits every year in an outdoor drama we hold called, "Strike at the Wind."

Red Banks

This particular area is called Red Bank, located on the Lumber River. You'll remember the 1935 Baker Report that I mentioned before. Well, Agent Baker recommended to the Department of the Interior that it acquire land for settlement of the Lumbees under the recently enacted Wheeler-Howard Act, also known as the Indian Reorganization Act. He recommended that the land be purchased here, at Red Bank. The Bureau of Indian Affairs initiated the project, but the project was transferred from the BIA to the Resettlement Administration of the Department of Agriculture, for reasons that were never explained to the Tribe. Indian families did eventually settle here and established the Red Banks Mutual Association, a long running farming cooperative that was all Indian. The effort to use this land base to organize under the IRA failed, though, when local white were allowed to settle a portion of the land.

Another effort by the Tribe to organize under the IRA should also be mentioned. At the same time that the resettlement effort was underway, Assistant Solicitor Felix Cohen wrote to Lumbee tribal leaders and laid out a plan that would allow the Tribe to become organized. First, tribal members had to consent to physical examinations to determine whether they were one-half or more Indian blood. Most of our people refused to consent to these examinations, testing hair, teeth, head size, and other such demeaning things. 209 of our people agreed to submit to these examinations and the BIA certified 22 of these individuals as one-half or more Indian blood. This was really just made up science—in some cases, full blood brothers and sisters were said to have different quantum of Indian blood. But this effort eventually failed, too, when the BIA refused to take land into trust for these half-bloods so that they could organize under the IRA.

Main Street, Pembroke

This film clip shows Main Street in the Town of Pembroke. Pembroke is in the heart of Lumbee territory. All its elected and appointed officials are members of the Lumbee Tribe—the mayor, the town council, town clerk, police department, etc. This particular clip shows an event that takes place in Pembroke every year that is important to Lumbees—the annual Lumbee Homecoming that takes place every year at the Fourth of July. Thousands of Lumbees come home for this event because Robeson County is always home to us wherever we may live. During Homecoming we visit family and participate in tribal events such as a parade, beauty pageants, and a pow-wow.

In 1956, the streets of Pembroke were closed for a parade and celebration of the passage of the 1956 Lumbee Act by Congress. As I mentioned earlier, the Tribe first sought federal recognition in 1888 so that we could get federal assistance for the Indian normal school. That request was turned down by the Secretary of the Interior in 1890, because as he said, he had too little education funding for tribes already under his jurisdiction and the Lumbees, as a so-called "civilized" tribe recognized by the State, should look to the State for assistance. After that, the Tribe's congressional delegation introduced a series of bills in Congress to extend federal recognition to the Tribe. These bills generally were copied from the most recent state legislation recognizing the Tribe. After the State amended state law to recognize the Tribe as Lumbee in 1953, an identical bill was introduced in the Congress to achieve federal recognition on the same terms. When this bill passed Congress in 1956, the Tribe celebrated in the streets of Pembroke.

However, the 1956 Lumbee Act was not identical to the State law passed in 1953. The Department of the Interior had requested that Congress amend the federal bill by including termination language, language that the Department of the Interior said was necessary so that the Tribe would not get federal Indian services. The Congress included this termination language in the 1956 Lumbee Act. And because of that termination language, the Lumbee Tribe is not eligible for federal Indian services. Also because of that termination language, the Lumbee Tribe is not eligible for

the administrative acknowledgement process at the Bureau of Indian Affairs. So as the law stands now, the Lumbee Tribe can be federally recognized only by an act of Congress. As far as we know, the Lumbee Tribe is the only tribe in the country in this position.

VFW Post, Pembroke

This last film clip is particularly significant to me—it shows the VFW Post in Pembroke. All the members of this post are Lumbee Indians. It includes veterans from World War II, the Korean War, Viet Nam, and Dessert Storm. We also have a tribal color guard of our Indian veterans. Our tribal color guard members wear a special uniform that shows our pride in being Lumbee and our pride in our service to our country.

I'm a proud member of this Post. I enlisted in the Army and served in Viet Nam. The men in my squad called me "Chief." For my service in Viet Nam, I earned the Purple Heart, the Bronze Star, and the Air Medal. My father, too, serviced this country in World War II. Lumbee people have always served this country as far back as 1775 when we fought with the colonists. Many of our veterans' records identify them as Indian, yet the United States does not officially recognize us.

Conclusion

Mr. Chairman and members of the community, our people have been at this work for federal recognition for more than one hundred years. The Bureau of Indian Affairs has studied us and the Congress has developed a voluminous congressional record on us. No other tribe has come to Congress with such an extensive record, one that consistently supports our Indian ancestry, our descent principally from the aboriginal Cheraw Tribe, and our separate community with distinct and strong leadership. Mr. Chairman, we hope these film clips have shown you what visitors to our community see, that we are Indian country and should be recognized as such.

The CHAIRMAN. Thank you. Principal Chief Hicks.

STATEMENT OF MICHELL HICKS, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS, CHEROKEE, NORTH CAROLINA

Mr. HICKS. Hello and good morning. Chairman Rahall, I appreciate the opportunity to be here today.

Congressman Shuler, thank you for all that you did. You have made a very good name for yourself here in D.C., and Western North Carolina thanks you and we appreciate you.

I want to thank the Members of the Resources Committee for allowing me to say a few words today and to testify on the views of the Eastern Band of the Cherokee. The Eastern Band is a fairly recognized tribe in Western North Carolina. We reside on the Cherokee Reservation known as the Kwala Boundary. It is about 56,000 acres. We have 13,700 members. We are the largest Federally recognized tribe east of the Mississippi; also, a member of the 25 USET tribes.

The Eastern Band's ancestors were the Cherokees who resisted the Trail of Tears, this ugly scar on our American history that caused the deaths of thousands of our people, the Cherokee people. And for centuries the Cherokee people have fiercely protected our separate cultural identity, and that is what we are here about today is identity.

We have a living, breathing culture with a unique spoken language, and also obviously a written language. The Federal government worked hard to destroy our language and destroy our ways, destroy our culture, but the Cherokee people have survived and flourished nonetheless.

Our long-defended identity is threatened by several groups throughout the Southeast who have illegitimately claimed our

Cherokee identity as their own. Without a doubt, the Lumbee are one of these many groups who fall unfortunately into this category.

Since 1913, over 90 years ago, the Eastern Band has been concerned about the issue of Lumbee recognition. Long before they took the name Lumbee, this group sought recognition from the State of North Carolina as the Cherokee Indians of Robeson County. Over our opposition, that recognition was granted. And for more than 40 years they were state-recognized as a Cherokee tribe.

In 1924 the Lumbee sought Federal recognition from the U.S. Congress, and I quote, "The Cherokee Indians of Robeson and adjoining counties." In 1932 they sought once again to be recognized by Congress as a Cherokee tribe. Congress rejected both of these attempts.

This uncertain history of Lumbee identity helps to explain the Eastern Band's position on Lumbee recognition and this bill. The Eastern Band opposes any legislation that would Congressionally acknowledge the Lumbee as an Indian tribe. Doing so would undermine the cultural and political integrity of the Eastern Band and other Federally recognized tribes who value the government-to-government relationship with the United States.

We would not oppose, however, legislation that would clear the way for the Lumbees to get a fair shot—and I repeat, a fair shot—at Federal recognition through the Department of Interior's Office of Federal Acknowledgement. And I want to repeat, we would not oppose legislation that would allow the Lumbee to go through the process.

Credible experts in genealogy raise serious questions about Lumbee identity that this committee cannot ignore. Dr. Virginia DeMarce, the former Chair of National Genealogical Society, and Paul Heinegg, an award-winning genealogist and author, have published research on Lumbee family genealogies, and reached conclusions that contradict the fundamental basis for the Lumbee Recognition Act.

Heinegg summarizes his conclusions concerning Lumbee identity, referring to the Lumbee as a "in all due respect, an invented North Carolina Indian tribe."

Dr. DeMarce's research demonstrates that many Lumbee families migrated into the Robeson County, North Carolina area from other places prior to 1800. Heinegg concurs. Dr. DeMarce also states that genealogical evidence does not bear out that these families significantly married into Indian families upon arrival in the Robeson County area in the 1800s.

In fact, there is evidence that non-Indians in the area did not consider these Lumbee families to be Indians in the 1840s. Beyond these families, Dr. DeMarce also states that other notable genealogists frequently refer to other self-identified—let me repeat, self-identified—Lumbee families as residing in other areas prior to any settlement in the Robeson County area.

This uncertain background may somewhat explain why the Lumbees have sought Federal recognition as four different tribes over the years: The Siouan, the Croatan, the Cherokee, and now the Cheraw.

This leads to my second point. The cultural and political integrity of the Eastern Band of the Cherokees and other tribes with living

tribal languages and longstanding government-to-government relationships with this great United States is undermined when this Congress acts arbitrarily in Federal acknowledgement matters, allowing politics and emotion to drive decision making, rather than facts about the real tribal identity.

Eastern Cherokee leaders have raised these identity concerns about the Lumbees since at least 1913, when the Lumbees first claimed to be Cherokees. And for 40 years thereafter, they were known by the State of North Carolina to be Cherokees.

Third, the Department of the Interior's Office of Federal Acknowledgement, while imperfect, is the only Federal entity equipped to make an informed, merits-based determination of Lumbee tribal identity and its recognition. Congress is not well equipped to evaluate and make these decisions, with all due respect.

And finally, Congress should be absolutely certain that the Lumbees meet the objective criteria at Interior before it enacts a bill that would cost more than \$800 million of taxpayer dollars estimated over a five-year period, based on the latest CBO numbers. And I hope through this process that a new CBO calculation is done.

Today the Lumbees claim, as I understand—I have heard about four or five estimates of the membership—over 60,000 members. This raises a rather obvious question. Where was the so-called Lumbee Tribe when President Andrew Jackson, in the 1830s, and the U.S. Army were rounding up all the Indians in the Southeast, and forcibly removing us to the West?

For these reasons, we strongly oppose the passage of H.R. 65. And Mr. Chairman, there is an established process to review these issues and make a fact-based decision.

We urge you to consider another approach, which I have heard earlier today, one that would give the Lumbee a fair chance, an equitable chance, a timely chance to meet the standard established criteria at the Office of Federal Acknowledgement. If they can meet those standards, then they will be recognized as a tribe, and we will welcome them, as we do all the other brothers as a Federally recognized tribe. And they deserve all the benefits that come with that.

But please remember, the Lumbees submitted a petition for acknowledgement to the Interior Department on January 7, 1980. On November 20, 1989, the Solicitor determined they could not complete the process because of the 1956 Lumbee Act. That was over 18 years ago. If the Lumbee had agreed to legislation giving them a fair shot, which again we offer today a fair shot, at the administrative process, then they would have their answer today. There would be no questions.

And the question we ask is whether the Lumbee want to avoid the administrative process because they believe it is unfair, or because they know it would truly examine the factual issues about Lumbee identity. The Eastern Band of Cherokee urges you to protect the integrity of all Indian nations, and oppose this current legislation today.

I thank you for the opportunity to speak.

[The prepared statement of Mr. Hicks follows:]

**Statement of Principal Chief Michell Hicks,
The Eastern Band of Cherokee Indians**

Chairman Rahall, Ranking Member Young, members of the House Natural Resources Committee, I appreciate the opportunity to testify today before this Committee to provide the views of the Eastern Band of Cherokee Indians.

The Eastern Band strongly believes that Congress should not enact H.R. 1324. As I testified on behalf of the Eastern Band three years ago before this Committee and last year before the Senate Indian Affairs Committee, this bill has factual and policy flaws that fundamentally make the bill unfair to the United States and existing federally-acknowledged Indian tribes.

First, there are serious problems with the tribal and individual identity of the Lumbee. Credible experts in the area of genealogy, who are not affiliated with the Eastern Band, have reached difficult conclusions concerning Lumbee identity that this Committee should not ignore. Paul Heinegg, whose work has been recognized by The American Society of Genealogists, concludes that the Lumbee are “an invented North Carolina Indian tribe,”¹ and that many of the persons who first self-identified as Indian in Robeson County, North Carolina, are not of Indian ancestry.

Another indisputable expert in this area is Dr. Virginia DeMarce, who formerly served as Chair of the National Genealogical Association and as an expert in this area at the Department of the Interior. Dr. DeMarce concludes from her genealogical studies that many Lumbee families do not originate from the Robeson, North Carolina, area, but migrated there from other places.

As you know, in past testimony before the Congress, Department of Interior officials also have raised serious concerns about Lumbee individual and tribal identity as well.

This uncertain background may somewhat explain why the Lumbee have sought federal recognition as descending from four different tribes over the years: Cherokee, Siouan, Croatan, and now Cheraw.

This leads to my second point. The cultural and political integrity of the Eastern Band and other tribes with living tribal languages and long standing government-to-government relations with the United States is undermined when Congress acts arbitrarily in federal acknowledgement matters, allowing politics and emotion to drive decision making, rather than facts about tribal identity. Eastern Cherokee leaders have raised these identity concerns about the Lumbee since at least 1910, when the Lumbees first claimed a Cherokee identity.

Third, the Department of the Interior’s Office of Federal Acknowledgement (OFA), while imperfect, is the only federal entity equipped to make an informed, merits-based determination of Lumbee tribal identity and recognition. Congress, while it certainly has the power to recognize tribal groups, is not as well equipped to evaluate and make these decisions as the Department of Interior.

And finally, Congress should be absolutely certain that the Lumbees meet the objective criteria at Interior before it enacts a bill that could cost the taxpayers more than \$800 million over five years, undermine the integrity of existing federally-recognized tribes, and further decrease the funds existing tribes and Indians receive. But due to the problems with Lumbee identity, Congress cannot be confident in the merits of this bill.

A fair approach would be for Congress to clear the way for the Lumbees to get a fair shot at federal acknowledgement through the Department of the Interior’s Office of Federal Acknowledgement.

Serious Problems with Claimed Lumbee Identity

“An Invented North Carolina Indian Tribe”: Credible Experts Raise Serious Problems With Lumbee Identity

Dr. Virginia DeMarce, the former Chair of the National Genealogical Society, and Paul Heinegg, an award-winning genealogist and author, have published research on Lumbee family genealogies and reached conclusions that contradict the fundamental bases for the Lumbee Recognition Act. Heinegg summarizes his conclusions concerning Lumbee identity, referring to the Lumbee as “an invented North Carolina Indian tribe.”²

¹“The Lumbees’ Long and Winding Road,” Roll Call 13 (July 17, 2006) (published following the Senate Indian Affairs Committee hearing on the Lumbee Recognition Act in 2006).

²“The Lumbees’ Long and Winding Road,” Roll Call 13 (July 17, 2006) (published following the Senate Indian Affairs Committee hearing on the Lumbee Recognition Act in 2006).

Dr. DeMarce's research demonstrates that many Lumbee families migrated into the Robeson County, North Carolina, area from other places prior to 1800.³ These include the Brayboy, Chavis (Chavers), Cumbo, Gowen, Locklear, Kersey, and Sweat families. Heinegg concurs and adds the Lumbee families of Carter, Hammond, Jacobs, James, Johnston, Lowry, Manuel, and Roberts to this list.⁴ Dr. DeMarce also states that genealogical evidence does not bear out that these families significantly married into Indian families upon arrival into the Robeson County area in the 1800s.⁵ In fact, there is evidence that non-Indians in the area did not consider these Lumbee families to be Indians in the 1840s.⁶ Beyond those families listed earlier, Dr. DeMarce also states that other notable genealogists frequently refer to other self-identified Lumbee families as residing in other areas prior to any settlement in the Robeson County area.⁷

More broadly, Heinegg states that the Lumbees from Robeson County were not Indians but "African American as shown by their genealogies."⁸

DeMarce states that Lumbee families had good reason to identify themselves as Indian at the time. The "legal, social, educational, and economic disadvantages of being African-American were so great that it was preferable for a person to be considered almost anything else."⁹ Heinegg adds that until about 1835, "free African Americans in Robeson County attended white schools and churches, voted, and [congregated] with whites. However, the relations between the whites and free African American communities deteriorated rapidly after 1835, and by the end of the Civil War they were strained to the breaking point."¹⁰ The Lumbee claims of Indian ancestry allowed Lumbee children to go to different schools from the children of newly freed slaves.¹¹ According to DeMarce, not until after the Civil War did most communities of African Americans advance a claim of also being of Indian ancestry.¹²

In 1900, over 120 Lumbee families, including the ones above, self-identified as "Indian" in the federal census. Dr. Campisi relies on federal census records as the "best source of evidence concerning the Lumbee community."¹³

The Lumbee Have Self-Identified As Four Different Tribes

This uncertain genealogical background illuminates the remarkable story of Lumbee efforts to attain federal acknowledgement as four different Indian tribes, including the "Cherokee Indians of Robeson and Adjoining Counties."

The Lumbee group seeking Congress's acknowledgement today has been before the Congress on numerous occasions in the past, beginning in 1899. The tribal identity of the Lumbees, who have over the course of history self-identified themselves as four different tribes before Congress "Croatan, Cherokee, Siouan, and now Cheraw—is highly in question. These appellations do not correlate with each other. Linguistically, the Croatan were Algonquian, the Cherokee Iroquoian, and the Cheraw were Siouan. Thus, these disparate references themselves implausibly covered three distinct and separate linguistic groups. Moreover, referring to themselves as the "Siouan Tribe" did not make sense because the term "Siouan" is simply a reference to a broad generic linguistic classification that encompassed many distinct tribal languages in North America, including Osage, Assiniboine, Dakota, Lakota, Catawba, Hidatsa, Crow, Mandan, Ponca, Biloxi, and Quapaw, to name a few.

The origin of the Lumbee name comes not from a historic tribe but from a geographic location in the State of North Carolina, a place along the Lumber River. The term "Lumbee" is a modern creation that the group selected as its name in 1952.

³Virginia DeMarce, "Looking at Legends—Lumbee and Melungeon: Applied Genealogy and the Origins of Tri-Racial Isolate Settlements," *National Genealogical Society Quarterly* 81 (March 1993): 27-31.

⁴Paul Heinegg, *Free African Americans of North Carolina and Virginia* (Baltimore, MD: Clearfield, 1997, 3rd Ed.): 23.

⁵DeMarce, *Legends* at 37.

⁶DeMarce, *Legends* at 27. These genealogical findings are supported by Historian John Hope Franklin quoting a petition from the North Carolina Legislative Papers for 1840-41 that showed Robeson County inhabitants during the first half of the nineteenth century did not agree with the theory that the Lumbees were Indians but were migrants from Virginia. Id.

⁷DeMarce, *Legends* at 30.

⁸Heinegg at 22.

⁹Virginia DeMarce, "Verry Slitly Mixt": Tri-Racial Isolate Families of the Upper South—A Genealogical Study," *National Genealogical Society Quarterly* 81 (March 1992): 6.

¹⁰Heinegg at 25.

¹¹Heinegg at 25. According to the 1956 Lumbee Act, the Lumbees themselves were persons "owning slaves."

¹²DeMarce, *Tri-Racial Isolates* at 7.

¹³109th Congress, Campisi testimony at 38.

Lumbee's Self-Identification as "Croatan" Indians

The Lumbee sought federal services from the Congress as "Croatan" Indians in the 1880's and early 1900's.¹⁴ In 1993, this Committee's House Report contained the following relating to the history of the Lumbee group, including its "Croatan" origins:

The story of how the progenitors of the Lumbee came to live in this area of North Carolina is a multifarious one. In fact, there are almost as many theories as there are theorists. Up until the 1920's, the most persistent tradition among the Indians in Robeson County was that they were descended primarily from an Iroquoian group called the Croatans. This theory, though highly conjectural, is as follows. In 1585, Sir Walter Raleigh established an English colony under Gov. John White on Roanoke Island in what later became North Carolina. In August of that year, White departed for England for supplies, but was prevented from returning to Roanoke for 2 years by a variety of circumstances. When he finally arrived at the colony, however, he found the settlement deserted; no physical trace of the colonists was found.

The only clue to their whereabouts were the letters "C.R.O." and the word "Croatoan" carved in a tree. From this it was surmised that the colonists fled Roanoke for some reason, and removed to the nearby island of Croatoan which was inhabited by a friendly Indian tribe. There, according to the theory, they intermarried with the Indians, and the tribe eventually migrated to the southwest to the area of present-day Robeson County. The theory is lent some credence by reports of early 18th century settlers in the area of the Lumber River who noted finding a large group of Indians—some with marked Caucasian features such as grey-blue eyes "speaking English, tilling the soil, "and practicing the arts of civilized life." In addition, many of the surnames of Indians resident in the county match those of Roanoke colonists.¹⁵

Genealogist Paul Heinegg refers to this theory of Lumbee tribal background as well as the one posited today by the Lumbee as "fantastic theories on [Lumbee] origin...."¹⁶

Lumbee's Self-Identification as "Cherokee" Indians

In the state of North Carolina, the Lumbee group sought recognition from the North Carolina legislature in 1913 as the "Cherokee Indians of Robeson County." This legislation was passed, despite the Eastern Band's opposition, and the group was recognized in North Carolina as "Cherokee" Indians. That continued for 40 years until 1953 when the North Carolina legislature, at the Lumbee group's request, passed legislation recognizing them as the "Lumbee" Indians instead of as the "Cherokee" Indians.

After World War I, the Lumbees sought federal legislation in Congress for recognition as "the Cherokee Indians of Robeson and adjoining counties." Specifically, in 1924, Dr. Campisi noted that the now-called Lumbee group had legislation introduced in the U.S. Senate that would have recognized them as "Cherokee" Indians. However, the Commissioner of Indian Affairs Charles H. Burke opposed the legislation and it failed to pass.

In 1932, the Lumbees sought legislation that was introduced in the Senate that would have recognized them as "the Cherokee Indians," but this effort failed also.¹⁷

In 1933, another Lumbee acknowledgement bill failed because the Lumbees themselves did not agree on whether the tribal affiliation should be changed from "Cherokee Indians" to "Cheraw Indians."¹⁸

Lumbee's Self-Identification as "Siouan" Indians

According to the Lumbee, they sought federal recognition as "Siouan" Indians in 1924. In the 1930's, for purposes of the Indian Reorganization Act, the Lumbees self-designated themselves as the "Siouan Indian Community of Lumber River."¹⁹ As stated above, the term "Siouan" is a reference to a generic linguistic classifica-

¹⁴ "Testimony of Dr. Jack Campisi, in Support of S. 420, United States Senate Committee on Indian Affairs" (September 17, 2003) p. 6.

¹⁵ H.R. Rep. No. 103-290, 103rd Cong., 1st Sess. at 179 (1993).

¹⁶ Heinegg at 17.

¹⁷ Id.

¹⁸ Campisi testimony, 109th Congress at 40.

¹⁹ Id. at 9.

tion that is spoken by many tribes in North America and is not a term that describes a distinct historical tribe.

It was not until 1952 that the Lumbees decided to refer to themselves as “Lumbee” based upon their geographic location next to the Lumber River. In 1956, Congress, at the request of the Lumbees, passed legislation commemorating their name change.²⁰

The Lumbees’ Current Efforts to Link Themselves to the Cheraw Tribe Are Tenuous

The federal acknowledgement criteria require that the membership of a petitioning group consist of “individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.”²¹ The regulations define “historical” in this context as “dating from first sustained contact with non-Indians.”²² The origin and ties to a historical tribe have been the subject of uncertainty not only among experts in the area but also the Lumbee themselves.

Experts at the Bureau of Indian Affairs have testified that the Lumbee ties to the Cheraw Tribe are tenuous. On August 1, 1991, Director of the Office of Tribal Services Ronal Eden testified on behalf of the Administration regarding federal legislation that would congressionally acknowledge the Lumbee. Regarding the Lumbee petition for federal recognition before the agency, the Director testified to a “major deficiency” that “the Lumbee have not documented their descent from a historic tribe.”²³

The testimony also stated that the 18th century documents used by Lumbee to support its claim that it is primarily descended from a community of Cheraws living on Drowning Creek in North Carolina in the 1730’s needed extensive analysis corroborated by other documentation.²⁴

In his September 17, 2003 testimony before the Senate Indian Affairs Committee, Lumbee expert Jack Campisi relies on a report of Dr. John R. Swanton of the Bureau of Ethnology for concluding “in the 1930s that the Lumbees are descended predominantly Cheraw Indians.”²⁵ The House Report specifically refutes this claim, stating that Swanton chose “Cheraw” rather than another tribal name he identified—“Keyauwee”—because the Keyauwee name was not well known. “In other words, the choice of the Cheraw was apparently made for reasons of academic ease rather than historical reality.”

Furthermore, the head of the BIA’s acknowledgement process questioned the adequacy of the underlying proof of Cheraw descent. He testified in 1989 that:

The Lumbee petition...claims to link the group to the Cheraw Indians. The documents presented in the petition do not support [this] theory...These documents have been misinterpreted in the Lumbee petition. Their real meanings have more to do with the colonial history of North and South Carolina than with the existence of any specific tribal group in the area in which the modern Lumbee live.

Arlinda Locklear, Counsel to the Lumbee, in her 2003 testimony before the Senate Indian Affairs Committee admitted that these concerns continue today. “Department staff that administers the administrative acknowledgement process have expressed some concern about the absence of a genealogical connection between the modern day Lumbee Tribe and the historic Cheraw Tribe.”²⁶

On July 12, 2006, an Interior official testifying before the Senate Indian Affairs Committee restated the problem the Lumbee have had in identifying their historic tribe.

“[T]he uniqueness is the lack of pinning down of the historical tribe. “There is a considerable period of time where evidence would be needed to fully

²⁰ Id. at 9-10. Contrary to Lumbee claims that the 1956 Lumbee Act both acknowledged the Lumbee as a tribe and terminated that tribal status in the same law, the Act itself states that the Lumbee are individuals only “claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina...” The legislative history of the Act also makes clear that it only commemorates a name change. 102 Cong. Rec. 2900 (1956).

²¹ 25 C.F.R. § 83.7(e).

²² Id. at 83.1.

²³ Statement of Ronal Eden, Director, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, Before the Joint Hearing of the Select Committee on Indian Affairs, United States Senate, and the Interior and Insular Affairs Committee, United States House of Representatives, on S. 1036 and H.R. 1426 (August 1, 1991) p. 3-5.

²⁴ Id.

²⁵ Campisi Testimony at 21.

²⁶ “Testimony of Arlinda Locklear, Patton Boggs LLP, Of Counsel for the Lumbee Tribe of North Carolina in Support of S. 420 United States Senate Committee on Indian Affairs” (September 17, 2003) p. 4 fn. 1.

understand who this group was and is...[because] there have been approximately 26 bills introduced since 1899...[that] have provided possible historical tribes and there are quite a number of them...One report indicated...the Cherokee, another...the Cheraw, another...the Croatan. One report included a whole group of different historical tribes, such as the Eno, the Hatteras, the Keowee, the Shakori. Even John R. Swanton, who is a renowned anthropologist, in a 1946 report for the Bureau of Ethnology, stated that there were several possibilities that the Lumbee could descend from either the Cheraw, the Siouan Indians of Lumber River, the Keowee, and another group known as the Washaw. There is a whole number of possibilities.”

Claimed Lumbee Membership Not Tied to Cheraw Individuals

The various documents on which the Lumbee membership list is based similarly cast doubt as to the ability of the Lumbee to meet the acknowledgement criteria. The Lumbees claim over 62,000 enrolled members who are descended from anyone identifying as “Indian” in five North Carolina counties and two South Carolina counties in either the 1900 or 1910 federal census. The Lumbee Constitution refers to these census lists as the “Source Documents.” Yet the individuals on these lists cannot be specifically identified and verified as Cheraw Indians. In fact, these individuals cannot be identified as belonging to any tribe whatsoever. These are lists of people who self-identified or were identified by the census as “Indian.”

Members of this Committee have recognized the weaknesses and complexities in the Lumbee group’s claim to tribal recognition in the past:

The Lumbee...have never had treaty relations with the United States, a reservation, or a claim before the Indian Claims Commission; they do not speak an Indian language; they have had no formal political organization until recently; and they possess no autochthonous “Indian” customs or cultural appurtenance such as dances, songs, or tribal religion. One of the groups consultant anthropologists, Dr. Jack Campisi, noted this lack of Indian cultural appurtenances in a hearing colloquy with then-Congressman Ben Nighthorse Campbell:

Mr. Campbell: Do [the Lumbee] have a spoken language...?

Dr. Campisi: No.

Mr. Campbell: Do they have distinct cultural characteristics such as songs, dances and religious beliefs and so on?...Do the Lumbees have that?

Dr. Campisi: No. Those things were gone before the end of the 18th Century. This absence of cultural appurtenances in part identify the Lumbee as part of what sociologist Brewton Berry has termed the “marginal Indian groups.” As Berry notes:

These are communities that hold no reservation land, speak no Indian language, and observe no distinctive Indian customs. Although it is difficult to establish a firm historical Indian ancestry for them, their members often display physical features that are decidedly Indian. Because they bear no other historic tribal names, they often emphasize a *Cherokee* ancestry.

These characteristics...point out that this is a case replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand fully. Needless to say, if those [Members of Congress] charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or even knowledge—in this area, how will the balance of our Members appropriately exercise those judgments as they will be called upon to do when this legislation reaches the floor?²⁷

Furthermore, in his 2006 Senate testimony, the BIA director identified “over 80 names of groups that derive from these counties...[including] the Cherokee Indians of Robeson and Adjoining Counties, the Lumbee Regional Development Association, the Cherokee Indians of Hoke Count, Inc., the Tuscarora Nation of North Carolina, The Tuscarora Nation of Indians of the Carolinas...[in which] there is an overlapping of membership, there is an overlapping of some of the governing bodies and there is an overlap of the ancestry of these groups with the Lumbee.”²⁸

This Legislation Impacts the Integrity of Eastern Band and other Established Tribes

Since before the coming of Europeans to this continent, the Cherokee have lived in the southeastern part of what is now the United States, in the states of North Carolina, South Carolina, Alabama, Georgia, Kentucky, Tennessee, and Virginia.

²⁷ H.R. Rep. No. 103-290, 103rd Cong., 1st Sess. at 186-87 (1993).

²⁸ S. Hrg. 109-610, Lumbee Recognition Act, July 12, 2006, page 16.

Through these years, the Cherokee have faced unending threats to our very existence—including the tragic Trail of Tears where more than 15,000 Cherokee Indians were forcibly removed by the U.S. Army from their ancestral homelands to the Indian Territory as part of the federal government’s American Indian Removal Policy. Thousands died. The Cherokee came to call the event *Nunahi-Duna-Dlo-Hiluli* or Trail Where They Cried. The Eastern Band of Cherokee Indians are the descendants of those Cherokees that resisted removal in the Great Smoky Mountains and escaped the Trail of Tears or who were able to return to their homeland in the Smoky Mountains after the Trail of Tears.

Yet, through all of this, the Cherokee people have fiercely protected our separate identity as Cherokees. Many of our tribal members are fluent in the Cherokee language. We have a separate culture that makes us different than any group of people in the world. Leadership of the Cherokee and the Cherokee people themselves, with tenacity and determination, have fought to ensure that our way of life, our beliefs, and our sovereignty will survive. And we are still here today—proud and strong.

Like other tribes across the country, we hold in high regard the long-standing government-to-government relationship the Eastern Band of Cherokee Indians has with the United States. We are proud that the United States has entered into treaties with the Cherokee that helped shape the government-to-government relations with all tribes.

But today, like other tribes, we face a new threat to our separate identity: groups of people who claim, or who have claimed Cherokee, or other tribal affiliations whose legitimacy is doubtful at best. Unfortunately, we believe this to be the case with this bill.

If Congress recognizes groups whose tribal and individual identity as Indians is seriously in doubt, it will dilute the government-to-government relationships that existing federally recognized tribes have with the United States. We strongly believe that this bill would undermine the integrity of existing federally recognized Indian tribes due to the real problems that the Lumbee have in demonstrating that it is a tribe, including their inability to trace the genealogy of its 62,000 members to a historic tribe.

Interior’s Office of Federal Acknowledgement Is the Proper Forum for Deciding Whether the Lumbee Should be Federally Recognized

The Department of the Interior through the Office of Federal Acknowledgement (OFA) has an established, uniform administrative process with objective criteria that can make exactly the kind of substantive, merits-based determinations that the Congress is not able to make. To allow the Lumbees to circumvent that process would also undermine the federal recognition process, as it has evolved at the Department of Interior, and would be patently unfair to the hundreds of applicants that have gone through or are going through the process developed by the Department. Congressional approval of this legislation will short circuit the process and allow the Lumbee to avoid the proven regulatory process, which we believe the Lumbees seek to do because they have significant historic, cultural and genealogical gaps for which they can provide no proof of their existence as a sovereign entity, in favor of old-fashioned politics.

Members of the Resources Committee have noted the harm that would come to long-standing federally recognized tribes from legislation like this:

Bypassing the [administrative] process not only ignores the problem [with that process], but is unfair to all of the recognized tribes. There exists a formal government-to-government relationship between the recognized tribes and the United States. If Congress creates tribes at will, without meaningful uniform criteria or substantial corroborated evidence that the group is indeed a tribe, then we dilute and weaken that relationship.²⁹

Members of this Committee have acknowledged that a large number of tribes and tribal organizations supported strict adherence to a systematic administrative procedure, including:

[T]ribes in twelve states, from regional intertribal organizations representing all the tribes of the Pacific Northwest, Montana and Wyoming, the United South and Eastern Tribes (representing all the tribes from Maine to Florida and west to Louisiana), all of the ten southwestern Pueblo tribes, and twenty-five of the twenty-six tribes in Arizona.³⁰

Moreover, while the Lumbee have argued that the process is unfair, their bill, contrary to their argument, provides that the other North Carolina groups, who the Solicitor’s office at Interior has also determined are barred from accessing OFA

²⁹Id. at 202.

³⁰Id. at 202-03.

under the 1956 Lumbee Act, would be authorized to submit petitions to OFA for federal acknowledgement. If it is fair for these other groups to go through the OFA process, then it should be fair for Lumbee also.

When substantially similar legislation came up in the past, members of this Committee argued strongly that the Lumbee should be required to follow the administrative process:

[T]he argument that the Lumbee should be allowed to bypass the process because it is too cumbersome and backlogged is...specious. While the BIA recognition process is in need of repair, it is not as decrepit as the majority would have us believe. There is only a backlog of nine petitions, not the 120 cases often cited; and while we concede that the process is imperfect, the most rational solution is to fix it. Bypassing the process only ignores the problem, undermines the role of the BIA, and is unfair to both recognized and unrecognized tribes.³¹

Congress Should Not Obligate Enormous Spending Where the Identity of the Tribe is Uncertain at Best

The impact on appropriations to other Indian tribes would be unprecedented in the history of federal acknowledgement. The Congressional Budget Office has determined that, based on an estimate of 34,000 Lumbees, that the cost of this legislation would be \$430 million over four years. Yet the Lumbees claim over 62,000 members. Based upon the Congressional Budget Office's estimate and the 62,000 members claimed by Lumbee, the real cost of this bill would be over \$835 million dollars.

Accordingly, this bill would have a huge, negative impact on the budgets of Bureau of Indian Affairs and the Indian Health Service and would decrease even further the badly needed funds Indian people receive as a result of promises and trust obligations of the United States to Indians and tribes. This Committee and the Congress should not dive into support for this legislation for emotional or political reasons, particularly without being absolutely certain that this group constitutes an Indian tribe in accordance with the objective criteria utilized by the Office of Federal Acknowledgement for evaluating petitions for federal acknowledgement.

CONCLUSION

If this Committee and the Congress choose to pass this legislation, the consequences will be dramatic for existing federally recognized tribes.

First and foremost, politics will have won a decided victory over sound policy. The notion of "taking the politics out of federal recognition" will have suffered its most severe setback in history.

Second, with federal acknowledgement comes the ability of a group to engage in serious activities associated with sovereign status, such as the ability to tax and enjoy certain tax advantages, the ability to exercise civil jurisdiction over non-Indians as well as Indians, and the right to engage in gaming. Enacting legislation like this only arms those who seek to erode sovereign rights with evidence that some of those with such rights were haphazardly afforded them.

The Eastern Band of Cherokee Indians would welcome the Lumbees into the family of federally recognized tribes if they can successfully make it through the administrative process at the Department of the Interior. Absent their meeting the objective criteria at Interior, with complete vetting of their claimed tribal identity, membership lists, and other requirements, we believe that passing this legislation would be a serious mistake, with politics winning out over sound policy.

If you determine that legislation is necessary to address this situation, we urge you to require the Lumbee provide evidence to Congress which shows that it meets the equitable and standardized requirements established in the administrative process.

The CHAIRMAN. Coach Sampson.

STATEMENT OF KELVIN SAMPSON, HEAD BASKETBALL COACH, INDIANA UNIVERSITY, BLOOMINGTON, INDIANA

Mr. SAMPSON. Good morning, Chairman Rahall. I would also like to thank Congressman McIntyre for what he is doing for the people of Robeson County, not just the Native Americans, but all people.

³¹ Id. at 206.

I appreciate the opportunity to appear before the Committee this morning to testify in support of H.R. 65, a bill that would extend Federal recognition to the Lumbee Tribe of North Carolina, which is my tribe.

I am the head basketball coach at Indiana University. I am also an enrolled member of the Lumbee Tribe. And it is my experience as a tribal member, a member of a tribe not recognized by the United States, that I would like to address this morning.

Chairman Goins spoke about a 1956 Lumbee Act. This Act left the Lumbee Tribe in a legal limbo, lacking the status of all other Indian tribes in Indian country, and yet Indian nonetheless.

The Lumbee people have suffered the same economic disadvantages of other Indian tribes. Discrimination by the dominant society, poor social services and resources as compared to the dominant society, and limited opportunities. But the Lumbee people have not enjoyed the Federal support that Federally recognized tribes enjoy. Support for our tribal government advantages in attracting industry to the area and special education opportunities.

Nonetheless, many Lumbees have risen to prominence in their chosen fields, and made major contributions in the Indian country, as doctors, lawyers, judges, and yes, even major college basketball coaches.

I would like to tell you my own story this morning. I want to tell you a story about a young boy growing up in Pembroke, North Carolina. My father held as many as four jobs every summer outside of his main occupation, which was high school teacher and coach at one of the many all-Indian high schools in Robeson County. And yes, it is pronounced Robeson County.

One of his summer jobs was a foreman of a crew at a tobacco market. I was part of his crew. A memory that is etched in my mind forever was the names on the public restrooms. There was three. One was marked white, in relation to that time in our history. Another was marked colored, and the other was marked other.

I was told to use the one marked other. Even though this had a profound effect on how I viewed others at the time, I did not allow this experience to define me or my family.

As always, I moved on in life, as this served to motivate me, but not deter me. Growing up in Pembroke I always had great role models, including my mother and father, Ned and Eva Sampson, both Lumbees and both college graduates.

Good or bad, we are all known for something. What I have just described is an identity. Looking back at my time living in Pembroke, I think the strength of the Lumbee people was our local college, which started as Indian Normal College, then became Pembroke State College, Pembroke State University, and is presently known as the University of North Carolina at Pembroke.

Education became our foundation and our strength. Because of University of North Carolina at Pembroke being local and affordable, we had many of our people that could afford to go to college. With the University of Pembroke, we would not have as many college graduates.

Living my life as a Native American Division One basketball coach, I have had the opportunity to influence and affect many

lives. It has been an honor and a pleasure to speak at many Native American Indian seminars, symposiums, and heritage events over the years. When asked about my tribe, the Lumbees, many times the subject of Federal recognition comes up.

I do think this carries a stigma, that somehow because we are not recognized or have full benefit, that we are different than other tribes. The issue of acceptance has created a perception of Lumbees not being completely whole.

I know that a lot of highly successful Lumbees that would love to be here today, and I am honored to represent them and speak for them with my voice. Lumbee people have served, and continue to serve, other Indian tribes throughout the country as doctors, lawyers, judges, administrators, pharmacists, nurses, and educators. We have contributed our talents, time and efforts, because we believe in the support of the advancement of all native people.

Indian country knows about all the contributions that Lumbee people have made in their tribal communities. We have worked with Indian people in national organizations such as the National Congress of American Indians, the National Council on Indian Education, and the National Indian Education Association. I am honored to speak on behalf of all of those Lumbees today.

We are a proud and persistent people. My family taught me the value of hard work, the importance of going to school and earning the best education possible, understanding the value of family. And maybe most importantly, the importance of giving back to others.

I have a camp scholarship program at Indiana University for Native American kids all over the country. This allows me the opportunity to not only help Lumbee kids, but Native American kids all over the United States.

I think there are two areas that the Lumbee people will benefit most from being Federally recognized. Those are medical benefits and educational opportunities.

I know a lot was said here about gaming. There is a large percentage, don't put every Native American, every Lumbee under a blanket, and say because someone thinks that this is the majority of what we believe, don't think that everybody believes that. Our people will be able to get much-needed medicine, and will also allow more deserving Lumbee children to dream of furthering their education all over the United States.

You see, gentlemen, you not only have an opportunity to right a wrong; you more importantly have the power to create a legacy. I do not need your permission to call myself Native American, but unfortunately in today's world I do need your validation. This is what we, as Lumbee Indians, can accomplish. With Federal recognition, the Lumbee Tribe would become a full player in Indian country, no longer second-class Indians in the eyes of the Federal government. As such, we would employ our substantial skills and abilities to help correct problems faced by Indian country, and make significant contributions.

I go back to Pembroke every year for Lumbee Homecoming. As a basketball coach, you learn the importance of motivation. And I have always thought the easiest people to motivate are those people who have a high self esteem. Most successful coaches, their motivational techniques will involve building people's self esteem.

I was born in 1955. I viewed a lot of Lumbee Homecomings, if you will. If you go back and look at the last five Lumbee Homecomings, you see kids that walk around with their chests stuck out, their heads held up high. They are proud of their heritage. Chairman Goins and what he is doing for the Lumbee pride and the Lumbee people is apparent in every walk of life through our churches, through our schools, through our families.

This is sometimes debated. And I don't think we should be narrow-minded people and only look at our side. And certainly, as Lumbees, we can't be like that, either. But sometimes through bureaucracy and through political means, sometimes we have to look through all the bad and say what is the right thing to do. Regardless of what our arguments may be. Some of them may be political in nature, some of them may be selfish in nature. But at the end of the day, sometimes common sense is our greatest map, sometimes it is our greatest compass.

The only thing that I ask you to do today, as you view H.R. 65, is don't look at why we should not do this; look why we should. And do the right thing.

I thank you for giving me this incredible opportunity to come here and represent the Lumbee people.

[The prepared statement of Mr. Sampson follows:]

Statement of Coach Kelvin Sampson, Head Basketball Coach, Indiana University, Enrolled member of the Lumbee Tribe, North Carolina

Good morning, Chairman Rahall and Congressman Young. I appreciate the opportunity to appear before the committee this morning to testify in support of H.R. 65, a bill that would extend federal recognition to the Lumbee Tribe of North Carolina—my tribe. I am the Head Basketball Coach at Indiana University. I am also an enrolled member of the Lumbee Tribe. And it is my experience as a tribal member, a member of a tribe not recognized by the United States that I'd like to address this morning.

Chairman Goins spoke about the 1956 Lumbee Act. This act left the Lumbee Tribe in a legal limbo—lacking the status of all other Indian tribes in Indian country and yet Indian nonetheless. The Lumbee people have suffered the same economic disadvantages of other Indian tribes—discrimination by the dominant society, poor social services and resources as compared to the dominant society, and limited opportunities. But the Lumbee people have not enjoyed the federal support that federally recognized tribes enjoy—support for our tribal government, advantages in attracting industry to the area, and special education opportunities. Nonetheless, many Lumbees have risen to prominence in their chosen fields and made major contributions to Indian country—as doctors, lawyers, judges, and yes, even major college basketball coaches.

I'd like to tell you my own story this morning...I want to tell you a story about a young boy growing up in Pembroke, North Carolina. My father held as many as four jobs every summer outside of his main occupation, which was school teacher, and coach, at one of the many all Indian High Schools in Robeson County. One of his summer jobs was a foreman of a "crew" at a tobacco market—I was part of his "crew". A memory that is etched in my mind forever was the names on the public restrooms. There were three. One was marked white, another was marked colored, and the last marked other. I was told to use the one marked other. Even though this had a profound effect on how I viewed others at the time, I did not allow this experience to define me, or my family. As I moved on in life, this served to motivate me, not deter me. Growing up in Pembroke, I always had great role models, including my mother and father, Ned and Eva Sampson, both Lumbees and college graduates. Good, or bad, we are all known for something. Looking back at my time living in Pembroke, I think the strength of the Lumbee people was our local college which started as Indian Normal College, then Pembroke State College/University to what it is presently known as UNC—Pembroke. Education became our foundation and our strength. Because of UNC-P being local and affordable, we had many of our people that could afford to go to college. Without UNC-Pembroke, we would not have as many college graduates.

Living my life as a Native American, Division I basketball coach, I have had the opportunity to influence, and affect, many lives. It has been my honor and pleasure to speak at many Native American education seminars, symposiums, and heritage events. When asked about my tribe, many times, the subject of Federal recognition comes up. I do think this creates a stigma—that somehow because we are not “recognized” or have “full benefit” that we are different than other tribes. The issue of acceptance has created a perception of not being completely “whole”. I know there are a lot of highly successful Lumbees that would love to be here today. Lumbee people have served and continue to serve other Indian tribes throughout the country as doctors, lawyers, judges, administrators, pharmacists, nurses, and educators. We have contributed our talents, time, and efforts because we believe in and support the advancement of all native peoples. Indian country knows well the contributions that Lumbee people have made in their tribal communities. We have worked with Indian people in national organizations such as the National Congress of American Indians, the National Council on Indian Education, and the National Indian Education Association. I am honored to speak on behalf of all these Lumbees today. We are a proud, and persistent, people. My family taught me how to work hard, go to school and earn the best education possible, understand the value of family and maybe, most importantly, give back to others. I have a camp scholarship program through my camps at Indiana University, for Native American kids, all over the country. This allows me the opportunity to not only help Lumbee kids but Native American kids all over the United States.

I think the two areas that the Lumbee people will benefit most from being federally recognized will be in medical benefits and education. Our people will now be able to buy much needed medicine, and will also allow more deserving Lumbee children to dream of furthering their education all over the United States.

You see, gentlemen, you not only have an opportunity to right a wrong, you more importantly have the power to create a legacy. I do not need your permission to call myself Native American but unfortunately in today's world I need your validation.

This is what we Lumbee Indians can accomplish. With federal recognition, the Lumbee Tribe would become a full player in Indian country, no longer second class Indians in the eyes of the federal government. As such, we would employ our substantial skills and abilities to help correct problems faced by Indian country and make significant contributions.

We ask for that opportunity.

The CHAIRMAN. Thank you, Coach. Dr. Campisi.

**STATEMENT OF JACK CAMPISI, ANTHROPOLOGIST,
CONSULTANT, LUMBEE TRIBE OF NORTH CAROLINA**

Mr. CAMPISI. Good morning, Mr. Chairman and Members of the Committee. I am Dr. Jack Campisi. I worked on Lumbee history and community study for over 20 years, including document research and field work. I am also the principal author of the petition for Federal acknowledgement submitted by the tribe to the BIA in 1987.

I will restrict my oral testimony to three points: Cheraw origins of the Lumbee Tribe, the name changes imposed by the State of North Carolina, and evidence of contemporary community.

The Cheraw origin. As shown on the map, there is a collection of 18th century documents that identifies an historic Cheraw settlement on Drowning Creek. And that links the modern-day Lumbee community to this community.

These documents include a 1733 map, a Moseley map, that shows the Cheraw and Keyawee settlement east of the Pee Dee River. Land record documents between 1737 and 1739 that specifically refer to the retention by the Cheraw of two old fields in what is now the Lumbee Community of Prospect.

A 1753 statement by North Carolina Governor Rowan that identified the area occupied by present-day Lumbee Tribe as “a frontier to the Indians.” A 1754 report of 50 families living on Drowning

Creek. A 1771 South Carolina newspaper article that identified a Cheraw community on Drowning Creek. And a 1773 list of names taken by Bladen County that identified 21 individuals with 11 surnames that are present among today's Lumbees.

In 1809, North Carolina changed the name of Drowning Creek to the Lumbee River. Taken together, these documents show a presence of historic Cheraw community, and the descent of the Lumbee Tribe from it.

Dr. John Swanton of the United States Bureau of American Ethnology was the first to make the connection between the Cheraw and Lumbee Tribe. The Department of Interior adopted Dr. Swanton's opinion in 1934, when it testified to Congress that the Lumbees descend from the Cheraw and related Siouan-speaking tribes.

Dr. Swanton published his findings in 1936 and 1946. Later experts on Southeastern Indians, including the late Dr. William Sturdevant, Chief Ethnologist of the Smithsonian Institution and General Editor of the Handbook of North American Indians; Dr. James Merrow, Professor of History and a specialist in Catawba history; Dr. Ray Fogelson, Professor of Anthropology and a specialist in Cherokee history and culture, and Editor of the Southeast Volume of the handbook; and Dr. William Starnes, Professor Emeritus of Anthropology and Iroquois specialist, all agree with Dr. Swanton's analysis.

Name changes. Much is being made of changes in the name, in the tribe's name by the State of North Carolina over time. But we need to put this in perspective.

In 1885 the state attached the name Croatan to the tribe because of an erroneous belief by the State Legislature that tribal members were descendants from the lost colony.

Again, in 1911 and 1930, the tribe's name was changed by the state. Finally, in 1933, after a tribal referendum, the name was changed to the Lumbee. The important points are that regardless of the name applied, present-day tribal members are descendants of the same people for whom the 1885 law was made.

While there was confusion over names on the part of the state, the tribal members certainly knew who they were and who their members were. And changes in the tribe's names are irrelevant. The regulations make that clear and certain.

Contemporary community. The two most difficult criteria for tribes to prove under the Department's acknowledgement regulations, and the ones that every unsuccessful petitioner has failed to meet, are those relating to community and political authority. These are key to tribal existence.

Under the Department's regulation, a tribe that proves community by so-called high evidence also conclusively proves political authority. Following a sampling protocol established by the then Branch of Acknowledgement and Research, I drew a 1 percent systematic sample of the enrolled members of the Lumbee Tribe in 2002. The results showed that 64.6 percent of the tribal members live in the core area, many of these in communities that are almost exclusively Lumbee.

A second part of the study consisted of analyzing the marriage patterns. The results show that 70 percent of tribal marriages were

between tribal members. Under the regulations, these results meet the high-evidence standard, and thereby conclusively prove both of these most difficult criteria.

Finally, I would note that this legend on the map listing present leaders of the tribe, and links them to the leading families of the tribe 100 years ago. Clear evidence of continuity of leadership.

Because of its repeated efforts to obtain Federal recognition, there is a voluminous administrative Congressional record on the Lumbee Tribe. Not once does this record reflect any doubt by the Department of the Interior or the Congress about the Indian identity of the Lumbee people. In my opinion, the Lumbee meet every definition of an Indian tribe known to me.

Thank you.

[The prepared statement of Mr. Campisi follows:]

**Statement of Dr. Jack Campisi, Anthropologist,
Consultant, Lumbee Tribe of North Carolina, on H.R. 65**

I hold a doctorate in anthropology, have dedicated my career to research in tribal communities, and have taught these subjects as an adjunct professor at Wellesley College. Between 1982 and 1988, I conducted a number of studies for the Lumbee Tribe of North Carolina. Each of these included fieldwork in the community for periods of time varying from a week to three weeks. In all, I spent more than twenty weeks in Robeson County carrying out a variety of research projects. Besides being responsible for synthesizing the thousands of pages of documentation collected during the ten years it took to carry out the archival research, and for designing and carrying out the community research, I had the honor of writing the petition that was submitted on December 17, 1987, to the Branch of Acknowledgement and Research (now the Office of Federal Acknowledgement) under the federal regulations that govern acknowledgement of eligible Indian tribes, 25 C.F.R. Part 83. Specifically, I drafted the Historical Narrative section, and researched and wrote the sections dealing with community and political continuity. Subsequent to the completion of the petition, I continued research with the Lumbee Tribe, most recently in 2002. The material that follows is based on my twenty years' research on the Tribe's history and community.

Over the course of the past twenty-five years, I have worked on 28 tribal petitions for federal acknowledgement. None has exceeded the Lumbee petition in documentation and no group has exhibited more evidence of community cohesion and political continuity than the Lumbee Tribe. It is my professional opinion that the Lumbee Tribe exists as an Indian tribe and has done so over history. I will outline below the main arguments and evidence in support of this conclusion.

An Overview of Lumbee Tribal History

Aboriginal origins of the Tribe

At the time of sustained white contact, there existed a Cheraw Indian community precisely where the Lumbees reside today and this Cheraw community had the same, unique surnames as those common to the modern-day Lumbee community. A 1733 Moseley map showed the Tribe between the Pee Dee River and Drowning Creek, in 1737 John Thompson purchased land in the area from Robert, Chief of the Cheraw, and in 1754, Governor Arthur Dobbs of North Carolina identified on "Drowning Creek on the head of Little Pedee 50 families a mixt Crew [or Breed] a lawless people filled the lands without patent or paying quit rents shot a Surveyer for coming to view vacant lands being enclosed by great swamps." A document written in 1771 refers to "the Charraw Settlement" on Drowning Creek, and another document dated 1773 contains a list of names that connect this community to the Cheraw in 1737. Some of the same surnames as today's Lumbee population appeared on the list: Ivey, Sweat, Groom, Locklear, Chavis, Dees, and Grant (see Dr. James H. Merrill letter to Congressman Charlie Rose, October 18, 1989 for further discussion). The 1790 federal census identifies families with these same surnames around Drowning Creek and modern day enrolled Lumbees can prove genealogical descent from those Indians. Thus, the community mentioned in the references cited in above and the community of Indians described in nineteenth century documents was the same, and were the antecedents of today's Lumbee Tribe.

Early land records link the modern day Lumbee community to the historic Cheraw Tribe located on Drowning Creek. A 1754 deed refers to Major Locklear, who resided at the time on the north side of Drowning Creek. Present-day Locklears in the Tribe descend from or are related to Major and his brother John Locklear. These early Locklears and their descendants intermarried with other members of the Indian community whose surnames (Oxendine, Chavis, and Lowry) are prevalent among present day Lumbees. Genealogical records of present day members show that the vast majority descend from Locklear, Oxendine, Chavis, or Lowry families with many descending from more than of these family groups who comprised the early Cheraw settlement.

These places are shown in relation to the boundaries of modern day Robeson County on this map. As you can see, the Cheraw settlement (spelled Saraw at the time) first identified on the 1733 Mosely map, is located within the Cheraw old fields, which in turn are identified in early land records as the location of families with traditional Lumbee surnames, and nearby Drowning Creek. In 1809, the North Carolina Legislature changed the name of Drowning Creek to the Lumber River. The modern day Lumbee Tribe, many of whose members trace back to families residing at the Cheraw old fields near Drowning Creek in the early eighteenth century, still reside today on and around that river. This genealogical connection is demonstrated by this overlay which shows the descent of the current tribal council members from those families.

The federal census records are by far the best source of evidence concerning the early Lumbee community. It is clear from the names of the heads of households that the area of Robeson County around Drowning Creek, now the Lumber River, was occupied almost exclusively by tribal members. Based on the 1850 census (the first census to provide the names of the individual's resident in each household), it is possible to describe the residency patterns of the Lumbee community. We can identify 168 households headed by ancestors of present day Lumbees from the 1850 census. These households were clustered in three settlements that were almost exclusively Lumbee, with white settlements between them. The data also show that the Lumbee ancestors in these three settlements were all closely related, including multiple first cousin marriages. All of the signers of the 1887 and 1888 petitions for assistance to the Tribe, the first to the State of North Carolina and the second to the United States, appear as heads of households in these settlements. Thus, there can be no doubt that there was an Indian community present along Drowning Creek from the mid-1700s, separate from other communities in the area. It is also certain that this community had a well-established leadership structure and that it managed its affairs with relative autonomy.

The oldest Lumbee community that can be continuously documented was called Long Swamp, now called Prospect and located within the core area in Pembroke and Smith townships—the heart of the modern day Lumbee community. It is also located right in the heart of the so-called old field of the Cheraw, documented in land records between 1737 and 1739. The earliest census records show the presence in this community of an extended Locklear family continuously since 1790. Members of this extended family appeared among the tribal leaders, both by descent and marriage, who petitioned Congress for federal recognition in 1888. Members of this extended family were also among those who were tested by physical anthropologist Carl Seltzer in 1936 for blood quantum. This includes Duncan Locklear and Henry Locklear, whose pictures are attached. The Tribe's attorney, Arlinda Locklear, is also descended from this extended family.

The Civil War period

Federal census and state court records document the continued existence of a separate Indian community in Robeson County during the ante-bellum period. Although generally classified as free non-whites during the post-Revolutionary War years, the Lumbees appear to have been treated more generously than free blacks, being allowed to vote without challenge and to own property. However, in the 1830s two seemingly unrelated actions—one by the national government and the other by the State of North Carolina—converged, with disastrous impact on the Indians of the state. In 1830, Congress passed legislation providing for the removal of all Indian tribes east of the Mississippi River to land set aside in the "Indian Territory" in Oklahoma. Tribes such as the Cherokee and Creek were forced to leave. In the climate of removal, it did not benefit a tribe to overtly manifest its identity. Lumbees, like other Indians in the state, held their land in severally, but often without patents. Thus, they were in a precarious position.

Added to the problem of tribal survival was the steadily worsening relationship between whites and "people of color" in North Carolina following Nat Turner's uprising in 1831. In 1835, the state passed a constitutional amendment denying tribal

members rights they had previously enjoyed. Many refused to abide by the changes and some were charged with violations. One case, in particular, went far toward recognizing the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun, a violation of state law. He was convicted, but promptly appealed, claiming that the law only restricted free Negroes, not persons of color. The appeals court reversed the lower court, finding that "Free persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from Negro ancestors beyond the fourth degree." The following year, in 1859, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself. These cases generally resulted in the Lumbees establishing a special status under the law as Indians, one outside the limitations placed on others who were classified as "free persons of color."

There is abundant evidence of tribal activity of 1860. During the Civil War, the Lumbee Indians were prohibited from serving in the Confederate Army and were, instead, conscripted into labor gangs and assigned to build the fortifications at the mouth of the Cape Fear River to protect the city of Wilmington. The conditions were harsh and the treatment brutal. Many Lumbee men escaped and returned home where they hid out in the swamps of Robeson County. Besides Lumbees, the swamps provided a refuge for Union soldiers who had escaped from nearby Confederate camps. Because of their treatment by the Confederacy, and more particularly the Home Guard, the Lumbees gave assistance and protection to the Union soldiers. As the number of Lumbees and Union soldiers "laying out" increased, so did the burden of feeding them. With so many men in hiding or conscripted, there were few to do the farm work. Gradually, the attitude of the Lumbees changed from a passive one to one marked by belligerence. In short order, a band emerged, led by the sons of Allen Lowrie.

Matters came to a head in 1864 when members of the Allen Lowrie family, a leading Indian family, and the local authorities came into armed conflict and a number of individuals on both sides were killed. In March of 1865, the Home Guard captured Allen Lowrie and his son, William, and after holding them for a short time, executed them in a field near the father's house. This was followed by a virtual reign of terror during which the Home Guard tortured members of the Lowrie family and their kinsmen in order to learn the whereabouts of the band. With the death of his father and brother, Henry Berry Lowrie, who was barely twenty years old, took over the leadership of the band. For the next decade, led by Henry Berry Lowrie, and with the Indian community's support and protection, the band fought against local authorities who sought by a variety of means to oppress the Indian population in Robeson County. The Lowrie Band led a struggle that ended only after the disappearance of its leader in 1872, and the capture and death of the last of the band members in 1874. Henry Berry Lowrie remains a folk hero to the Lumbee Indians and his story is told every year in an outdoor drama called "Strike at the Wind."

By the 1870s, the Lumbees were openly acknowledged to be Indians. While the Lowrie Band was carrying out its defense, others in the tribe were taking equally effective actions to assert their independence. Lumbees were denied access to the white schools in the county and they refused to attend the schools for blacks. This impasse was broken in 1885.

Formal State recognition of the Tribe and efforts to obtain Federal recognition

In 1885, the State of North Carolina formally recognized the Tribe as the Croatan Indians as a means of addressing the school issues. The state statute established a school system for the children of tribal members only. Tribal members exercised complete control over who could attend the schools. Each Lumbee settlement had a school committee that determined eligibility. In order to be eligible, an individual had to prove Lumbee ancestry back through the fourth generation, that is, back to the 1770's. Because of the rigorous manner in which these rules were enforced in the nineteenth century, school enrollment records provide an accurate basis for determining present-day membership.

Officials at the Bureau of Indian Affairs have acknowledged the particular significance of this early state recognition of the Lumbee Tribe. George Roth, an anthropologist who recently retired from the office that processes applications for acknowledgement from Indian tribes, wrote regarding the Lumbees:

North Carolina legislation in 1885 established in law a distinct status as Indian for the Lumbee (designating them as Croatan Indians) and provided for a school system separate from blacks. Though not colonially derived nor involving the distinct legal status of the colonially derived reservations, this

North Carolina action was perhaps the earliest and strongest postcolonial state-Indian relationship before the modern era.

Roth, G., *Indians of the Southeastern United States in the Late 20th Century* (1992 U. of Alabama Press).

In 1887, tribal members petitioned the state legislature again, requesting the establishment of a normal school to train Indian teachers for the Tribe's schools. Permission was granted, tribal members raised the funds, and along with some state assistance, the normal school began training teachers for the expanding Lumbee school system. That normal school has been in operation continually since, evolving into Pembroke State University and, recently, the University of North Carolina at Pembroke.

The Tribe had difficulty, though, in supporting the Indian normal school financially. In 1888, the Tribe petitioned Congress for assistance for its normal school. The request was sent by the House Committee on Indian Affairs to the Commissioner of Indian Affairs, but no action was taken for nearly two years. Finally, in 1890, Commissioner Morgan responded to the Tribe, telling them that, "So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes." There is no doubt that the government's rejection of assistance was based solely on economic considerations, the commissioner implying that if sufficient funds had been available, services would have been provided to tribes he referred to as "civilized."

The Lumbees made frequent attempts over the course of the next fifty years to receive assistance from the United States. In 1899, Congressman John D. Bellamy introduced legislation to provide educational assistance for the Croatan Indians (as the Lumbees were then called). Again, in 1910 and 1911, legislation was introduced in Congress to change the Tribe's name and to establish "...a school for the Indians of Robeson County, North Carolina." To secure information on the Tribe, the Indian Office sent Charles F. Pierce, Supervisor of Indian Schools, to investigate. He reported favorably on the Tribe, finding "...a large majority as being at least three-fourths Indian." He described them as being law abiding and industrious and "crazy on the subject of education." Pierce had no doubt that the Lumbees were Indians, or that they were a tribe. Nor did he doubt that federal educational assistance would be beneficial. He opposed the legislation because, in his words, "[a]t the present time it is the avowed policy of the government to require states having an Indian population to assume the burden and responsibility for their education, so far as is possible." After lengthy deliberations, the bill passed the Senate, but not the House, because the chairman of the House committee felt that the Lumbees were eligible to attend the various Indian boarding schools.

The Tribe continued its efforts to secure federal educational assistance, and in 1914, sent a delegation to Congress. Another investigation was carried out by the Indian Office at the direction of the Senate. Among other things, Special Indian Agent, O.M. McPherson found that the Tribe had developed an extensive system of schools and a complex political organization to represent its interests. He noted that the Lumbees were eligible to attend federal Indian schools, but doubted that these schools would meet their needs. His recommendation was that if Congress saw fit to establish a school, it should be one emphasizing agricultural and mechanical skills. Again, Congress took no action. Parenthetically, it should be noted that during this period tribal activity was generally at a low level across the United States. Not so for the Lumbees, who actively involved their congressmen in their efforts to achieve federal recognition.

During the 1930s, the Tribe renewed its efforts to achieve federal recognition. In 1934, the Bureau of Indian Affairs asked the eminent anthropologist at the Bureau of American Ethnology John Reed Swanton for his professional opinion on the Lumbees. Swanton was emphatic concerning their Indian ancestry, specifying a Cheraw and other eastern Siouan tribes as their ancestry. A later report by Indian Agent Fred Baker (1935), who had visited the Lumbee community, gave further support that they constituted a tribe. Baker discussed a resettlement project with the Tribe in which the government would acquire land for the Lumbees' support, an alternative to the share-cropping and credit system then the predominant means of Lumbee livelihood. Baker reported to Congress:

It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all of the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision...

I find that the sense of racial solidarity is growing stronger and that the members of this tribe are cooperating more and more with each other with

the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them.

However, the Bureau of Indian affairs did not support recognition of the Tribe, despite four studies that all found the Lumbee to be Indian. The apparent reasons were the size of the Tribe and the costs to the government.

Twentieth Century efforts to obtain Federal Recognition

Following the First World War, the Lumbees renewed their efforts, both in the state and with Congress, to improve their educational system. At the state level, they were able to get an appropriation of \$75,000 for capital improvements at the Indian Normal School. The issue of the Tribe's name had become a concern, and tribal leaders sought legislation in Congress to recognize the name adopted by the state legislature—The Cherokee Indians of Robeson and Adjoining Counties in North Carolina. Such a bill was introduced in the Senate in 1924, and at first received favorable support from the Secretary of the Interior, although Commissioner of Indian Affairs Charles H. Burke opposed the legislation. The Secretary later dropped his support and the bill died.

The efforts to obtain congressional recognition were resumed in 1932. Senator Josiah W. Bailey submitted a bill designating the Indians of Robeson and adjoining counties as "Cherokee Indians," but this effort also failed. The following year another bill was proposed, this time designating the Tribe as the "Cheraw Indians," at the suggestion of Dr. Swanton. This name caused a split in the Tribe, with those tribal members led by Joe Brooks favoring it, while others, led by D.F. Lowry opposing it, fearing it would jeopardize the Tribe's control over its schools. Because of the split in the Tribe, the effort failed.

With the passage of the Indian Reorganization Act, Brooks and his supporters attempted to organize the Tribe under a federal charter. Because the Tribe did not possess a land base, it was advised by Assistant Solicitor Felix Cohen to organize under the half-blood provision of the act. Cohen urged that the Tribe apply for land and a charter under the name of the "Siouan Indian Community of Lumber River." Brooks immediately submitted a proposal that mirrored Cohen's recommendations. Over the course of the next two years, the two projects of establishing recognition under the IRA and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the BIA to the Rural Resettlement Administration of the Department of Agriculture, and the land that was to be purchased solely for Lumbee use, was opened to non-Indians. After a lengthy struggle, Brooks was able to have a part of the land set aside for tribal members, and incorporated under the name of the Red Banks Mutual Association.

The Tribe was no more successful in achieving recognition under the IRA. The BIA formed a commission of three to investigate the blood quantum of the Lumbees. In 1936, Dr. Carl C. Seltzer, an anthropologist and member of the commission, visited Robeson County on two occasions and took physical data on 209 Indians applying for recognition as one-half or more Indian blood. He found that twenty-two met the criteria. They were certified by the Secretary of the Interior. What made Seltzer's work so ludicrous was that in several cases he identified full siblings in different ways, one meeting the blood quantum requirement and the other not.

After the Second World War, the Lumbees again tried to achieve federal recognition of their status as an Indian tribe. The issue of their name continued to cause them problems so, in 1952, the Lumbee leadership conducted a referendum on the name; at the Tribe's request, the state funded and provided other assistance for the conduct of the referendum. Of 2,144 tribal members who voted, all but 35 favored the use of the name "Lumbee," derived from the Lumber River upon which they had always dwelled. Armed with this overwhelming support, the leader of the movement, D.F. Lowry, asked the state legislature to adopt the change. The legislature approved the name change in 1953. The Lumbee Tribe then took its case to Congress, which in 1956 passed the Lumbee Bill.

There can be no doubt that for more than 200 years the Lumbees have been continuously and repeatedly recognized as American Indians. This was made explicit by the state in the 1880's and by the federal government from at least the beginning of the twentieth century on. Federal and state officials have, on numerous occasions, reviewed the evidence and at no time have they questioned the fact that the Tribe consisted of people of Indian descent. Federal reluctance to acknowledge the Tribe centered on questions involving the extension of services. It was unfortunate that each effort by the Lumbees to clarify their federal status and to receive services coincided with federal Indian policy shifts away from the trust relationship: the General Allotment Act in 1887; the Citizenship Act of 1924, and the termination policy

of the 1950s. The exception, the Indian Reorganization Act, which could have provided a means to recognition, was subverted by bad anthropology and bureaucratic indolence.

Recent Lumbee History

Challenges to the Lumbee community and independence

Since the passage of the Lumbee Act, the Tribe has faced a steady string of problems, beginning with an attempt by the Ku Klux Klan to intimidate tribal members in 1958 by a rally held within the Lumbee community. The Tribe's reaction to this threat was a spontaneous gathering that drove the klansmen from the field and broke up their rally, a confrontation that focused national attention for a time on the Lumbee community. The tribal members have exerted their influence in other ways. In the 1960's they organized voter registration drives that made their influence felt on local politics, electing members of the Tribe to state, county, and local public offices. When the local school authorities attempted to integrate only the black and Indian schools in the county, tribal members staged sit-ins and filed lawsuits to prevent the loss of tribal control over the schools. It must be understood that the school system was and is a key and integral part of tribal identity, and any threat to the Tribe's control would be resisted. And resisted it was!

While the Tribe was struggling to maintain its schools, it was actively opposing the so-called "double voting" system, which allowed whites in the towns (which had separate school districts) to vote with whites in the county, who were in the minority, to maintain white control over the county school system. The students in the county school system were predominantly Indian and black. Tribal leaders took the case to federal court, and after losing at the district court, won a reversal at the court of appeals, thus ending double voting.

At about the same time, tribal leaders became involved in an issue with high symbolic value to the Tribe. In 1972, the Board of Trustees of Pembroke State University decided to demolish the main building on the campus of the former Indian normal school and replace it with another structure. Very quickly, a group formed to "Save Old Main." The group waged a statewide and national campaign to save the building, and just at the point when it seemed that they would be victorious, the building was burned to the ground. The Tribe overcame this blow and campaigned hard for the reconstruction of Old Main, which they eventually accomplished. The building was completed in 1975 and is now the site of the University of North Carolina at Pembroke's Native American Resource Center.

Since the end of World War II, the Tribe has grown in stature and influence. It was a primary mover in the establishment of North Carolina Commission of Indian Affairs, an organization that has become a model for state Indian commissions. The Lumbees have played an instrumental role in county affairs, where they have represented a moderating influence.

The Lumbee history is one of continual resistance to outside domination, beginning in the eighteenth century. In 1754, the ancestors of the Lumbees were described as a community of 50 families living on Drowning Creek, "mixt Crew [or breed] a lawless people." In 1773, they were identified as "A List of the Mob Railously Assembled together in Bladen County [later subdivided to create Robeson County]." In the 1830s, Lumbees opposed the laws limiting their freedoms, and in the Civil War and Reconstruction years, under the leadership of Henry Berry Lowrie, they actively opposed, first the Confederate government, and later the United States.

The distinct and strong Lumbee community

There is a variety of definitions of the term "Indian tribe" employed in a variety of contexts. Most experts agree that the most exacting definition is that used by the Department of the Interior in its federal acknowledgement regulations, 25 C.F.R. Part 83. Even as judged by this definition, though, there is no question that the Lumbee Indians constitute an Indian tribe.

The Lumbees are held together by the same mechanisms and values that have kept them together for the past two hundred years or more, mechanisms and values that are typically Indian. First and foremost is the family, which serves as the center of Lumbee social activities. There is continual and widespread visiting among adults, particularly in the homes of parents and grandparents. Often, children live near their parents on land that was part of the family homestead. Members of families speak to and visit each other on an almost daily basis.

The knowledge that the average Lumbee has of his or her kin is truly astounding. It is very common for individuals to be able to trace their parents' genealogies back five or more generations. Not only are individuals able to name their grandparents, great grandparents, great great grandparents etc., but often they can name the

siblings of their ancestors, the spouses of their ancestors' siblings, relate where they lived in Robeson County, the church they attended, and the names of their offspring. It is common for an individual to name two or three hundred individuals as members of the immediate family. Every year there are family reunions that attract members from all over the country. They vary in size from small gatherings of a few hundred close kin to reunions involving a thousand or more persons.

This kinship pattern is well illustrated by the mapping of all Lumbee heads of household based upon the 1850 federal census that I prepared for the Tribe's petition for federal acknowledgement. I identified 168 households headed by Lumbees in 1850. These heads of household are the ancestors of present day Lumbees and include descendants of the Locklear extended family documented on the old Cheraw field in 1790. The households were clustered in what is the core area today of the Lumbee Tribe; some areas, such as the Prospect community, were almost exclusively Lumbee. The households showed an extremely high rate of in-marriage, resulting in complex and multiple kinship and marriage ties among the members. This same kinship pattern persists today. When the relationships, both marital and kin, between the list of tribal leaders who appear on the 1887 petition to the state and the 1888 petition to Congress are mapped, it again reveals a remarkably tight community. And as I mentioned before, the modern day tribal leaders are related in the same way to the Tribe's historic leaders and households.

Religion also serves to maintain the social boundaries of the Lumbee Tribe. By social boundaries, I mean that there are membership rules, special beliefs and values, a unique history, and a system of political authority and decision-making that marks the Lumbees as a separate community. There are more than 120 Lumbee Indian churches in Robeson County, and with one or two exceptions, each has a Lumbee minister. There are also two all Lumbee church conferences—the Burnt Swamp Baptist Association and the Lumber River Holiness Methodist Conference. Church membership crosses family lines and settlement areas, thus drawing together different sectors of the Tribe.

For the Lumbees, church is more than a religious experience; it is one of their most important social activities. It involves many of them on a daily basis. The churches have Sunday schools, youth organizations, senior citizens' programs, Bible study programs, and chorus practices, to mention but a few of the activities available. It is common for members of the same household to attend different churches, and this behavior further acts to bring the tribal membership together.

The family and the churches also provide the main avenues for political participation. In studying the Lumbee community, it is clear that leadership over the years has tended to surface in the same families from generation to generation, something like a system of inherited leadership. These leaders have gained prominence through their participation in the educational system and as church leaders. In the past, many of the Tribe's most dynamic leaders were ministers and teachers. Today, there are other avenues for the demonstration of leadership qualities, but family, education and religious values still command attention.

The importance of the role played by the Lumbee churches in the political life of the Tribe cannot be overstated. During the 1990s, it was the leadership from the churches that initiated and sustained the process for preparing a tribal constitution. The delegates to the constitutional convention were selected by the churches and represented every segment of the Tribe. After nearly ten years of meetings, negotiations, court actions, and re-drafts, the constitution was presented to the tribal members for their approval. On November 6, 2001, the tribal members voted on the constitution. Eighty-five [85] percent of those voting voted in favor of adoption. The approved constitution is recognized by the State of North Carolina, and it is the Tribe's governing document.

Geographic concentration of Lumbee Tribe

Today, there are approximately 55,000 enrolled Lumbee tribal members. Each of these members completed a documented application for enrollment to establish that he or she meets the enrollment criteria. There are two membership criteria: first, that he or she descends from an individual who appears on the Tribe's base roll; and second, that he or she maintains contact with the Lumbee Tribe.

Historically, there has never been a complete list of tribal members, since no federal or other purpose required the compilation or maintenance of such a list. So the base roll used by the Tribe consists of a collection of documents dating back to the late nineteenth or early twentieth century that consists of partial lists of tribal members. These records include the 1900 federal Indian census, Indian school records, and church records. In the few instances where an individual cannot identify an ancestor in these documents (which are, by definition, incomplete lists of tribal members), the person's ancestry is considered by an Elder's Review

Committee. This is a group of tribal elders with great, personal knowledge about Lumbee kinship.

The maintenance of tribal contact means that the tribal member maintains ties to the Tribe, through visits and otherwise, even if the member does not reside in the area. Again, if there are questions regarding a member's maintenance of contact, the Elder's Review Committee will make a determination. Individuals who do not maintain contact are not eligible for enrollment; those already enrolled can be disenrolled if they fail to maintain contact.

Even though the Tribe is large, the Tribe remains concentrated even today in the area in and around the historic Drowning Creek, known today as the Lumber River. To determine the level of geographic concentration, a random sampling of tribal members was prepared. This is a methodology approved by the Bureau of Indian Affairs in its analysis of a tribe's community in the administrative acknowledgement process. A 1 percent systematic sample was drawn from the Lumbee membership files as of December 2002. Of the 543 files drawn, 29 were found to contain names of deceased individuals, or were missing from the files, leaving a balance of 514 files. This corresponds closely with the number of active members (52,850) as reported to the Lumbee Tribal Council in December 2002.

The residency pattern of the Lumbee Tribal members is divided into three categories: core area where the tribal members live in either exclusively or nearly exclusively Lumbee geographical areas; those living somewhere in North Carolina; and those living elsewhere. Included in the first category are the following communities in Robeson County: Pembroke, Maxton, Rowland, Lumberton, Fairmont, St. Paul's, and Red Springs. Within these communities, there are areas that are exclusively (or nearly so) occupied by Lumbees. This is consistent with the analysis of tribal membership concentration used by the Office of Federal Acknowledgement, Department of the Interior, under its acknowledgement regulations.

The data show that of the 511 for whom there was residency data, 330 (64.6%) live in the core area. One hundred and two (19.9%) live in the State of North Carolina, and the 79 (15.4%) live elsewhere, almost all of them in the United States. This high degree of geographic concentration establishes the existence of a Lumbee community, even without any further evidence (see discussion below). Based on census and other data, the Tribe demonstrates the same high level of geographic concentration going back well into the nineteenth century, or as far as there are data available.

A second indication of community is the level of in-marriage within a community. Using the same sample, there were 276 records that provided information on the age and marital status of individuals. Of these, 49 were younger than 16, the age selected as marriageable. Another 23 were identified as single, leaving 204 with known marriage partners. Of this number 143 (70%) were married to another Lumbee tribal member. Of the remaining 61, 59 were married to non-Indians and 2 were married to members of other tribes. Again, this high in-marriage rate establishes the existence of a Lumbee community, even without any further evidence (see discussion below). As with residency, based on census and other data, it is certain that the Tribe can demonstrate comparably high in-marriage rates for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

Political leadership among the Lumbee

As discussed above, the Lumbee Tribe of North Carolina organized, ran, and largely financed its own school system and teacher's training college for nearly one hundred years. It has had and continues to have a complex network of churches that exclusively or nearly exclusively serve the tribal members. All of these demonstrate clear political authority within the community that is accepted as such by the outside world.

A specific example of tribal political authority in the education context is illustrative. In 1913, State Attorney General Thomas Bickett issued an opinion that the Robeson County Board of Education, then controlled by non-Indians, had authority to overrule a Lumbee Indian school committee's decision to exclude a child who did not meet the Tribe's eligibility requirements from an Indian school. This was unacceptable to the Tribe. Tribal leaders sought and obtained state legislation in 1921 that reaffirmed the Tribe's authority to determine eligibility to attend the Lumbee schools.

Another example of Lumbee political autonomy outside the context of education involved the ultimate political control—the ability to directly elect leadership for the Town of Pembroke—located in the heart of the Lumbee community and occupied almost exclusively by Indians (excluding the students and employees of the University of North Carolina, Pembroke). At the time of its incorporation in 1895, state law

required that public officials of the town be appointed by the Governor rather than elected—the only incorporated town in the state so governed. Under pressure from Lumbee tribal leaders, this state law was changed in 1945 to allow for direct election of town officials by the residents there, just as in all other incorporated towns in the state. Since then, the mayor and town council of Pembroke have all been Lumbee Indians.

From the 1960s on, the Lumbee leadership sought to maintain control over their schools and college, and when that was no longer possible, to share political power in Robeson County. They instituted lawsuits to abolish double voting, fought to save the college's main administration building, and when that burned down, to have it rebuilt, and elect Lumbee leaders to county positions. The Tribe submitted a petition for federal recognition under 25 CFR 83. Finally, beginning in 1993, the Tribe began the process that eventually led in 2002 to the present constitution and tribal government. The process started with funds from a Methodist Church grant, the delegates were chosen from the participating churches, and the process was deeply influenced by church leaders. The results were overwhelming endorsed by the tribal population in two referenda—1994 and 2001.

Lumbee Tribe of North Carolina and The Federal Acknowledgement Regulations

In 1978, the Department of the Interior established a regulatory process for the acknowledgement of Indian tribes. 25 C.F.R. Part 83. The Department has determined that the Lumbee Tribe is not eligible for this administrative process because of the 1956 Lumbee Act. However, the history and data establish that the Tribe nonetheless meets the seven mandatory criteria used in the Department's regulations to define an Indian tribe. Those seven mandatory criteria are:

- (a) identification as an American Indian entity on a substantially continuous basis since 1900;
- (b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (c) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (d) a copy of the group's present governing document including its membership criteria;
- (e) the petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes which combined and functioned as a single autonomous political entity;
- (f) the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe;
- (g) neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Criterion (a) Identification as an Indian entity

This criterion can be met by showing evidence of federal, state, or county relationships, or identification by historians or social scientists, in books or newspapers, or by relationships with other tribes or national, regional or state Indian organizations since 1900. There are repeated and numerous identifications of the Lumbee Tribe as an Indian entity since 1900, as shown in the summary of the Tribe's efforts to obtain federal recognition above. There can be no serious question that the Lumbee Tribe can and has demonstrated this criterion.

Criterion (b) Community

This criterion provides a number of ways to demonstrate community, foremost among these are rates of in-marriage and residency patterns. The regulations provide that an Indian group has conclusively demonstrated this criterion by proof that 50 percent or more of its members reside in a geographical area composed exclusively or almost exclusively of tribal members, or that at least 50 percent of its members are married to other tribal members. These are the so-called high evidence standards. As established above, the Lumbee Tribe meets both these high evidence standards, both historically and in modern times. This means that the Lumbee Tribe has conclusively demonstrated community as defined by the regulations, typically the most difficult part of the administrative process for petitioning tribes. It should also be noted that this criterion specifically provides that changes in name of the group, such as those experienced by the Lumbee under state law, are irrelevant.

Criterion (c) Political authority

The regulations provide that if community is proven by high evidence as exhibited by the Lumbee community, this is considered conclusive proof of political authority

as well. In other words, the same high evidence of community exhibited by the Lumbee also conclusively demonstrates political authority for the Lumbee Tribe, both historically and in modern times. In addition, the actual evidence of political authority summarized above—from the substantial and active political relationship maintained with the State of North Carolina since 1885, repeated efforts organized by tribal leaders to obtain federal recognition, and persistent resistance to challenges to tribal independence—show vibrant and effective political leadership within the Tribe, both historically and in modern times.

Criterion (d) Governance

This criterion requires that a petitioner submit either a statement describing its system of governance or its governing document. By the adoption of a tribal constitution, one that has been recognized by the State of North Carolina, the Tribe clearly demonstrates this criterion.

Criterion (e) Descent from a historical tribe or tribes

As to criterion (e), Dr. John R. Swanton, a member of the staff of the Bureau of American Ethnology, a federal government agency, and one of the nation's foremost anthropologists and experts on American Indian tribes, particularly in the southeast, concluded in the early 1930s that the Lumbees are descended predominantly from Cheraw Indians. The Department of the Interior adopted this position in its 1934 statement to Congress on one of the proposed recognition bills, relying on Dr. Swanton's report. This has also been confirmed and supported by scholars such as Dr. William C. Sturtevant, Chief Ethnologist of the Smithsonian Institution and general editor of the Handbook of American Indians and Dr. James Merrell, Professor of History, Vassar College, and a leading authority on the colonial Carolinas.

Criterion (f) Petitioner's members are not members of any federally recognized tribe

The members of the Lumbee Tribe of North Carolina are not members of any federally recognized tribe. This can be demonstrated by a review of the Tribe's genealogical data.

Criterion (g) The petitioner has not been the subject of a federal termination act

The Solicitor for the Department of the Interior has determined that the 1956 Lumbee Act is an act forbidding the federal relationship.

Summary

Typically, Indian tribes petitioning for acknowledgement under the administrative process have most difficulty with criteria (b) and (c), community and political authority respectively. Every tribe that has been denied acknowledgement through the process to date has failed because of the inability to prove these criteria, and perhaps others. As demonstrated above, the Lumbee Tribe's case on these criteria is so strong as to be conclusive. In light of the heavily documented history of the Tribe since 1900, neither can there be any doubt about the Tribe's ability to demonstrate the other criteria.

In the past few years, the Bureau of Indian Affairs has expressed doubt as to the Tribe's evidence on criterion (e), that there is too little data on criterion e to prove descent from the Cheraw Tribe, specifically that a genealogical link between the Cheraw Tribe on Drowning Creek and all present-day members of the Lumbee Tribe on the renamed Lumber River cannot be made, despite the occurrence of shared and uncommon surnames and the clear descent of significant numbers of members from the Locklear family known to reside in the Drowning Creek area. Of course, the failure of the dominant society to record the births and deaths of Lumbees before 1790 is no fault of the Tribe; nor does this absence suggest that the Lumbee Tribe is not descended from the Cheraw Tribe. In fact, the Department testified in 1934 that the Tribe was descended from the Cheraw Tribe, based upon the work of the eminent Dr. Swanton. The Department's earlier opinion is also corroborated by the professional opinions of Drs. Sturtevant and Merrill. Thus, the Department's more recent view should be taken as more intellectual curiosity than serious doubt about the origins of the Tribe. And this new found curiosity should be judged in the context of the Department's long-standing determination to oppose recognition of the Tribe, even in the face of its past judgment that the Lumbees truly are an Indian tribe.

The extensive record of the Tribe's history in the eighteenth, nineteenth, and twentieth centuries establish that the Lumbee Indians constitute an Indian tribe as that term is defined in the Department of the Interior's acknowledgement regulations. The Tribe fails only on the last criterion, that is, Congress has prohibited the Department from acting on the Tribe's petition in the 1956 Lumbee Act. Thus, the Congress can act on H.R. 65 with full confidence that the Lumbees are, in fact, an Indian tribe.

The CHAIRMAN. Thank you. Let me ask my first question to Chairman Goins. Some have questioned the Lumbee as a tribe because of different names the tribe has been known as over the years.

Did the Lumbee Tribe request or work with the state on amendments to state law regarding your name?

Mr. GOINS. In 1952 that did occur, sir. We went to the legislation that allowed us, for our people to come out and vote on their own particular name. That name was derived from the Lumbee River. Up until that point it was all designated by the State of North Carolina.

The CHAIRMAN. Thank you. Mr. Campisi, let me ask you about the numerous studies that have been conducted over the years by Congress and the Department of Interior on Lumbee ancestry.

Have any of these studies expressed doubt of the tribe's Indian ancestry?

Mr. CAMPISI. No, Mr. Chairman, I have not read any study that expressed doubt about Indian ancestry.

The CHAIRMAN. I appreciate that. Coach Sampson, I might ask you. First, your testimony was very eloquent, and your dedication to education is most commendable.

After all that you have accomplished in your life, it seems you still yearn to be known as a member of a Federally recognized Indian tribe. And I highly respect you for that. How do you think that recognition will change the young Lumbee men and women growing up now?

Mr. SAMPSON. It is my belief, and I speak from personal experience, when I travel across the United States with my team to play basketball—it may be in Los Angeles, it could be in Chicago. When I was in Oklahoma in the Big Twelve, the State of Oklahoma having the largest influence of Native Americans in the United States. They all accepted me as a Native American. They felt I was a Native American.

But I knew that, in an almost sinister way, that there is a but at the end of the way that we are recognized. We are Native American, but there is a but at the end.

What we would like to do, and I think this is where the self esteem and almost a complete generation could put their hands around this and embrace it, we would like to remove the but. I think our people deserve that.

We are Native American. I don't look at my people as anything but Native American, never have. My father was Indian, my mother is Indian. Their mother and their father were Indian. I lived my life as an Indian, accepted as an Indian. But we have the problem with the word but. We need to remove but.

The CHAIRMAN. Thank you so much, Coach. The gentleman from North Carolina, Mr. Shuler.

Mr. SHULER. Thank you, Mr. Chairman. I would like to thank all the members of the panel and their testimony today, and for all your works. And Chairman Goins, a special thank you for your commitment to our country and serving in our foreign wars.

Mr. Goins, or Chairman Goins rather, why did the Lumbee community seek recognition under, or did they seek recognition under the Cherokee name? I know you have alluded to this.

Mr. GOINS. Arlinda, do you want to answer?

Ms. LOCKLEAR. If I may, Congressman, for the Chairman. There were two names that you referred to. The first, as a process of state law, the tribe itself did not seek that name change. That occurred in 1913. Chief Hicks is correct about that year. It happened because the State Legislature in both 1885, 1911, and 1913, who thought they knew where the Lumbees came from, and enacted into state law their own version of amateur history.

However, the Chief is also correct that there were efforts made in the Federal Congress to achieve recognition on the same terms that the state law had been passed. There was a simple reason for that.

If you will recall from our history, in 1885 the state established a separate school system for Lumbee children. The record establishes that the tribal leaders feared use of any other name other than the one imposed by state law, or else they would lose their schools. And the record is clear on the Federal bills that there was, in fact, debate among the tribal leaders at the time on that issue. But the tribal leaders resisted use of any other name other than that imposed under state law, so that they could maintain control under state law of their state schools.

Mr. SHULER. And Mr. Campisi, you had also alluded to that several times legislation has changed the names of the community, correct?

Mr. CAMPISI. That is correct.

Mr. SHULER. So Mr. Chairman, it seems to me that many times before, that legislative bodies have continued to be wrong, correct?

Mr. GOINS. Wrong about the name?

Mr. SHULER. Correct.

Mr. GOINS. Correct.

Mr. SHULER. Or the recognition thereof. So it seems like that we should continue to go through the due process to allow, in this circumstances that we are looking at, that the due process, that Members of Congress are, just as other legislators in our State of North Carolina have done, they too have been wrong, from what you are, the information which you have submitted today in front of our, in the hearing, that you said the state legislatures are wrong.

So I guess my question would be if, in fact, that North Carolina has been wrong, and obviously Chief Hicks had alluded to that the use of the Cherokee name now being recognized, trying to be recognized under the Lumbee name, that at that point in time, we have seen how legislation has been wrong in not going through the due process, or actually having your community involvement was incorrect.

Ms. LOCKLEAR. If I may comment on that.

Mr. SHULER. Sure.

Ms. LOCKLEAR. Congressman Shuler, there were two questions here. One is the use of a name. As Dr. Campisi testified earlier, the regulations make very clear that the use of various names is irrelevant.

The other, however, is tribal existence. None of those bodies was wrong with regard to the tribal existence question. The Lumbee have existed, as Dr. Campisi testified, as an independent Indian

community entitled to recognition, under whatever name they may have used at the time.

So while they may have been incorrect on the name, they were not incorrect with regard to the recognition issue.

Mr. SHULER. Well, in my heritage, our surname Shuler had been passed down, and I know where that has gone. So the Lumbee, when does the name Lumbee community come about?

Ms. LOCKLEAR. As the Chairman indicated, out of frustration with the state's various names, the tribe did ask the state to conduct a referendum in 1952 on the adoption of the name. Because of the tribe's long-time association with Drowning Creek, later renamed Lumber River, the tribe itself chose the name Lumbee, derived from the Lumber River. That is the name that the tribe itself chose.

Mr. SHULER. And what year was that?

Ms. LOCKLEAR. It was chosen in 1953. The state recognized the name—I am sorry, 1952. The state recognized the name in 1953. And the Congress did so in 1956 in the Lumbee Act.

Mr. SHULER. So for many years the ancestors of the community have not had a name.

Ms. LOCKLEAR. That is not correct. That is not correct. For many years this community has not been recognized by the United States. It is generally a function of Federal recognition that, number one, technical roles are prepared. We never had a technical role. And that number two, a legal body known by a particular name is authorized to represent a particular Indian people.

Mr. SHULER. So what was the name of the tribe before 1952?

Ms. LOCKLEAR. Under state law we were recognized—

Mr. SHULER. No, in the community.

Ms. LOCKLEAR. We didn't use a name other than Indian, because we were all Indian. We all knew who we were.

Let me tell you a little story. We have one of our members who explains it this way. I am going to use Drew's grandfather as an example. He was born in 1886. When he was born, he was a Croatan Indian, under state law.

When he married in 1913, he was, under state law, an Indian of Robeson County. When his children were born, he was, under state law, a Cherokee Indian of Robeson County. And by the time of his death, he was, under state law, a Lumbee Indian.

Now, this is the same individual, mind you. And every individual in his family knew they were Indian, and really actually paid little regard to what the state law designated them as, other than the ability to maintain their separate schools.

Mr. SHULER. OK. Mr. Chairman or whoever would like to answer this, if the mandate, the 1956 Congressional Ban was lifted, would you seek that recognition through the Department of Interior?

Mr. GOINS. Congressman, the question is, and it has always been since the 1956 Act, that Congress put us in this fix. And we are not the only tribe that has been treated like this, but we are the only tribe that is being left in this predicament.

You have corrected the situation with the Tiwas. And I was saying is just treat us like you did the other tribes that Congress put in this fix. That is all we are saying. Just go back to right or wrong.

Mr. SHULER. So would you seek the recognition, to my question, would you seek the recognition if the ban was lifted?

Mr. GOINS. If the ban was lifted, if that was the consent of the Congress, we would have no other choice but to go through the BIA process.

Mr. SHULER. Chief Hicks, how has this affected the community? If, for an example, Congress does not increase funding, what impact would it be if we didn't increase the funding, and the resources were divided on a much greater, the pile was divided many more times? What impact would it have upon your community and the Kwala boundary?

Mr. HICKS. Well, obviously I think the Committee is very privy to the current limitations in front in specifically healthcare, as an example. We are funded at about a 60 percent level of need at this point, so I think it would be overwhelming to not just the Eastern Band of Cherokee, but all tribes across the nation, especially the direct service tribes. It would have a significant effect.

And again, the numbers at this point are still questionable in regards to whatever the latest CBO report is going to report.

Mr. SHULER. Thank you. Chairman Goins, again, seeking recognition obviously with the caveat of banning gaming, would you also agree that being able to be recognized, but not having gaming?

Mr. GOINS. Congressman, if you noticed in that film clip I talked about the Lumber River holding this, holding this Methodist Conference. Sir, I am a member of that conference, and I take my relationship with my Lord very serious. In my personal opinion, I am not in favor of the lottery, but I cannot speak on behalf of the Tribal Council and the Lumbee people. It would be up to them to take on a referendum to vote.

But personally, forget about gaming, as far as I am concerned.

Mr. SHULER. Very good. And, Mr. Chairman, I note my time has expired, but I just would like to extend my special thanks to my colleague, McIntyre. It is not often the two of us actually ever disagree on any issue, and I continue to cherish my friendship, along with he and the Chairman, under these circumstances.

And also, once again, Coach, congratulations to you and your hard work and your dedication. And Chief Hicks, thank you and your counsel for what you have been able to help both in the economic impact in our community, and for the wellness of our community. Growing up just six miles from the Kwala boundary was a very special time of my life and a time that I will always remember. And I thank all of you for your testimony here before us today.

Thank you.

The CHAIRMAN. Mr. McIntyre.

Mr. MCINTYRE. Thank you, Mr. Chairman. I know the hour is late, and I will be brief. I do want to thank the Chairman for your patience and for your willingness to hear all of this testimony today. And thank you to my colleague, Congressman Shuler, for his kind words. I do greatly respect him, and is excited that he is here as a Member of our Congress and of this committee. And thank you for being with us today, and in a better understanding of this situation that my constituents in the Lumbee Tribe face.

I would like to just ask Arlinda Locklear, who is the attorney for the tribe, if there is anything else from a legal standpoint. Ms.

Locklear, I would like to give you that opportunity to speak to. I notice you have submitted for the record an excellent memorandum.

And I notice one comment that you had here, that if you would just like to speak to. When you say Congress should deal with the Lumbee Tribe just as it has every other tribe in the same situation. That is, by an Act of Recognition Legislation, because the tribe is ineligible for the administrative process.

Congress, you say, has never passed special legislation that will require administrative action on a tribe that is, under present law, ineligible for the administrative process. So in your reference here, if you would just expound upon that briefly. And we thank you again for your excellent preparation of this memorandum.

Ms. LOCKLEAR. Thank you, Congressman McIntyre, I appreciate the opportunity. And I also thank you for your work on this bill. The community is very grateful.

Yes, that is correct, Congressman McIntyre, that the Congress has never done as some have proposed today, which is to repeal a statute that precludes a tribe from going through the administrative process, and then require administrative action on that tribe's history. That was proposed by some in the Congress's consideration of the Pascua Yaqui Tribe in 1978. It was also mentioned by some in Congress's consideration of the Ysleta del Sur Tribe in 1987.

And in both cases, the Congress declined to do so, and instead enacted comprehensive legislation for those tribes. Both of those tribes were subject to Acts of Congress comparable to the 1956 Lumbee Act that precludes administrative action on the tribe's status.

But let me also point out that in the past, this committee has rejected that same alternative with respect to the Lumbee Tribe, as well. In both 1992 and 1993 when the issue was before the Committee, the Committee voted down that alternative in both Congresses.

Mr. MCINTYRE. Thank you. And just one other clarification. You also mentioned as another point following that paragraph in your discussion of that particular issue that the Department of the Interior, and I quote, "and the Congress have already made inquiry with regard to the Lumbee Tribe on numerous occasions in response to the tribe's repeated requests to Congress and the Department for Federal recognition."

The Congress and the Department have compiled a voluminous record on the tribe's history and community. In fact, what Dr. Campisi has referred to today and what you have submitted, can you tell us, in brief, the history of those records being provided already to this Congress with regard to the Lumbee status as Indians?

Ms. LOCKLEAR. Yes, sir. Those investigations and reports arose out of the tribe's long effort to obtain Federal recognition. Typically what occurred was when the bill was introduced, Congress would request or direct the Secretary of the Interior to dispatch a special Indian agent to study the history and condition of the Indians in Robeson County.

And it is important to point out that these were Indian agents with substantial background and experience among Federally rec-

ognized tribes. Mr. Baker, for example, who visited the community in 1935 was the agency at, the Sisseton Wahpeton agent at the time, agency at the time. They all, as instructed by Congress, produced reports which were then made part of the legislative history on those bills. And as Dr. Campisi testified, they all conclude that it is an Indian community in Robeson County, with a strong community sense and strong political leadership.

And in fact, one of those, one of the early ones of those, done in 1934 by Dr. Swanton, as Dr. Campisi testified, concluded that the Lumbee Indians descend from the Cheraw and related Siouan-speaking tribes.

The Department of the Interior relied on that report, in fact, in its testimony, adopted that view in its testimony to Congress on a bill in 1934. So it is a little disingenuous we believe for the Department now to express some doubt as to the ancestry of the Lumbee, when they appear to have known it for some time.

Mr. MCINTYRE. Thank you. And thank you, Mr. Chairman, thank you again for your indulgence today, and for the opportunity to present this case on behalf of the Lumbee Tribe.

The CHAIRMAN. Thank you, Mike. The gentleman from Maryland, Mr. Sarbanes, do you have any questions?

Mr. SARBANES. A very brief question for Ms. Locklear. You say there is other tribes that have been sort of similarly situated by having Congress recognize them, but deny them access to the administrative process.

Ms. LOCKLEAR. Yes.

Mr. SARBANES. And in those instances, have those, have any of those occurred since 1956?

Ms. LOCKLEAR. They both did.

Mr. SARBANES. They both did.

Ms. LOCKLEAR. Yes.

Mr. SARBANES. OK. And in both of those instances there was subsequent legislation that did not require them to go through the process, is that correct?

Ms. LOCKLEAR. That is correct.

Mr. SARBANES. OK. Thank you.

The CHAIRMAN. Thank you. The gentleman from Pennsylvania, Mr. Brewster.

Mr. SHUSTER. Thank you, Mr. Chairman, I appreciate it.

The CHAIRMAN. Mr. Shuster, I am sorry.

Mr. SHUSTER. You combined the Bill with the Shuster.

The CHAIRMAN. That is what I did.

[Laughter.]

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. It is not the first time that I have been mistaken for other people.

Thank you for correcting the record. And thank all of you for being here today.

I generally support tribal recognition legislation. But it has been brought to my attention that some of the tribes around the country, and especially in the Northeast, I am aware of a situation where they have not been collecting state taxes or sales tax or excise taxes, and it has put some small businesses—mainly what I am talking about it convenience store operators, whether it is gas or

whether it is tobacco, especially tobacco. I know there has been a pretty significant problem.

When the tribes are exempt from charging the tribal members taxes, which I understand, but when they are selling it to people that aren't tribal members, members of the tribe, that causes a great hardship on these businesses. They can't compete, and in some cases I am aware that cigarette sales for one convenience store operator has dropped 80 percent because the tribe refuses to collect the taxes when they are selling it to people who aren't members of the tribe.

And what I would like to do also is, for the record, put a letter in from the National Convenience Store Association, National Association of Convenience Stores, into the record. They oppose this legislation. And I understand why they oppose it, because they want to know what kind of protection are they going to have, what kind of mechanisms are in place in this legislation to make sure that the tribes are collecting those taxes.

So I don't know if any of you can answer that question, but I would like you to speak to that matter. Because it is of great concern to convenience store operators, especially, as I said, with tobacco, sales of tobacco. So could anybody address that for me?

Ms. LOCKLEAR. If I may, Congressman, I am aware of that concern. It does exist in several places in Indian country where there has been tension between the local government, among the local governments, the state governments, and the tribal governments with respect to the collection of taxes that are owed and payable. Largely, cigarette sales tax and other sales tax, cigarette excise tax and other sales tax.

However, let me point out that the situation of Lumbee is politically different from those situations, because of its longstanding history with the State of North Carolina. The tribe has had, since 1885, a cooperative arrangement with the State of North Carolina, a very active political relationship, and has addressed all of its issues with the state through a true, genuine government-to-government basis.

In those areas of Indian country where the issues on taxation do not exist, that is how it is solved there, as well. I am aware, for example, of the tribes in Wisconsin. I represent some tribes there who have entered into compacts with the State of Wisconsin to address those issues there, so that the tribes actually do pre-collect and remit those taxes to the state, and then the state rebates back a certain percentage of the tax to the tribes.

That is the key. The key is a respectful government-to-government relationship between the tribes and the states. And we fortunately already enjoy that at the Lumbee Tribe in North Carolina.

Mr. SHUSTER. That is great to hear. And I would hope sometime maybe, Mr. Chairman, we could hold a hearing with some of these tribes that aren't collecting the taxes. Because as I said, for a lot of small business owners, a lot of these convenience stores are small businesses, they are facing great hardships.

I appreciate you letting me know what is happening in your part of the world. And if anybody else would care to touch on that, that is fine. I think it is a huge problem, something we have to do. And

again, if I could submit this letter into the record, thank you. And I yield back my time.

[The letter submitted for the record by Mr. Shuster from Lyle Beckwith, Senior Vice President, Government Relations, The Association for Convenience & Petroleum Retailing, on H.R. 1294 follows:]

NACS

April 16, 2007

The Honorable James P. Moran Jr.
137 Cannon House Office Building
Washington, DC 20515

Dear Representative Moran

I am writing on behalf of the National Association of Convenience Stores ("NACS") to express our opposition to Rep. Jim Moran's legislation, H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act.

NACS is an international trade association representing 2,200 convenience store companies. There are over 140,000 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.

H.R. 1294 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. The bill closely resembles legislation introduced by Mr. Moran in previous Congresses. NACS opposes recognition of any additional tribes until Congress can fix the process for tribal recognition.

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 (that have trouble competing with the large price advantages unfairly bestowed when taxes are not collected) and substantial losses of state and local tax revenues. In fact, in some states, retailers in close proximity to recognized tribes have experienced a more than 80 percent decrease in cigarette sales, as non-Native American customers have migrated to tax-free purchases on Native American land. Many convenience stores have been put out of business because of these tax abuses, and the proliferation of the problem needs to be addressed prior to the recognition of additional tribes.

In addition to decimating the businesses of convenience store owners, H.R. 1294 also highlights the infirmities with our system of tribal recognition. Currently, this system 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. Understandably, the process has received significant criticism in recent years.

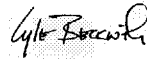
The Association for Convenience & Petroleum Retailing

1600 Duke Street ■ Alexandria, Virginia 22314-3436, USA ■ (703) 684-3600 ■ FAX (703) 836-4564 ■ www.nacsonline.com

While the shortcomings of the Bureau of Indian Affairs acknowledgment process are well-documented, recognition by Congressional legislation is more troubling. Such fast-track recognition provides no opportunity for expert evaluation of an applicant tribe's merits and no input by affected parties. Moreover, recognition by Congressional legislation circumvents the basic criteria established under the regulations of the Department of the Interior. It makes little sense to continue to recognize additional Native American tribes under such a flawed system, especially when that recognition has a significant impact on surrounding municipalities.

With so much at stake for America's communities and with the viability of many local small businesses at risk, we strongly urge you to oppose H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. When NACS members are forced to compete against tribal competitors who can abuse federal tax law to gain a competitive advantage, the harm is borne not only by the store owners who go out of business, but also by the American taxpayer. America's convenience store operators are an essential part of our economy, and it is not only critical but economically fair to ensure that these small businesses are able to compete on a level playing field.

Sincerely,



Lyle Beckwith
Senior Vice President, Government
Relations

The CHAIRMAN. The Chair thanks the panel very much for your patience this morning and your superb testimony. Thank each of you.

Due to the limited seating in the Committee room and the Chair's desire to be fair to all this morning, we had to limit the seating for this morning's portion of the hearing to those interested in the Lumbee Tribe. There are others waiting outside the room that wish to enter in regard to the next panel's testimony, so I would ask if we could, in an orderly fashion, vacate the seats now to allow those that have been outside waiting to come in. And in order to accommodate that, the Chair will take a five-minute recess.

[Recess.]

The CHAIRMAN. The Committee will resume its sitting, and call to the witness table panel number three in regard to H.R. 1294. The panel is composed of Chief Stephen R. Adkins, the Chickahominy Indian Tribe, Charles County, Virginia; Chief Kenneth Branham, the Monacan Indian Nation, Madison Heights, Virginia; Reverend Jonathan M. Barton, General Minister, Virginia Council of Churches, Inc., Richmond, Virginia; and Ms. Helen Rountree, Professor Emerita of Anthropology of Old Dominion University, Norfolk, Virginia.

Lady and gentlemen, we welcome you to the full Committee on Natural Resources. And you may proceed in the order that I have announced. And as with previous witnesses, we do have your prepared testimony; it will be made a part of the record as if actually read, and you are encouraged to summarize.

Chief Adkins.

**STATEMENT OF STEPHEN R. ADKINS, CHIEF, CHICKAHOMINY
INDIAN TRIBE, CHARLES CITY COUNTY, VIRGINIA**

Mr. ADKINS. Thank you. I would say Charles City County, Virginia, versus Charles County, Charles City County.

But thank you, Chairman Rahall and other distinguished Members of the Committee, for inviting me here today. And before I begin my talk, I would like to thank you for that moment of silence that you invoked, and for the galvanizing effect it had on the hearts and minds of the folks in this room. When something touches the Senecamaca, my homeland, it hits very hard.

But even if this had not been in that territory, what you did was very appropriate, and I think it joined our hearts together. So thank you very much for setting the tone of this very, very important hearing today.

The bill introduced by Congressman Jim Moran is titled "The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007," and it is H.R. 1294. And I am proud to appear today before this Congressional committee on behalf of the six named tribes in this legislation.

As part of my testimony, or as part of the record, I would like to submit the statement from Governor Tim Kaine of Virginia. I think you got it electronically. As part of my statement, I would like to enter that into the record today.

The CHAIRMAN. It will be.

[The statement submitted for the record by Governor Kaine follows:]

**Statement of The Honorable Timothy M. Kaine, Governor,
Commonwealth of Virginia, on H.R. 1294**

Thank you for the opportunity to provide a written statement supporting the long overdue Federal Recognition of the Native American Tribes of Virginia. In Virginia we are proud of the State Recognized Indian Tribes and the contribution their communities have made to our Commonwealth and the Nation.

As a part of my Inaugural Address on January 14, 2006 at the Colonial Capital in Williamsburg, Virginia, I stated:

"Our Virginia might not exist today were it not for the generosity extended to those first settlers by the native Virginia tribes living in this region. Without the hospitality of Chief Powhatan...those in Jamestown would have perished...And, we should use this historic time to help those who first helped us by working with the federal government to see that Virginia's native Indian tribes are finally recognized."

Next month we will be honoring the heritage of the Virginia Tribes and our early colonial history as we commemorate the 400th anniversary of the first permanent English Settlement at Jamestown.

Almost immediately after first landing at Jamestown in 1607, the early English settlers and explorers came into contact with the Virginia Tribes living throughout Eastern Virginia. While the relationship between the Native Tribes and the English was not always easy, there can be little doubt that had it not been for accommodations on both sides, the settlement would not have survived. Indeed, Virginia's Native American Tribes played an integral role in helping settlers survive those first harsh winters.

In this special anniversary year, it is especially tragic that these tribes still have not received equal status with the 562 other Federally Recognized Tribes in the United States. How can we commemorate their history and not recognize their existence? Now is the time to reconcile history. Let us, once and for all, honor their heritage. A heritage, I might add, that has been sorely tested by centuries of racial hostility and state-sanctioned coercive actions.

Virginia Tribes are unique. Unlike most tribes that obtained federal recognition when they signed peace treaties with the federal government, tribes in Virginia signed their peace treaties with the British Monarchy.

- Most notable among these was the Treaty of 1677 between Virginia's Tribes and Charles the II—well before the establishment of the United States. This treaty has been recognized by the Commonwealth of Virginia every year for the past 330 years when the Governor of Virginia accepts tribute from the Tribes in a ceremony now celebrated at the State Capitol.

However, while the Virginia Tribes have received official recognition from the Commonwealth of Virginia, acknowledgement and officially recognized status from the federal government has been considerably more difficult due to systematic mistreatment over the past century.

Recent History of Tribal Recognition Issue in Virginia

For 34 years, from 1912 to 1946, Walter Ashby Plecker, at the Virginia Bureau of Vital Statistics, led an effort to actively destroy vital records and evidence of Indian existence in the Commonwealth. This practice was supported when the eugenics movement was endorsed by Virginia Universities and the Virginia General Assembly enacted the Racial Integrity Act in 1924—a race based statute that forced all segments of the population to be registered at birth in one of two categories “white” or “colored”. No reference was allowed for other ethnic distinctions and no reference was allowed for Indian Tribal peoples in Virginia. Members of Virginia's Tribes were denied their identities as Native peoples. Essentially, Virginia declared, by law and the systematic altering of key documents, that there were no Indians in the Commonwealth as of 1924. The passage of these race based statutes in Virginia made it criminal for Native peoples to claim their Indian Heritage.

- For instance, married couples were denied marriage certificates or even forbidden to obtain the release of their newborn child from a hospital until they changed their ethnicity on the state record to read “colored.”

The Racial Integrity Act was not struck down by the Federal Courts until 1967. The eight Virginia Tribes are the Chickahominy, Eastern Chickahominy, Mattaponi, Monacan Indian Nation, Nansemond, Pamunkey, Rappahannock and the Upper Mattaponi.

From 1983-1989 each Tribe gained official Recognition in the Commonwealth of Virginia. In 1997, then Governor George Allen signed legislation acknowledging the “paper genocide” of Indians in Virginia. This legislation provided that state records be corrected that had been deliberately altered to list Virginia Indians on official state documents as “colored.” In 1999, the Virginia General Assembly adopted a resolution calling upon Congress to enact legislation recognizing the Virginia Tribes.

Each of the six tribes have also petitioned the U.S. Department of Interior and the Bureau of Indian Affairs (BIA) for official recognition under the process set forth in 25 CFR Part 83, “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” Such Federal acknowledgement enables Indian Tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian Tribe.

The Virginia Tribes have also submitted letters of intent and partial documentation to petition for Federal acknowledgement.

Helen Rountree, noted anthropologist and expert on Native-Americans in Virginia, who will also be testifying today, has spent her life documenting the Virginia Tribes. Through her thorough analysis and research the Commonwealth of Virginia was provided with sufficient authentication to officially recognize these tribes. I believe that that research should also be sufficient to address the damage of the Racial Integrity Act era and meet the BIA's criteria.

Need for Congressional Action

Six of the Tribes first came to Congress seeking recognition in 1999. They joined together to request Congressional action on their application for Federal Acknowledgement through the “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act” (this year it is H.R. 1294). The six Tribes view Federal recognition as a basic issue of equality with the other 562 tribes.

Under the United States Constitution Indian Commerce Clause, Congress has the authority to recognize a “distinctly Indian community” as an Indian tribe. I believe that the Tribes' situation clearly distinguishes them as excellent candidates for Congressional action.

Under H.R. 1294, the six Tribes would finally, and at long last, be granted federal recognition. At the same time, I feel that the safeguards provided in this legislation would address some Virginians' concerns about Class III style gaming in the Commonwealth. Indeed, this legislation would give both the Governor and the General Assembly strict control over any possibility of the development of Indian Gaming.

Specifically, sections 106(b), 206(b), 306(b), 406(b), 506(b), and 606(b) of H.R. 1294 include the following language:

- (1) GAMING.—No reservation or tribal land or land taken into trust for the benefit of the Tribe or a member of the Tribe shall be eligible to satisfy the terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act (25 U.S.C.2719(b)(1)(B)) to the prohibition on gaming on land acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, under section 20(a) of that Act (25 U.S.C. 2719(a)).
- (2) APPROVAL OF COMPACTS.—No compact for class III gaming shall be valid unless approved or ratified by the Virginia General Assembly.

I commend the committee for giving its time and attention to the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. I would like to especially thank House Natural Resources Chair Nick Rahall (D-WV) for his leadership on this important issue.

I would also like to thank Representative Jim Moran (D-VA) for his years of work on behalf of the native peoples of Virginia and his testimony today. I am heartened by the bipartisan Virginia Delegation support for H.R. 1294 and thank Representatives Jo Ann Davis (R-VA), Tom Davis (R-VA), and Bobby Scott (D-VA) for their original cosponsorship of the legislation.

I would also like to commend the other individuals testifying today: Helen Rountree, Jon Barton from the Council of Churches, Chief Stephen R. Adkins of the Chickahominy Indian Tribe, and Kenneth Branham of the Monacan Indian Nation. Thank you for your efforts.

Last summer, during ceremonies commemorating the 400th anniversary of the settlement of Jamestown, the British government reaffirmed its recognition treaties with the modern Virginia Tribes. It is time for these Virginia native peoples to be recognized by their own country. Recognition of the Tribes of Virginia is long overdue.

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 our Virginia Tribes during this momentous year. Indeed, our commemoration of the 400 years of modern Virginia history will be incomplete without successful Federal recognition of these Virginia Tribes.

Thank you for the opportunity to submit testimony on this important issue. I welcome your efforts to finally right an historic wrong for Virginia and the Nation.

Mr. ADKINS. But Governor Kaine in his inaugural address pledged his strong support for the Federal recognition of the Virginia tribes. That remains paramount in his objectives during his administration.

Chairman Rahall, we are in the midst of many events in Virginia. The United Kingdom and even across this nation commemorating the 400th anniversary of the founding of the first permanent English settlement in America at Jamestown in May 1607. Reflecting on some of the comments I heard today, perhaps our mistake was trusting people. Little did we know that this very settlement would mark the beginning of the diminution of a culture that we had enjoyed for many thousands of years.

But that spirit of trust still caused us to remain part of that infrastructure that helped that first permanent English settlement at Jamestown thrive.

During the anniversary weekend in Jamestown, May 11 through the 13th of this year, visitors from all over the world, including leaders representing the United States, England, Native Americans and African-Americans and others will gather, acknowledging the birth of this great Republic, the United States of America, which blossomed in Jamestown.

In July 2006, a delegation of 54 tribal members representing the gender and age demographic of the six tribes that we are talking about today had the opportunity to visit the United Kingdom as part of its 2007 commemoration activities. For many of us, it was the very first time to visit St. George's Church at Gravesend,

which, by the way, is the final resting place of Pocahontas, the daughter of Paramount Chief Powhatan, and who became the wife of Englishman John Rolfe.

And for us, through the experience we know so well what has happened to our people since the days of Pocahontas, the connection we felt to both the congregation at St. George's and Pocahontas was very palpable, sir, very real. The English have paid honor and tribute to her in a manner that no member of her family or her descendants has ever received in this country. This feeling of respect and honor in the church through its living congregation suffused the entire Virginia Indian delegation.

I would like to share with you the words from the plaque on the wall of St. George's. I believe from these words you can sense the very sincere regard that English people feel for Pocahontas, and I quote. "This stone commemorates Princess Pocahontas or Metoak, daughter of the mighty American Indian Chief Powhatan, gentle and humane. She was the friend of the earliest struggling English colonists whom she nobly rescued, protected, and helped. On her conversion to Christianity in 1613, she received in Baptism the name Rebecca, and shortly after she became the wife of John Rolfe, a settler in Virginia. She visited England with her husband in 1616, and was graciously received by Queen Anne. In the 22nd year of her age, she died at Gravesend preparing to revisit her native country, and was buried near this spot on March 21, 1617."

Sir, as descendants, we have not felt the honor here at home that those in England feel for Pocahontas and bestowed upon us. Through this visit to Gravesend we saw Pocahontas as more than the legend we live behind. We in fact saw her as the first to brave the new world that opened up with first contact by the English. We saw Pocahontas as one with whom we can identify, as a soul who today can still touch us and remind us of who we are, and remind us that we have a proud heritage.

She is not a myth. She is still inside all of us. And her death and burial in England remind us of how far and challenging our path has been since she braved that voyage to England. It was a tremendous experience to step into that church and feel the love of the English congregation.

I wish there was time today to tell the full story of what has happened to the Virginia tribes since Pocahontas visited England and the Court of Queen Anne. The story of Chief Powhatan and his daughter Pocahontas is well known across this land. As a matter of fact, her very picture is in this Capitol Building with her English husband, John Rolfe.

But public school textbooks throughout Virginia in the past had scant mention of who we are. The fact that we were so prominent in early history, and then so callously denied our Indian heritage, is a story that most don't want to remember or recognize.

I and those Chiefs with me here today stand on the shoulders of many others besides Pocahontas and Powhatan. One story that has always made me sad, and which brings in a different picture than the love we experienced in England, is that of the Paspahegh led by Chief Wowinchopunk, whose wife was captured and taken to Jamestown Fort and run through with a sword. His children were tossed overboard, and then their brains were shot out as they

floundered in the water, and whose few remaining tribal members sought refuge with a nearby tribe, possibly the Chickahominy.

With this horrific action in 1610, August 1610, a whole nation was annihilated. This was the Nation that befriended strangers, and ultimately died at the hands of those same strangers. As we commemorate Jamestown 2007 and the birth of our nation today, those of Indian heritage in Virginia are also reminded of this part of history.

Let me tell you how we got here today. The six tribes in this bill gained state recognition in the Commonwealth of Virginia between 1983 and 1989. Although there were meager attempts to gain Federal acknowledgement by some of the tribes in the mid 20th century, our sovereignty movement began directly after the passage of a legislation acknowledging the attack on our heritage.

In 1997 this legislation, sponsored by Governor George Allen, acknowledged the state action that attacked our heritage, but it couldn't fix the problem. The damage to our documented history had been done. In 1999 we came to Congress, where we were advised by the BAR, which is the Bureau of Acknowledgement and Research, which is now the Office of Federal Acknowledgement, but we were advised that many of us would not live long enough to see our petition go through the administrative process. We were advised by employees, by folks at the BIA, that that was the reality we faced.

Sir, I will tell you that that prophecy has come through. I am sad to say that we have buried three of our Chiefs since then, three Chiefs who worked a large portion of their lives trying to help us gain Federal recognition through the BIA process.

Given the realities of the OFA and the historical slights suffered by the Virginia Indian tribes over the last 400 years, the six tribes referenced in H.R. 1294 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

On a personal note, I have been asked why I do not have a traditional Indian name, and the answer is quite simple. My parents weighed the risks of assigning me an Indian name, of giving me an Indian name, opposite the risks of going to jail for one year. And guess what won out? I don't have an Indian name.

The documentary genocide the Virginia Indians suffered at the hands of Walter Ashby Plecker, a rabid white separatist who ruled over the Bureau of Vital Statistics in Virginia for 34 years, from 1912 to 1946, was well documented in an article written by Peter Harding of the Richmond Times-Dispatch in 2000. It was socially unacceptable to kill Indians outright, and I thank God for that. But Virginia Indians became fair game for Plecker, as he led efforts to eradicate all references to Indians on vital records, a practice, sir, that was supported by the state's establishment when the eugenics movement was endorsed by leading state universities, and was further supported when the state's legislature enacted the Racial Integrity Act in 1924, a law that stayed in effect until 1967, and caused my parents and many other couples to have to travel to Washington, D.C. on February 20, 1935, in order to be married as Indians. This vile law forced all segments of the population to be registered at birth in one of two categories: white or colored.

Our anthropologist says there is no other state that attacked Indian identity as directly as the lost past during that period of time in history. No other ethnic community's heritage was denied in this way. Our state by law declared there were no Indians in the state in 1924, and if you dared to say differently, you went to jail or worse.

The Racial Integrity Act stayed in effect for half of my life. Our parents lived in the heart of the Plecker years, and carried those scars to their graves.

Chairman Rahall, the story I just recounted to you is very painful. Quite frankly, I do not like to tell that story. Many of my people will not discuss what I have shared with you, but I felt that you needed to understand recent history opposite the romanticized, inaccurate accounts of 17th century history. You needed to know these facts.

The legislation sponsored by former Governor George Allen in 1997 acknowledged the aforementioned injustice. Unfortunately, while this legislation allowed those of the living generation to correct birth records, the legislation, the law has not and cannot undo the damage done by Plecker and his associates to my ancestors, who endured pain and humiliation, and things as disparate as trying to obtain marriage licenses or being inducted into the armed forces of the United States as Indian. Again, all of this was because of distorted, altered, incorrect records.

So we are seeking recognition through an Act of Congress, rather than the BIA, because actions taken by the Commonwealth of Virginia during the 20th century erased our history by altering key documents as part of a systematic plan to deny our existence. This state action separates us from the other tribes in this country that were protected from this blatant denial of Indian heritage and identity.

We are seeking recognition through Congress because this history of racism in very recent times intimidated the tribal people in Virginia, and prevented us from believing that we could fit into a petitioning process that would understand or reconcile this state action with our heritage. We feared the process would not be able to see beyond the corrupted documentation that was designed to deny our Indian heritage. Many of the elders in our community also feared, and for good reason, racial backlash if they tried.

As Chiefs of our tribes, we have persevered in this process for one reason. We do not want our families or our tribes to let the legacy of Walter Plecker stand. We want the assistance of Congress to give the Indian communities in Virginia their freedom from a history that denied their Indian identity. Without acknowledgement of our identity, the harm of racism is the dominant history. We want our children and the next generation to have their Indian heritage honored, and to move past what we experienced, and our parents experienced.

We, the leaders of the six Virginia Indian tribes, are seeking Congress, asking Congress to help us make history for the Indian people of Virginia, a history that would honor our ancestors who were there at the beginning of this great country. We want to experience the honor and love that we felt was still alive in the congregation at St. George's.

After our visit to England, I truly believed that Federal recognition of Virginia Indian tribes during the year of the 400th commemoration will make a significant difference. It will reconcile history in this country between two cultures in a way that honors our history of learning to live together in peace and in love. This is what I want for our people and for our nation.

Our decision to honor Pocahontas at her grave has strengthened our resolve to obtain Federal acknowledgement. It has made us understand that we deserve to be on a level playing field with the other 562-odd tribes who are Federally acknowledged. It has made us unwilling to accept being discriminated against because of both a historical oversight and the concerted efforts of our commonwealth to deny to us our rightful heritage.

The aforementioned visit, invitation to visit England was not easy to give, not easy for us to accept.

The CHAIRMAN. Chief, I am going to have to ask you to start wrapping up.

Mr. ADKINS. All right, sir. This year the Virginia tribes are part of the 400th commemoration of Jamestown. This year, with Jamestown expected to be visited by the Queen of England and the President of the United States, the Virginia tribes will have a much deeper understanding of who we are, fueled in part by our learning gained from our trip to England, and in our involvement in researching the truth about the underpinnings of the first permanent English settlement at Jamestown, and what our contribution meant to its success.

We believe it is time for the U.S. Congress to stand alongside us and grant us the recognition we deserve, as we commemorate the birth of the greatest nation in the world. Yes, it is essential for Virginia's indigenous peoples to receive that honor in this significant year in the history of the Commonwealth of Virginia, the history of the United States of America, the history of the world, and then the history of indigenous peoples around the globe.

I implore you to pass the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007.

Thank you, Chairman Rahall, and thank you for being the friend that you have been to our people.

[The prepared statement of Mr. Adkins follows:]

**Statement of Chief Stephen R. Adkins,
Chickahominy Indian Tribe**

Thank you Chairman Rahall and other distinguished members of this committee for inviting me here today to speak on House Bill 1294 which is pending before your Committee. The bill, introduced by Congressman Jim Moran is titled the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007—H.R. 1294. A hearing on our Federal Recognition bill was held by this committee in 2002. I am proud to appear before this Congressional Committee today on behalf of the six Tribes named in H.R. 1294 the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi, the Rappahannock, and my Tribe the Chickahominy. As part of the record today I am submitting the statement from our current Governor, Timothy Kaine, who in his inaugural address pledged his strong support for Federal Recognition of the Virginia Tribes. Beside me today is Dr. Helen Rountree, a renowned anthropologist specializing in the heritage of the Virginia Tribes, who worked on the petitions we filed with the BIA, and is prepared to assist with any questions you may have about our history. Also, with me today is Rev. Jon Barton from the Virginia Council of Churches who has worked tirelessly on our effort to gain Federal Recognition and Chief Ken Branham of the Monacan Indian Nation.

Chairman Rahall, I am sure you are well aware of the events occurring this year in Virginia and the United Kingdom commemorating the 400th anniversary of the first permanent English Settlement in America in May 1607. The settlement became known as Jamestown and is located on the James River in Tidewater Virginia. On Anniversary Weekend at Jamestown, May 11-13, 2007, visitors from all over the world including leaders representing the United States Government, England, Native Americans and African Americans et al will gather acknowledging the birth of this Great Republic, the United States of America, which blossomed at Jamestown. In July 2006 a delegation of 54 tribal members representing the gender and age demographics of the Tribes recognized by the Commonwealth of Virginia had the opportunity to visit the United Kingdom as part of its 2007 Commemoration Activities. For many of us it was a first time visit to St Georges Church at Gravesend, the final resting place of Pocahontas, the daughter of Paramount Chief Powhatan and the wife of John Rolfe. History tells us that Pocahontas died when she returned with John Rolfe to England in 1616.

The impact of our experience in Gravesend is something I want to share with you because it was beyond what any of us could have possibly imagined. The congregation of St. Georges Church brought home to us, the very real connection the English people feel with our heritage. And for us, who have experienced and know so well what has happened to our people since the days of Pocahontas, the connection we felt to both the congregation and Pocahontas was palpable and real. The English have paid honor and tribute to her in a manner that no member of her family or her descendants has ever received in this country. This feeling of respect and honor in the church through its living congregation suffused the entire Virginia Indian Delegation. But to my utter amazement, this attitude of honor and respect transcended the spiritual and emotional service within the church and was extended to us in every venue we attended from Kent University, to Kent County Council to the House of Commons and the House of Lords. If you would indulge me, I would like to share with you the words from a plaque which hangs on a wall of St. Georges Church I believe from these words you can sense the very sincere regard English people feel for Pocahontas. "This stone commemorates Princess Pocahontas or Metoak daughter of the mighty American Indian Chief Powhatan. Gentle and humane, she was the friend of the earliest struggling English colonists whom she nobly rescued, protected, and helped. On her Conversion to Christianity in 1613, she received in Baptism the name Rebecca, and shortly afterwards became the wife of John Rolfe, a settler in Virginia. She visited England with her husband in 1616, was graciously received by Queen Anne wife of James I. In the twenty second year of her age she died at Gravesend preparing to revisit her native country and was buried near this spot on March 21st 1617.

I believe for our people to go back to England and be embraced by this church congregation was a significant reconciliation and healing. As descendants, we have not felt the honor here at home that those in England both feel for Pocahontas and bestowed upon us. Through this visit to Gravesend, we saw Pocahontas as more than the legend we live behind, we saw her as the first to brave the new world that opened up with first contact by the English. We saw Pocahontas as one with whom we can identify, as a soul who today can still touch us, and remind us of whom we are and remind us that we have a proud heritage. She is not a myth for she is still inside all of us, and her death and burial in England, remind us of how far and challenging our path has been since she braved that voyage to England. She was brave and she was alone. It was a tremendous experience to step into that church and feel the love of that English congregation. Appropriately, the St. George's Church Guide, contains this prayer:

May your Church, Lord, be a light to the nations, the sign and source of your power to unite all men. May she lead mankind to the mystery of your love? Amen

I could tell you the much publicized story of the 17th Century Virginia Indians, but you, like most Americans, know our first contact history. I wish there was time today to tell the full story of what has happened to the Virginia Tribes since Pocahontas went to England to the Court of Queen Ann. The story of Chief Powhatan and his daughter Pocahontas is well known across this land, her picture being in this very capitol building with her English husband John Rolfe. But what about our story, for years the Commonwealth of Virginia did not care about our story? Our public school textbooks had scant mention of who we are. So, what do you know or what does mainstream America know about what happened in those years between the 17th century and today. The fact that we were so prominent in early history and then so callously denied our Indian heritage is the story that most don't want to remember or recognize. This year we, the Virginia Indian Tribes, are a part of the commemoration of Jamestown. This year, 2007, when Jamestown is expected to be visited by the Queen of England and the President of the United States, the

Virginia Tribes will have a much deeper understanding of who we are, fueled in part by our learning gained from our trip to England and in our involvement in researching the truth about the underpinnings of the first permanent English Settlement at Jamestown and, finally, what our contributions meant to its success. Our connection to Pocahontas and, by extension, to England must come full circle and extend to the Congress of the United States of America. We must feel the same honor and love from leaders of the United States of America as we do from the people from England with whom our last treaty was signed in 1677.

I and those Chiefs here with me, stand on the shoulders of many others besides Pocahontas and Powhatan. One story that has always made me sad, and which brings in a different picture than the love we experienced in England, is that of the Paspahugh led by Chief Wowinchopunk whose wife was captured and taken to Jamestown Fort and “run through” with a sword, whose children were tossed overboard and then their brains were “shot out” as they floundered in the water, and whose few remaining tribal members sought refuge with a nearby tribe, possibly the Chickahominy. With this horrific action in August 1610, a whole Nation was annihilated. A Nation who befriended strangers and ultimately died at the hands of those same strangers. As we commemorate Jamestown 2007 and the birth of our Nation today, those of Indian heritage in Virginia are also reminded of this history.

We are seeking recognition through an act of congress rather than the BIA because actions taken by the Commonwealth of Virginia during the 20th Century erased our history by altering key documents as part of a systematic plan to deny our existence. This state action separates us from the other tribes in this country that were protected from this blatant denial of Indian heritage and identity. The documentary genocide the Virginia Indians suffered at the hands of Walter Ashby Plecker, a rabid white separatist, who ruled over the Bureau of Vital Statistics in Virginia for 34 years, from 1912 to 1946 was well documented in an Article written by Peter Hardin of the Richmond Times Dispatch in 2000. Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Indians on Vital Records. A practice that was supported by the state’s establishment when the eugenics movement was endorsed by leading State Universities and was further supported when the State’s legislature enacted the Racial Integrity Act in 1924. A law that stayed in effect until 1967 and caused my parents to have to travel to Washington D.C. on February 20, 1935 in order to be married as Indians. This vile law forced all segments of the population to be registered at birth in one of two categories, white or colored. Our anthropologist says there is no other state that attacked Indian identity as directly as the laws passed during that period of time in Virginia. No other ethnic community’s heritage was denied in this way. Our state, by law, declared there were no Indians in the State in 1924, and if you dared to say differently, you went to jail or worse. That law stayed in effect half of my life.

I have been asked why I do not have a traditional Indian name. Quite simply my parents, as did many other native parents, weighed the risks and decided it was not worth the risk of going to jail.

Former Senator George Allen as Governor of the Commonwealth of Virginia sponsored legislation in 1997 acknowledging the injustice of the Racial Integrity Act. Unfortunately, while this legislation allows those of the living generations to correct birth records, the legislation or law has not and cannot undo the damage done by Plecker and his associates to my ancestors who endured pain and humiliation in venues disparate as trying to obtain marriage licenses to being inducted into the Armed Forces as Indian, all because of these distorted, altered, incorrect records.

We are seeking recognition through Congress because this history of racism, in very recent times, intimidated the tribal people in Virginia and prevented us from believing that we could fit into a petitioning process that would understand or reconcile this state action with our heritage. We feared the process would not be able to see beyond the corrupted documentation that was designed to deny our Indian heritage. Many of the elders in our community also feared, and for good reason, racial backlash if they tried.

My father and his peers lived in the heart of the Plecker years and carried those scars to their graves. When I approached my father and his peers regarding our need for state or federal recognition they pushed back very strongly. In unison they said, “Let sleeping dogs lie and do not rock the boat”. Their fears of reprisal against those folks who had risked marrying in Virginia and whose birth records accurately reflected their identity outweighed their desire to openly pursue any form of recognition. Those fears were not unfounded because the threat of fines or jail time was very real to modern Virginia Indians.

Chairman Rahall, the story I just recounted to you is very painful and I do not like to tell that story. Many of my people will not discuss what I have shared with

you but I felt you needed to understand recent history opposite the romanticized, inaccurate accounts of 17th century history.

Let me tell you how we got here today. The six tribes on this bill gained State Recognition in the Commonwealth of Virginia between 1983 and 1989. The legislation of 1997 placed the burden of cost to correct the inaccurate vital records on the Commonwealth of Virginia Governor, but it couldn't fix the problem—the damage to our documented history had been done. Although there were meager attempts to gain federal acknowledgement by some of the tribes in the mid 20th century, our current sovereignty movement began directly after the enactment of the aforementioned legislation acknowledging the attack on our heritage. In 1999 we came to Congress when we were advised by the BAR (Bureau of Acknowledgement and Research) now OFA (Office of Federal Acknowledgement) that many of us would not live long enough to see our petition go through the administrative process. A prophecy that has come true. We have buried three of our chiefs since then.

Given the realities of the OFA and the historical slights suffered by the Virginia Indian Tribes for the last 400 years, the six tribes referenced in H.R. 1294 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

As Chiefs of our tribes we have persevered in this process for one reason. We do not want our families or our tribes to let the legacy of Walter Plecker stand. We want the assistance of Congress to give the Indian Communities in Virginia, their freedom from a history that denied their Indian identity. Without acknowledgement of our identity, the harm of racism is the dominant history. We want our children and the next generation, to have their Indian Heritage honored and to move past what we experienced and our parents experienced. We, the leaders of the six Virginia Tribes, are asking Congress to help us make history for the Indian people of Virginia, a history that honors our ancestors who were there at the beginning of this great country. We want to experience the honor and love that we felt was still alive in the congregation at St. Georges. After our visit to England I truly believe the Federal Recognition of the Virginia Indian Tribes during the year of the 400th commemoration will make a significant difference. It will reconcile history in this country between two cultures in a way that honors our history of learning to live together in peace and in love. That is what we want for our people and for our nation. The acceptance of the invitation to visit England to share our culture and history to describe our contemporary lifestyles as both contributors to the American way of life and aspirants to the American Dream and our decision to honor Pocahontas at her grave has strengthened our resolve to obtain federal acknowledgement. It has made us understand that we deserve to be on a level playing field with the other 562 odd tribes who are federally acknowledged. It has made us unwilling to accept being discriminated against because of both a historical oversight and the concerted efforts of our Commonwealth to deny to us our rightful heritage. The aforementioned invitation to visit England was not easy for us to accept. We did not know what to expect, and we were apprehensive. From an overall perspective this visit was destined to be for it brought us into the history we commemorate at Jamestown in a very positive palpable way.

The Commonwealth of Virginia has taken definitive actions to right the wrongs inflicted upon its indigenous peoples and stands with us today as we commemorate the founding of the first permanent English Settlement 400 years ago on the banks of the James River at Jamestown, Virginia. We believe it is time for the United States Congress to stand alongside us and grant us the Recognition we deserve as we commemorate the birth of the greatest Nation in the world. Yes, it essential for Virginia's Indigenous Peoples to receive that honor in this significant year in the history of the Commonwealth of Virginia, the history of the United States of America, the history of the world and in the history of Indigenous Peoples around the Globe.

Thank you for allowing me to address you on behalf of the six tribes in H.R. 1294.

The CHAIRMAN. Mr. Branham.

**STATEMENT OF KENNETH BRANHAM, CHIEF, MONACAN
INDIAN NATION, MADISON HEIGHTS, VIRGINIA**

Mr. BRANHAM. Chairman Rahall and Members of the Committee, my name is Kenneth Branham. I am the Chief of the Monacan people. And as Chief, Steve Adkins just mentioned we will be at a lot of the Jamestown commemoration events this year in 2007.

We are not part of the Powhatan confederation, so we are a little bit different than the Powhatans. The major difference was the language. They spoke Algonquin, we spoke a Siouan dialect. Our boundaries with the Powhatan Indians were the fall lines of the James River, just above Richmond, and we were the most western part of the state, the Piedmont area of Virginia. We were the only tribe from that region of the state that is state recognized today. And we were the last to be state recognized in 1989.

The Monacan people lived off the land, hunting, fishing, and gardening small crops like corn, beans, squash. Our villages were located on flood plains of the rivers that ran through our land. The villages ranged anywhere from 30 to 40 people, to maybe as many as three or 400, depending on the lay of the land and the natural resources there.

The people in our tribe avoided the European contact. We didn't come in contact with the first Englishmen until 1608. And because we had people in our tribe that had prophesied that there would come a people from beneath the world to take our world away. If you think about it and look back, truer words have never been spoken.

But the way that we lived, trading with each other, it wasn't long before trade goods from the new people started showing up in our villages. Although they made life a little easier, tasks a little easier, they also brought along different types of hardships: European diseases and things of that sort.

The Powhatan Indians helped the European people to survive. But once they learned how to survive, plant the crops that were needed to grow in this area, their thinking toward the Indian people changed. And of course, more and more kept coming; and as they came, more and more land was needed. So the Indian people were eventually put on reservations, where they could not speak their language, practice their religion. And even today, without Federal recognition, a lot of our religion ceremonies can't be taught or used because we need special things to do those that we cannot have because we are not Federally recognized tribes.

The Monacan people did whatever they could to survive and stay out of the onrush of the newcomers into our land. The next 400 years, the Monacans, like other Virginia Indians, suffered many injustices. The Treaty of 1677 was signed by the Chief of the Monacans, Chief Shuwanoff, and the other Chiefs of the Powhatan Confederation, and things got better for a short period, and again went back to the old ways of taking land, treaties being broken, and those type things.

The most devastating thing to happen to the Virginia Indians were the Racial Integrity Law of 1924. Walter Plecker, who was in charge of vital statistics in Virginia for over 30 years, systematically went about changing records, death records, birth records, and in some cases destroying these records; anything that we had on there claiming to be Indian.

In Amherst County, Walter Plecker had what we called the Walter Plecker hit list, with names like Branham, Johns, Adcock, Hicks, Clarks, Red Cross. These were Indian names, and he said that these people were claiming to be Indian, but were not. And anybody that would give them documentation stating that they

were Indians could be fined or even lose their jobs. So it was forced, with a great deal of strength.

Our mother and father and a lot of other Monacan people who got married actually went out of state to get married, to get away from the classification of being called colored. And that was a common practice. In my family, I am the oldest of four children, each one of us had a different race stated on our birth certificate, from colored to black to mulatto, and to a circle with a line drawn through it. We joked around with my sister and said that must have been she was orange or something or other.

Our people in Virginia were denied a high school education. The Monacans, up until 1962, along with the other Virginia tribes, were not allowed at public schools. I am the first in my family to attend high school, and graduated in 1972.

In 1961, the year before myself and five other Monacan kids were paraded in front of the school board—they wanted to see what we looked like. I guess they were looking for two heads or something or other. But anyway, the following year, 35 Monacan kids were allowed in the public schools. The remaining 45 Monacan students were allowed in public schools the following year, closing the Indian school there at our church for good. In 1972 I became one of the first four to graduate from Amherst High School.

I believe that Walter Plecker knew the sure way to eliminate Indian people were to keep them uneducated. And that is how you keep anybody down is to keep them uneducated.

Federal recognition would give our elders the benefits that they need for proper healthcare. Our young people would be, doors would be opened that we can only dream of now for scholarships for education. Better healthcare, better housing, retrieving our ancestral remains, which is often overlooked, but the laws forbid us to retrieve our Federal ancestral remains, which we feel very strongly about.

In June of 2006, eight Monacans went with the other 50-some Indians to England to celebrate the commemoration of Jamestown. We were very proud to be a part of this. It was difficult for our people to participate in events that are significant dates in American history, when our own heritage is denied. The Monacan people hosted, was the host tribe at Monticello, the home of Thomas Jefferson, for the kick-off of the Lewis and Clark Expedition. In this role, we were the only tribe asked to perform at the White House. Shortly before the occasion, our heritage was questioned by the Park Service when they realized we were not on the list of Federally recognized tribes.

As Virginia tribes, we have played a significant role in the history of this nation, but we are constantly reminded of the legacy of the Plecker era. The Racial Integrity Act denied our identity.

I have lived through this period of Virginia history. I want the next generation to be free from this legacy. Now is the time for the Congress to give Virginia Indians Federal recognition, which would restore that respect and dignity. Indian people in Virginia are proud of our heritage and culture, though some of it has been lost by the injustice bestowed upon them.

My generation feels that it is our responsibility to teach our young people to be strong in their culture, and to stand up for their rights. And it is their rights to be proud of who they are.

So I ask you and the other Members of the House to pass this Federal recognition bill so we can go on with our lives in a manner that we feel we should be able to do. Thank you.

[The prepared statement of Mr. Branham follows:]

Statement of Chief Kenneth Branham, Monacan Indian Nation

Chairman Rahall and other distinguished members of this Committee:

My name is Kenneth Branham, the Chief of the Monacan people. I would like to thank you for allowing me to speak today on behalf of the six Virginia Tribes that are seeking Federal Recognition. The Monacan people who live in the western part of the state have been living there for thousands of years. The Monacans survived by living off the land, hunting fishing, and raising gardens of corn, beans, and squashes. Our villages were located on the flood plains of the rivers that ran through our land. The villages ranged from as few as 30 to 40 people but in some cases several hundred people would make up the villages or towns. We had our own government and religion and we lived in peace with the other Tribes around us.

In 1608 the Monacan people made contact with a new people from across the water, the first Englishmen. We had people in our Tribe that had prophesied of this strange group of people that would come to take our world away. Therefore, we tried to avoid contact with the new people. The Monacans like most Tribes traded with other groups of people and some began to get trade goods from the Powhatan Indians that came from the English. The new people were taught how to survive in this new land by the Indian people. When they could survive, things began to change. Increasingly people came and more and more land was needed to raise their crops, therefore, the Indian people were removed from their land for the new people. With the trade goods that made life easier also came European diseases that killed a lot of the Native people. Because of this, it was not too long before Virginia Indians were outnumbered and at the mercy of the English. Our land was taken and the people were put on reservations, and our religion and languages were forbidden to be used.

The Monacans moved back into the mountains of Amherst County where the Monacan headquarters are located to this day. The Monacans did whatever they could to survive and stay out of the way of the rush of the newcomers into our land. For the next 350 years, the Monacans like the other Virginia Indians suffered many injustices. The Monacans as did the Powhatan Indians had a treaty with England and is still to this day recognized as a sovereign people by the English Government. The main treaty was the Middle Plantation Treaty of 1677 where our Chief signed along with Chiefs from the Powhatan Confederacy.

One of the most devastating things to happen to the Virginia Indians was a law that was past in 1924 called the Racial Integrity Law. Mr. Walter Plecker who was head of Vital Statistics in Virginia From 1912 to 1948 was instrumental in getting this law passed. He went about systematically changing records of certain people pertaining to their race. His belief was that there were no Indians in Virginia and this new law stated that you were either white or colored. In Amherst Co. Mr. Plecker had a hit list, which stated names like Branham, Johns, Adcocks, and Hicks were not Indian people. However, in reality these were the major names of the Monacan Indian Tribe. He tampered with birth certificates and my family is living proof of that. I have three younger sisters who have the same mother and father and each one of us had a different race classification on our birth certificates. This was not uncommon for Virginia Indians.

Our people would go outside of Virginia in order to be married and our people were not allowed in public schools until 1962. The Monacans and some of the other Tribes in Va. did have Indian Schools. The Monacans had a mission school that was operated by the local churches; however, your educational status was limited to a maximum of the sixth grade. I am 53 years old and I attended the mission school until I was in the third grade at which time after being paraded in front of the school board 35 Monacan children and I were allowed into public schools. The following year 45 remaining Monacan students were also allowed in public schools. However, the injustices and racial prejudices did not stop there. In 1972 the first four students graduated from Amherst High School. Many children did not graduate because of the racial tensions that they endured each day. I believe that Mr. Plecker knew that a sure way to annihilate Indian people was to keep them uneducated.

We have fought hard to gain education for our children and Federal Recognition would give our children opportunities that they have not been afforded. Federal Recognition would also give our elders the benefits they need for proper health care. Our elders have suffered the hardships that Walter Plecker's actions burdened them with in order to live and I feel it is our duty to right this wrong. Our people need this federal recognition for education, health benefits, better housing, and retrieving ancestral remains for reburial. In July 2006 54 Indian people from the Virginia Tribes traveled to England to be part of the 400th year commemoration of Jamestown. The Virginia Indians were treated with such respect and dignity and England recognized our sovereignty and honor our Treaty of 1677. It is very difficult for our people to participate in events commemorating significant dates in American history when our own heritage is denied. The Monacan Tribe was the host Tribe at Monticello the home of Thomas Jefferson for the kick off of the Lewis and Clark Expedition. In this role we were the only Tribe asked to perform at the White House. Shortly before that occasion our heritage was questioned by the Park Service when they realized that we were not on the list of Federally Recognized Tribes.

As Virginian Tribes, we have played a significant role in the history of this Nation, but we are constantly reminded of the legacy of the Plecker era. The Racial Integrity Act denied our identity. I have lived through that period of Virginia history. I want the next generation to be free from that legacy. Now is the time for you to give Virginia Indians Federal Recognition which would restore their respect and dignity. Indian people in Va. are proud of their heritage and culture although some of it has been lost by the injustices bestowed upon them. My generation feels that it is our responsibility to teach our young people to be strong in their culture and to stand up for their rights. And it is their right to be proud of whom they are.

The CHAIRMAN. Thank you. Mr. Barton.

STATEMENT OF REV. JONATHAN M. BARTON, GENERAL MINISTER, VIRGINIA COUNCIL OF CHURCHES, INC., RICHMOND, VIRGINIA

Mr. BARTON. Good afternoon, Chairman Rahall. I, too, would like to thank you for your comments at the opening. We in Virginia appreciate the prayers and thoughts as we work through Monday's events.

I would also like to thank the elders and leaders of the Virginia tribes that are here for the opportunity to speak today, and to provide another voice and witness on behalf of the Virginia tribes.

My name is Jonathan Barton, and I do serve as the General Minister for the Virginia Council for Churches. I would ask your permission to include my previous testimonies from 2002 and 2006, and to revise and extend my comments.

I would like to express my deep appreciation to the members of the six tribes present here today for inviting the council to stand with them in their request for Federal acknowledgement. And we do stand solidly with our tribes today in support of H.R. 1294.

The Virginia Council of Churches is the combined witness of 37 governing bodies of 18 different Catholic, Orthodox, and Protestant denominations within the Commonwealth. And during our 63-year history, we have an established record for justice, fairness, and dignity for all people. And we stand here today grounded in our faith and in our history and our values.

Our faith means living not just by our feelings, but by our commitments. The assurance of things hoped for is often less about when a hoped-for dream becomes a reality than why that dream must become a reality.

The conviction of things not seen isn't always even about how it will come to pass, but rather, why it deserves our energies and our efforts in the first place.

We hold fast in our faith that the Virginia tribes will be recognized by our Congress, because we have the assurance in the rightness of it, and we have the conviction necessary to see it through.

Four hundred years ago this month, when Christopher Newport sailed into the Chesapeake Bay, a relationship began between the Church and Virginia's indigenous people. There is little doubt in the historical record that one of the main purposes of Jamestown was to establish the Church in Virginia. And this relationship continues today.

In 1999, both our Chambers in the Virginia General Assembly agreed to House Joint Resolution 754, urging Congress to grant Federal recognition to Virginia's tribes. They further admonished the delegation in Congress to take all necessary steps forthwith to advance it.

Five years ago, I testified before this committee, and before the Senate Committee on Indian Affairs. At that time, Senator Ben Nighthorse Campbell made the comment, "You know, Reverend Barton, the Indians and the Church have not always gotten along very well."

The Church has much to repent for in many of our early missionary efforts, and my presence here today represents a desire to repent for some of those past sins. The Reverend Robert Hunt and others of the early 1600s failed to find the image of God in these native people that they encountered. These early settlers were blinded by a doctrine of discovery, giving them the sense of divine calling and the right to do whatever they wished. They believed that in order to be a Christian, Indians needed to look, live, speak with an English accent. And even though the missionaries were excessively zealous, the scripture that they eventually brought provided the strength to many of these tribes and these people to endure over four centuries of oppression and discrimination. Thank goodness we have come a long way since those days.

During that same hearing, I was also asked about concerns the council might have regarding gaming. I would like to thank and acknowledge Congressman Frank Wolf for his support of the tribes and his desire to see them recognized. I also appreciate his vigilance in gaming issue, because the Council of Churches, as do these tribes, share his concern about gaming.

But we also, even though we stand in strong opposition and have always stood against all forms of gaming as the Council of Churches, believe that you cannot and should not deny recognition that is long overdue today because somebody, sometime, some part far off in the future may change their mind and do something that cannot be held against our tribes today.

In Virginia, Council of Churches and my strong conviction that if gaming comes to Virginia, it will not be the responsibility of the Virginia tribes. This is still our conviction; that was my testimony five years ago.

I have been blessed to know and to work with each of these Chiefs in the Virginia tribes, and I know them to be persons of great integrity and moral courage. Each brings a very strong sense of leadership to their tribes, and each brings a unique and special

gift. They all share a common respect for their past, and a vision for their future.

America's 400th anniversary is underway. The Queen will be here in two weeks. International guests and visitors are arriving every week. It is vital that we show the world that Virginia's people, the people who have lived here for 1,000 generations, and who greeted the English as they landed in 1607, still exist today. We need to recognize them. As we approach these public observances, we are called to review our complete history, to reflect upon it and to act as a people of faith, mindful of all of the significance of 1607. For what represented newness and hope and opportunity for some was the occasion of oppression, degradation, and genocide for others.

For the Church, this is not just a time of celebration but a time of a committed plan of action ensuring that this kairos moment in history not continue to cosmetically coat the painful aspects of our American history of racism. These six tribes, as they stand before you today, ask only that you honor their being, honor their contributions to our shared history, honor their ancestors by acknowledging that they exist. This simple request is vital to healing the broken circle, broken when cultures collided, forever changing the history of this world.

It is about the present, the recognition that despite the journey they have traveled, they have survived and are still here. It is about taking their proper place among the other tribes that are recognized by this government. It is about a hope that future generations may experience the fullness of life intended by their forebears and their Creator. Let us mend the circle so that we may move forward into that future.

Let me close with the words from one of the songs that was created for our special anniversary celebrations, created and recorded by the Anniversary Voices for the Jamestown observance. Titled, "Remember the Many."

"We have been here for more than 10,000 years, and will be here for 10,000 more. Stand where I am standing. Take a look at my view. How should I feel? I was here before you. The time has arrived, recognition is due. Remember the many who have become the few."

The member Communion of the Virginia Council of Churches strongly encourage you to remember the few, and recognize our tribes in Virginia with the passage of H.R. 1294.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Barton follows:]

**Statement of The Reverend Jonathan M. Barton,
General Minister, Virginia Council of Churches**

Chairman Rahall, members of the House Committee on Natural Resources, Congressman Moran, Congressman Wolf, tribal leaders from the Virginia Tribes, thank you for the opportunity to speak here today. My name is Jonathan Barton and I serve as the General Minister for the Virginia Council of Churches. I ask your permission to include my previous testimony and to revise and extend my comments. I would like to express my deep appreciation to the members of Virginia's six tribes present here today for inviting the Council to stand with them in their request for Federal Acknowledgement. We stand with the Virginia tribes today in solid support of H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007,"

The Virginia Council of Churches, established in 1944, is the combined witness of 37 governing bodies of 18 different Catholic, Orthodox, and Protestant denominations located within the Commonwealth of Virginia. A list of our member denominations is appended to my written comments. During our 63-year history, we have an established record for fairness, justice, and the dignity of all peoples. We stand here today in grounded faith, in our history and values. Faith means living not by our feelings but by our commitments. The assurance of things hoped for is often less about when a hoped-for dream becomes a reality than why that dream must become reality. The conviction of things not seen isn't always about when or even how it will come to pass but rather why it deserves our energies in the first place. We hold fast to our faith that our Virginia Tribes will be recognized by Congress because we have assurance in the rightness of it and have the conviction necessary to see it through.

Four hundred years ago this month when Captain Christopher Newport sailed into the Chesapeake Bay, a relationship between the church and Virginia's Indigenous People began. There is little doubt in the historical record that one of the purposes of Jamestown was to establish the church in Virginia, this relationship continues today.

In 1999 both chambers of the Virginia General Assembly agreed to House Joint Resolution 754 urging Congress to grant Federal Recognition to the Virginia Tribes. Our legislature asked the state's delegation in Congress "to take all necessary steps forthwith to advance it." Five years ago when I testified before this Committee and the Senate Committee on Indian Affairs, Senator Ben "Nighthorse" Campbell made the comment: "You know Rev. Barton, the Indians and the church have not always gotten along very well." The church has much to repent in our early missionary efforts. My presence here today represents a desire to repent for past sins. The Rev. Robert Hunt and others of the early 1600s failed to find the Image of God in the native people they encountered. They believed that in order to be a Christian, they needed to look, live, and speak with an English accent. Even though the missionaries were excessively zealous, the scriptures they brought with them eventually provided the strength for these tribes to endure four centuries of oppression and discrimination. We have come a long way together since those early days. During that same hearing Senator Allen asked me about concerns the Council may have regarding gaming. At that time I stated the Council's opposition to all forms of gaming and our conviction that if gaming comes to Virginia it will not be the Virginia Tribes who are the ones to introduce it. This is still our strong conviction today.

The cultural landscape is similar with each of the Virginia tribes. As you enter their land, you find the church, the school and the Tribal Circle. As you approach the Circle you can hear the sounds of the Tribal Drum, you can feel the heartbeat of life move through your body, declaring you are on sacred ground. It is here where the tribal community is grounded. You must listen to the sound of the drum of the past, so that you can sing in the present and dance into the future. Here is where the faith and traditions of the Elders are passed to new generations.

It has been a blessing for me to know and work with each of the chiefs of our Virginia tribes. I know them to be persons of great integrity and moral courage. Each brings strong leadership to their tribes. Each brings unique and special gifts, and they all share a common respect for their past and vision for the future.

America's 400th Anniversary Commemorations are now center stage with special events drawing international guests and visitors every week. It is vital that we show the world that Virginia's Indigenous People, who have lived on this land for a thousand generations, and who greeted the English as they landed in 1607, still exist today. We need to recognize them, as we approach these public observances marking the 400th Commemoration of the first permanent English Settlement at Jamestown. We are called to review our complete history, reflect upon it, and act as a people of faith mindful of the significance of 1607. The people in our churches and communities now look at the significance of these events differently. What represented newness of hope and opportunity for some was the occasion for oppression, degradation, and genocide for others. For the church this is not just a time for celebration but a time for a committed plan of action insuring that this "kairos" moment in history not continue to cosmetically coat the painful aspects of the American history of racism. These six Virginia Tribes; the Chickahominy, the Chickahominy—Eastern Division, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond, stand before you today after a four hundred year journey asking only that you honor their being, honor their contributions to our shared history, and honor their ancestors by acknowledging they exist. This simple request is vital to the healing of the broken circle, broken four centuries ago when cultures collided and forever changed the history of the world. It is about the present and the recognition that despite the journey these tribes have survived and are still here. It

is about taking their proper place among the other 563 tribes recognized by the United States. It is about the future that future generations may experience the fullness of life intended by their forbearers and their Creator. Let us mend the Circle so that we may move forward into the future. Let me close with the words from one of the songs created and recorded for this special Jamestown observance by “Anniversary Voices”

Remember the Many

*We are all part of the sacred earth, every deer, every stream, every tree
We have learned to respect all living things, and to live in harmony.*

*We are riders on the sands, the sands of time,
the Creator’s in the wave in the shore.*

We have been here for more than ten thousand years.

We will be here for ten thousand more!

Stand where I’m standing; take a look at my view

How should I feel? I was here before you.

The time has arrived recognition is due.

Remember the many who’ve become the few!

The member Communions of the Virginia Council of Churches, strongly encourage you to remember the few, recognize our tribes pass the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006.

The Rev. Jonathan M. Barton—General Minister
Virginia Council of Churches

Testimony before the Senate Committee on Indian Affairs

S. 480

Thomasina Indian Tribes of Virginia Federal Recognition Act of 2005

June 21, 2006

Mr. Chairman, members of the Senate Committee on Indian Affairs, 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 Senator George Allen for his sponsorship of S. 480 and Senator John Warner for his cosponsorship. I would like to express my deep appreciation to the members of Virginia’s six tribes present here today for inviting the Council to stand with them in their request for Federal Acknowledgement. We stand with the Virginia tribes today in solid support of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005.

The Virginia Council of Churches is the combined witness of 37 governing bodies of 18 different Catholic, Orthodox, and Protestant denominations located within the Commonwealth of Virginia. A list of our member denominations is appended to my written comments. During our 62-year history, we have always stood for fairness, justice, and the dignity of all peoples. The Council was one of the first integrated bodies within the Commonwealth. We stand here today in faith, grounded in our history and our value. In April of 1607, when Captain Christopher Newport sailed into the Chesapeake Bay, a relationship between the church and Virginia’s Indigenous People began. This relationship continues today. There is little doubt in the historical record that one of the purposes of Jamestown was to establish the church in Virginia.

Four years ago when I testified before this Committee, Senator Ben “Nighthorse” Campbell made the comment: “You know Rev. Barton, the Indians and the church have not always gotten along very well.” The church has much to repent in our early missionary efforts. My presence here today represents our desire to repent for our past sins. The Rev. Robert Hunt and others of the early 1600s failed to find the Image of God in the native people they encountered. They believed that in order to be a Christian, they needed to look, live, and speak with an English accent. We have come a long way together since those early days.

A few weeks ago, Mr. Chairman, you had the opportunity to be in the beautiful mountains of Virginia. You may not have realized as you gazed out over the horizon, that for as far as your eyes could see was home to the Monacan Indians for thousands of years. Just a short distance away, up a narrow winding road and nestled in the mountainside are the tribal grounds of this great Indian nation. On the same

land there is a small Episcopal Church with a stream that runs under it. On the other side of the stream, there is the old one room schoolhouse where the Monacan people attended school until the 1960s. The Tribal Circle is just a little way up the path. It is here where the tribal community is grounded. Here is where the faith and traditions of the Elders are passed to new generations. The cultural landscape is the same with each of the Virginia tribes. As you enter their land, you find the church, the school and the Tribal Circle. Even though the missionaries were clumsy in their approach, the scripture provided strength for these tribes to endure four centuries of oppression and discrimination.

It has been a blessing for me to know and work with each of the chiefs of our Virginia tribes. I know them to be persons of great integrity and moral courage. Each brings strong leadership to their tribes. Each brings unique and special gifts, and they all share a common respect for their past and vision for the future.

As 2007 rapidly approaches, Jamestown will move onto the global stage. It is vital that we demonstrate to the world that Virginia's Indigenous People who have lived on this land for thousands of years, and who greeted the English as they landed in 1607, still exist today and that we recognize them. As we approach the public observances marking the 400th Commemoration of the first English Settlement at Jamestown, we are called to review our full history, reflect upon it, and act as a people of faith mindful of the significance of 1607. The people in our churches and communities now look at the significance of the event in different ways. What represented newness of freedom, hope and opportunity for some was the occasion for oppression, degradation, and genocide for others. For the church this is not a time for celebration but a time for a committed plan of action insuring that this "kairos" moment in history not continue to cosmetically coat the painful aspects of the American history of racism. These six Virginia Tribes; the Chickahominy, the Chickahominy—Eastern Division, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond, stand before you today after a four hundred year journey asking only that you honor their being, honor their contributions to our shared history, and honor their ancestors by acknowledging that they exist. This simple request is vital to the healing of the broken circle, broken four centuries ago when cultures collided and forever changed the history of the world. Let us mend the Circle so that we may move forward into the future. On behalf of the member Communion of the Virginia Council of Churches, I encourage you to recognize our tribes by passing the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005.

The Rev. Jonathan M. Barton—General Minister
Virginia Council of Churches

Testimony before the Senate Committee on Indian Affairs

S. 2694

Thomasina Indian Tribes of Virginia Federal Recognition Act of 2002

October 9, 2002

Mr. Chairman, members of the Senate Committee on Indian Affairs, 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 Senator George Allen for his sponsorship of this bill and the Senator John Warner for his cosponsorship and the other members of the Virginian Congressional delegation for all their efforts. To the members of the six tribes gathered here today, you continue to honor the Virginia Council of Churches greatly by your invitation to walk with you as you seek federal acknowledgement. We stand with you today in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2002" (S. 2694). Two weeks ago before the House Committee on Resources I made a public apology for any acts of injustice we may have been complicit or complacent in during the past. This apology is sincere and expresses a hope for our continued walk into the future.

The Virginia Council of Churches is the combined effort of 34 governing bodies 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 Euro-

pean 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, 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 its 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. These tribes here today humbly ask nothing more than to have their identity acknowledged, to be recognized for who they are. You can make this possible 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 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 "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 now time for the United States Congress to do the same.

**STATEMENT OF HELEN ROUNTREE, PH.D., PROFESSOR
EMERITA OF ANTHROPOLOGY, OLD DOMINION UNIVERSITY,
NORFOLK, VIRGINIA**

Ms. ROUNTREE. I am going to be less grand-eloquent, and since I am coming off a chest cold, I shall probably croak at you. Sorry.

Mr. Chairman, ladies and gentlemen of the Committee, I am Dr. Helen C. Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. I originally worked with Western Shoshone people in Nevada, but since 1969 I have specialized in the Indian people of eastern Virginia, historical and modern. My seventh University Press book about them is due out in June.

I have done the work with very little grant money, and no money from the tribes. I have never been hired by any of these tribes. I have mostly supported my work out of my university salary. So

what you are going to hear is, in a very real sense, an independent scholar's testimony.

It was not easy to find records about the people. Many records in Virginia were burned during the Civil War, though not in the 20th century.

But Virginia was reluctant all along to accord the people an Indian label once they lost their reservations in the late 17th and early 18th centuries. Having Pocahontas in the state's history actually made things worse. The public contrasted her exotic legend with the reality of modern Indians and usually turned up its nose.

During the Racial Integrity era that began in 1924, not only Indian people who insisted on an Indian label in public records, but any non-Indians who allowed them that label, could be sent to jail. So records saying Indian were going to be limited.

Instead, I had to work through personal names. And I agree with Mr. Artman's answer to Mrs. Christensen: if you have to turn to individual names and see how networks of people turn up in the records.

Fortunately, several tribal rolls from the early 20th century were available to me. I scoured the Federal, colonial, state, and county records with the zeal of a collector for information about these individuals and their ancestors, and then I analyzed the whole collection to see what showed up.

What I found in the records were distinct ethnic isolates, networks of kinsmen with Indian ancestry. One of the tribes is traceable through personal names of Indian people back to 1638. They have had formal institutions, like tribal churches, since the mid 19th century. My written testimony includes a quick reference chart that will point that sort of thing out.

By the way, early in the present recognition process I wrote to the Office of Federal Acknowledgement offering to send copies of any or all of the records that I had found. And I mean photocopies. I invited scrutiny. I have never received a response to that offer. They dropped the ball.

I have watched the tribes in the current era of self-identification, when anybody can be what they want. They used to be accused of saying they were Indian so that they could eventually pass as white. They went on saying they were Indian. When it became possible to be whatever you wanted, they still went on saying they were Indian. And I hasten to point out that they were doing it before the Indian Gaming Act of 1988 was ever even discussed. That didn't make them say they were Indian; it is their history that makes them say Indian.

So after nearly four decades of researching and working with the tribes before you today, I can tell you this. They really are what they say they are: Indian-descended tribes who have held together in spite of land loss and persecution by bigots. When they say they are not interested in gaming, they mean precisely that. And when they say they feel it keenly, having to go into Virginia's 400th anniversary year without Federal acknowledgement, they really mean that, too.

Thank you.

[The prepared statement of Ms. Rountree follows:]

**Statement of Helen C. Rountree, Ph.D., Professor Emerita of Anthropology,
Old Dominion University, Norfolk, Virginia**

Mr. Chairman, members of the Committee, and guests: I am Dr. Helen Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. My training and publications are in “ethnohistory,” a combination of cultural anthropology and history. Initially I worked with Shoshone Indian people in Nevada, but I began researching the Native Americans of eastern Virginia, historical and modern, in 1969. I am the only scholar, whether anthropologist or historian, who has been active in the specialty that long. I spent every free moment of the first eight years, when I was not teaching for a living, scouring the published and unpublished records from 1607 onward. That included speed-reading the often unindexed county record books. I have spent substantial periods since then hunting for more records and studying other subjects, like ethnic identity, that are relevant to learning about Indian tribes. Shoehorned into all that work were face-to-face visits and occasional spells of living among the modern Virginia people, the people whose Indianness, compared with the Nevada Indians I knew, impressed me so much.

I am not the first social scientist to work with these six tribes (see the attached quick-reference chart). My predecessors’ work goes back nearly 120 years, beginning with James Mooney of the Smithsonian Institution and continuing with Frank Speck of the University of Pennsylvania, among others. Like them, I have written up my findings for others to read; unlike them, I have done it in no less than six books (so far), the most germane of them for this hearing being *Pocahontas’s People: The Powhatan Indians of Virginia Through Four Centuries* (University of Oklahoma Press, 1990; no. 196 in the *Civilization of the American Indian* series). Roughly one-third of that volume is devoted to endnotes and bibliography, to prove I didn’t make anything up. I have offered to send copies of the documents unearthed in my research to the BAR in the Bureau of Indian Affairs; the BAR has never yet seen fit to respond to my offer, not even when I talked to their representative face-to-face at the Senate committee hearing last summer.

The last thing to say about my work is that I have always supported my research with funds saved back from my own salary and from small university grants. Like the tribes I work with, I don’t have backers: I pay my own way. So the testimony you are about to hear is my own; the Indian people are my colleagues, not my employers. And that testimony is literally based upon decades of intensive research.

I have been able to trace the existence of Indian groups across 400 years in eastern Virginia. Many of today’s tribes come from refugee communities, meaning reduced Indian populations that merged in order to keep going. But there were elements in them descended from the early seventeenth century tribes that give them their names today.

It was not easy to find records about the tribes. In the 18th century, if a group never had a reservation (the Monacans) or if reservations were lost (the other five), the Commonwealth of Virginia took no further interest in the people. Meanwhile, local governments’ records were mainly concerned with property and criminal behavior, neither of which involved many Indians. (If you were poor and law-abiding, you were invisible.) Several of the key courthouses were burned in the 19th century. U.S. Census-takers did not record the names of family members—only the heads of household—until 1850.

Aggravating the problem in finding Indian records was Virginia’s reluctance to let Indians appear in the records as “Indians.” One relatively tolerant law of 1833 created a category they could fall into: POMBFBFNM (Persons of Mixed Blood Not Being Free Negroes or Mulattoes). Needless to say, the people who got certified in that category never subsequently appeared in the records under that jaw-breaking name. Instead before the Civil Rights era, Virginia racial policy became increasingly intolerant of anyone claiming an Indian identity rather than the catch-all “colored” one.

In the first half of the 20th century, anybody claiming to be Indian and any non-Indian cooperating with such persons came in for humiliation that was severe and very public. That was possible because an entire state bureau, the Vital Statistics Bureau, became a policing agency on matters racial, issuing public announcements, sending a circular to all county officials statewide, and mailing pamphlets to thousands of private citizens—at taxpayers’ expense. In both the circular and the pamphlet, the Indian tribes were specifically attacked. The effect upon the appearance of “Indian” entries in state, local, and even federal records like the U.S. Census schedules should be obvious. It didn’t stop with humiliation. Thanks to the Racial Integrity Law of 1923, anyone insisting upon the “Indian” label in Virginia could legally be sent to jail; several Indian people did in fact go to jail for it.

Therefore like a fieldworking anthropologist, I not only collected all documentary references to Indians, but I also acquired recent lists of Indian personal names—several 20th century tribal rolls being available—and then worked backward as far as I could in the records, constructing genealogies and collecting the records about the people in those genealogies to see how the communities shaped up.

Social scientists like me look for several things in determining whether or not a group is a distinct ethnic group. I searched for the same things that the Bureau of Indian Affairs, later on, expected to see before acknowledging people as Indian tribes. I have found clear evidence that the people before you today meet those criteria as far back as the public records allow me to look: living in geographical clusters, being predominantly in-marrying, and having most of their associations with one another rather than with outsiders. After the Civil War, when free non-whites could openly have them in Virginia, those associations show up as tribal churches, followed by tribal schools. On several occasions, beginning in 1892, the federal Office of Indian Affairs (later the BIA) was contacted for financial help for those schools. The answer was always “no”—not because the people were not Indians, but because the last treaty they signed (in 1677-80) had far predated the existence of the federal government. Washington was uncomfortable with that. The people of these six tribes had possessed informal political organizations—like many ethnic groups called “tribes” in the Third World—since the dying out of their chiefs in the early 18th century. When they formalized things in the 20th century, the tribes took out charters with the State Corporation Commission, something the white supremacists could not legally prevent them from doing.

Virginia was most definitely an anti-Indian state in the 19th and most of the 20th centuries, and ironically enough, some of the blame can be laid on Pocahontas. No other state has as many or as socially prominent descendants of that so-called “princess.” Her legend—for that is exactly what it is, a legend—has long blinded most Virginians to the existence of the modern Indian tribes in their midst. Even now, when I say I work with Virginia Indians, people nearly always start in asking me about Pocahontas. When Virginia wanted to make the “one-drop” rule (i.e., one “drop” of non-white “blood” making a person “colored”) into a law, legislators found that it couldn’t be done without making some of the state’s aristocrats get into the Jim Crow coach. The bill had to be rewritten, making an exception for “the Pocahontas Descendants.” The tone of the defenders of the white race in Virginia was even more strident than elsewhere, as a result, for that exception was seen as a hole in the dyke by the die-hards, one of whom characterized the “Indian” racial category as a “way-station to whiteness.”

I have always found it amusing, how wrong the white-supremacists were in assuming that absolutely everybody would “pass” for white who could. The tribes I work with were not and are not interested in doing that. When Virginia repealed its racial definitions law in 1975, and anybody could claim to be anything, these people went right on saying they were Indian, as they had been doing all along. They had said it to James Mooney in the 1890s, and to the social scientists who followed him. Most of us social scientists have been North American Indian specialists, and we have worked with these Virginia communities because they are tribes of Indians. I submit to you that they deserve acknowledgement as such now.

The CHAIRMAN. The Chair thanks the panel for their testimony.

The Committee understands that the Virginia tribes have met with the Office of Federal Acknowledgement within the Department of Interior about the letter of intent that yours and other tribes have filed. But my question is to the panel, what was the Administration’s reaction to Dr. Plecker’s actions? And how has the Administration expressed its willingness to work with the tribes on meeting the consistent and continuous records requirement?

Mr. ADKINS. The Committee has offered technical assistance with their neighbors. Folks have come down, I am sorry, and we worked on some of those processes. However, our last visit as a group to the BIA to talk about our Federal recognition process, when we were so soundly apprised that many of us would not live to see that process work itself through, it kind of bashed our hopes against the rocks.

And we felt like the process that they had in place, while we support those criteria, it wasn't a process that would neatly fit over our set of circumstances that were promulgated by action taken by the state beginning in the 20th century, with the Racial Integrity Act of 1924. We don't think it is an impossible process, but given those folks who have gone this way, who have had records that were fairly well intact, and we see decades before they get acknowledgement, we just say this process isn't going to fit as neatly for us as it does for people who have to wait decades for acknowledgement.

The CHAIRMAN. Anybody else wish to respond? OK. Every year at least one of the Virginia tribes fulfill their duties under the treaties enacted hundreds of years ago, and provide payment to the Commonwealth of Virginia. Has anyone ever denied these tribes or their descendants of the signators of the treaty?

And the second question is, has the Commonwealth of Virginia ever questioned the tribe's annual actions?

Mr. ADKINS. To my knowledge, it has never been questioned. But again, it may have, but to my knowledge it hasn't. Maybe someone else on the panel could speak to that, or even I would ask our lawyer if she is aware of that.

Ms. LOCKLEAR. So far as I know, the Commonwealth has never denied that treaty should come in, according to the treaty. However, if you read some of the correspondence of Dr. Plecker in the Racial Integrity era, he doubted everybody, and was willing to say so far and wide.

He had a very widespread correspondence to other states, as well. And that doubt is in his letters. Even about the reservation people, yes.

The CHAIRMAN. The bill requires the Secretary of the Interior to place land in certain counties into trust for the various tribes if requested within 25 years after the date of enactment of the Act. The bill does not specify that the land will be considered each tribe's reservation.

Was this an oversight? And did you think it would be automatic? Or is there a reason that the tribes do not want the land to be identified as a reservation?

Mr. ADKINS. Could I defer to Liz Walker?

The CHAIRMAN. Sure.

Ms. WALKER. Chairman Rahall, we received some advice, and I think the staff for Jim Moran probably knows that detail better. But at that time we were advised that we didn't need to designate it as a reservation for it to be taken as land in trust. Because these are considered the landless tribes, and what land that would come in, land that they hold in fee today, would come in as their original reservation. That is what we were told, that we didn't need to designate it.

If that is true, if that is different than what the legal advice the Committee has given now, then we do need to look at that. That may have been an oversight. But we were advised that they didn't have to designate it that way; that since they are what you call the landless tribes, that any land they take in initially would be their original reservation.

The CHAIRMAN. OK. Just for the official record, would you identify yourself and your position?

Ms. WALKER. Yes. I am Elizabeth Walker. I am an attorney for the tribes seeking recognition.

The CHAIRMAN. Thank you. Thank you. As we conclude, let me state that the hearing record will remain open for 10 days to accept any additional testimony. We may submit questions to the witnesses for a written response, and there may be other of my colleagues that are not physically present today that may have questions for the record, as well. And we will submit those to you and ask for written responses to them.

Mr. ADKINS. Thank you, Chairman.

The CHAIRMAN. We thank each of you for your testimony. Thank you for being with us today.

Mr. ADKINS. The written testimony we submitted will be in the record, right?

The CHAIRMAN. Yes, sir.

Mr. ADKINS. Thank you very much.

The CHAIRMAN. In its entirety.

Mr. ADKINS. Thank you.

The CHAIRMAN. Thank you for being with us. The Committee will stand adjourned.

[Whereupon, at 1:20 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record on H.R. 1294 by The Honorable Jo Ann Davis follows:]

**Statement of The Honorable Jo Ann Davis, a Representative in Congress
from the State of Virginia, on H.R. 1294**

Chairman Rahall, thank you for holding this hearing on H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act.

Several of the Virginia tribes are located within my congressional district and I am proud to be one of the primary sponsors of this historically significant legislation. The Indian communities have worked hard over the years to maintain their heritage, and it is appropriate as we approach the 400th anniversary of the settlement of Jamestown that we would also recognize the Virginians who descended from the Native Americans that were here at the founding.

As a former member of the Virginia Council on the Indians, it is important to me that the Native Americans tribes who were here before the English landing at Jamestown in 1607 receive all the rights afforded other similarly situated Indian tribes. The Chickahominy, the Eastern Chickahominy, the Rappahannock, the Monacan Indian Nation, and the Nansemond Indian Tribes have been recognized by the state of Virginia and should be officially recognized by the U.S. government.

The members of these tribes have worked tirelessly and desperately to secure greater autonomy and control to deal with tribal housing, health care and education. The tribes have begun the federal review process, however significant hardships and systematic efforts aimed to destroy the cultural and traditional history of Virginia's tribes have made the Department of Interior's current recognition process difficult for first contact tribes. I believe it is appropriate that Congress take steps to recognize these tribes and allow Virginia's Indians to pursue cultural preservation and local tribal issues.

Additionally, this legislation provides significant prohibitions and protections to prohibit casino style gambling on tribal lands. In fact, the tribes themselves are opposed to gaming. Instead the focus should be on the long overdue recognition of these tribes who trace their ancestry before our nation's founding.

Again, thank you Mr. Chairman for holding this hearing and for your attention to this issue important to Virginia.

[A statement submitted for the record on H.R. 65 by Arlinda F. Locklear, Esquire, Attorney for the Lumbee Tribe of North Carolina, follows:]

**Statement of Arlinda F. Locklear, Esquire,
Attorney for the Lumbee Tribe of North Carolina**

It is my privilege to make this statement as counsel for the Lumbee Tribe of North Carolina in support of H.R. 65, a bill to extend full federal recognition to the Tribe. In the interest of full disclosure, I should inform the committee that I am also an enrolled member of the Tribe.

The hundred year legislative record on Lumbee recognition

In one form or another, Congress has deliberated on the status of the Lumbee Tribe of North Carolina for more than one hundred years. On numerous occasions during that time, Congress has itself or directed the Department of the Interior to investigate the Tribe's history and conditions. On all such occasions, the Tribe's Indian identity and strong community have been underscored.

Congress' first experience with the Tribe followed shortly upon the heels of formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state statute formally recognized the Tribe under the name Croatan Indians of Robeson County, authorized the Tribe to establish separate schools for its children, provided a pro rata share of county school funds for the Tribe's schools, and authorized the Tribe to control hiring for the schools and eligibility to attend the schools. See North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained state legislation establishing an Indian normal school, one dedicated to training Indian teachers for the Indian schools. See North Carolina General Assembly 1887, chap. 254. The Indian Normal School was badly underfunded, though, leading to the Tribe's first petition to Congress for recognition and assistance in 1888.

The 1888 petition to Congress was signed by fifty-four (54) tribal leaders, including all members of the Indian Normal School Board of Trustees. All the traditional Lumbee surnames are represented in the list of signatories—Sampson, Chavis, Dial, Locklear, Oxendine, and others—and descendants of these signatories are active today in the tribal government. The petition sought federal assistance for the then named Croatan Indians in general and funding for the Tribe's schools in particular. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the state. The Commissioner of Indian Affairs ultimately denied the request for funding, citing insufficient resources:

While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.

Thus began the Department's long-standing opposition to federal recognition of the Lumbee Tribe, typically because of the cost of providing services.

After the failure of the 1888 petition to Congress, the Tribe sought recognition more directly through proposed federal bills. In 1899, the first bill was introduced in Congress to appropriate funds to educate the Croatan Indian children. See H.R. 4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (See H.R. 19036, 61st Cong., 2d Sess.) and 1911 (See S. 3258, 62nd Cong., 1st Sess.) In 1913, the House of Representatives Committee on Indian Affairs held a hearing on S. 3258 where the Senate sponsor of the bill reviewed the history of the Lumbees and concluded that the Lumbees, then called Croatans, had "maintained their race integrity and their tribal characteristics;" See Hearings before the Committee on Indian Affairs, House of Representatives on S. 3258, Feb. 14, 1913. In response to the same bill, the Department of the Interior dispatched C.F. Pierce, Supervisor of Indian Schools, to conduct an investigation of the Croatan Indians. Pierce reviewed the Tribe's history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance for the Tribe:

It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it

would establish a precedent for the Catawbias of S.C., the Alabamas of Texas, the Tuscaroras of N.Y., as well as for other scattering tribes that are now cared for by the various states.

Those other tribes mentioned by Pierce have since been recognized by the United States.

In 1914, the Senate directed the Secretary of the Interior to investigate the condition and tribal rights of the Lumbee Indians and report to Congress thereon. See S.Res. 410, 63rd Cong., 2d Sess. The Secretary assigned Special Indian Agent O.M. McPherson to conduct the investigation. According to the Secretary's letter to the President of the Senate transmitting the McPherson report, McPherson conducted "a careful investigation on the ground as well as extensive historical research." The report covered all aspects of the Tribe's history and condition, running 252 pages in length. See *Indians of North Carolina*, 63rd Cong., 3d Session, Doc. No. 677. McPherson's report again confirmed the tribal characteristics of the Lumbee Indians, but Congress took no action on the McPherson report.

In 1924, yet another bill was introduced in Congress to recognize the Lumbee Indians as Cherokee Indians of Robeson County. See H.R. 8083, 68th Cong., 1st Sess. This bill failed and in 1932 a very nearly identical bill was introduced in the Senate. See S. 4595, 72d Cong., 1st Sess. This bill failed as well.

The next federal bill was introduced in 1933 and was nearly identical to the prior two bills, except that it directed that the Croatan Indians "shall hereafter be designated Cheraw Indians and shall be recognized and enrolled as such..." H.R. 5365, 73d Cong., 1st Sess. In his statement at the hearing on the bill, the Secretary of the Interior attached an opinion of John Swanton, a well-respected specialist on southeastern Indians with the Smithsonian Institution, which concluded that the previously named Croatan Indians actually descended from Cheraw and other related tribes. The Secretary recommended that the United States recognize the Tribe as the Siouan Indians of Lumber River, but also that the Congress include termination language because of the expense of providing federal Indian services to the Indians. Rep.No.1752, House of Representatives, 73d Cong., 2d Sess. The committee adopted the change proposed by the Secretary and reported the bill out favorably, but the bill was not enacted. The following year, the Senate Committee on Indian Affairs took the same action on the identical bill in the Senate, S. 1632, but the Senate floor also did not act on the bill. See Rep.No.204, Senate, 73d Cong., 2d Sess.

These numerous federal bills to recognize the Tribe under various names have a common and clear legislative history—that is, state statutes that modified the name by which the State of North Carolina recognized the Tribe. The 1899 federal bill would have recognized the Tribe as Croatan, just as the State had done in 1885. The 1911 federal bill would have recognized the Tribe as the Indians of Robeson County, just as the State had done in a 1911 amendment to state law. See *North Carolina General Assembly 1911*, chap. 215. The 1913 federal bill would have recognized the Tribe as Cherokee, just as the State had done in a 1913 amendment to state law. See *North Carolina General Assembly 1913*, chap. 123. Indeed, a committee report on the 1913 federal bill explicitly acknowledged that the federal bill was intended to extend federal recognition on the same terms as the amended state law. Rep.No.826, House of Representatives, 68th Cong., 1st Sess.; see also S. 4595, 72d Cong., 1st Sess. [1932 bill which referred to the 1913 state statute as its antecedent.] Thus, Congress consistently followed the lead of North Carolina in its deliberations on the Tribe's status and did so in finally enacting a federal bill in 1956.¹

Legislative history of the 1956 Lumbee Act

In light of the mounting historical evidence compiled in Congress' deliberations on its recognition bills, including the McPherson Report and the Swanton opinion, the Indians of Robeson County grew dissatisfied with their designation under state

¹In between the 1933 bill and the 1956 Lumbee Act, the Tribe attempted to obtain federal recognition through an earlier administrative process. Congress enacted the Indian Reorganization Act in 1934, which authorized half-blood Indians not then recognized to organize and adopt a tribal constitution, thereby becoming federally recognized. The Lumbee leadership wrote to the Commissioner of Indian Affairs, inquiring whether the act applied to the Lumbees. The inquiry was referred to Associate Solicitor Felix Cohen, the famous author of the foremost treatise on Indian law, the *Handbook of Federal Indian Law*. Cohen concluded that the Lumbees could organize under the act, if some members certified as one-half Indian blood or more and the Department approved a tribal constitution. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, for that purpose. Approximately 200 Lumbees agreed to submit to Dr. Seltzer's examination; interviews of these individuals were conducted as well as physical examinations. Dr. Seltzer certified 22 out of the 200 tribal members as one-half or more Indian blood, eligible to organize under the act. However, the Department refused to approve a tribal constitution submitted by those individuals, once again thwarting the Tribe's effort to become federally recognized.

law as Cherokee. Under pressure from the Tribe and after a referendum among tribal members, the State of North Carolina once again modified its recognition of the Tribe in 1953, renaming it Lumbee. North Carolina General Assembly 1953, chap. 874. Two years later, a bill identical to that one enacted by the state was introduced in Congress. See H.R. 4656, 84th' Cong., 2d Sess.

The federal bill passed without amendment in the House of Representatives and was sent to the Senate. The Department of the Interior objected to the bill in the Senate, just as it had done in the House, but with more success. The Secretary noted that the United States had no treaty or other obligation to provide services to these Indians and said:

We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition...If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

The Senate committee adopted the Secretary's recommendation and, when the bill was enacted into law, it contained classic termination language: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indian shall be applicable to the Lumbee Indians." Pub.L.570, Act of June 7, 1956, 70 Stat. 254.

Clearly, the 1956 Lumbee Act was intended to achieve federal recognition for the Tribe. The House sponsor for the bill wrote to Senator Scott, seeking his support for the bill, and noted that the bill was copied from the recent state law by which the State of North Carolina recognized the Lumbee Tribe. Senator Scott, who agreed to sponsor the bill in the Senate, issued a press release describing the bill as one to give federal recognition to the Lumbee Indians of North Carolina on the same terms that the State of North Carolina had recognized the Tribe in 1953. Senator Scott testified before a Senate committee that, "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name. Giving official recognition to the Lumbee Indians means a great deal to the 4,000 Indians involved."²

There are also excerpts from the legislative history of the 1956 act suggesting that Congress did not intend to make the Tribe eligible for federal services, even without the amendment proposed by the Secretary of the Interior. For example, in a colloquy on the House floor, the House sponsor Mr. Carlyle was asked whether the bill would commit the United States to furnishing tribal services. Mr. Carlyle responded in the negative. Congressman Ford then stated that, "[i]t simply provides for the change of name," and Mr. Carlyle agreed. 102 Cong. Rec. 2900 (May 21, 1955).³

The eligibility for federal services, though, is not determinative of whether federal recognition has been bestowed. While federal recognition and eligibility for federal services are often viewed as interchangeable, they are not under federal law. The Department of the Interior has itself made this clear in the context of Congress' deliberations in 1977 on legislation to restore the previously recognized Siletz Tribe. In its comments on the bill, the Department recommended that the language in the bill restoring "federal recognition" be replaced with language restoring "the federal trust relationship." The Department explained the reason for this proposed change as follows:

Section 3(a) states: "Federal recognition is hereby extended to the tribe." This suggests that the Siletz Indians are not now federal recognized. This is not the case; they are recognized. The termination act simply dissolved the special relationship between the Siletz Indians and the Federal Govern-

²The tribal population figure given by Senator Scott in his statement was repeated in the House and Senate reports on the bill. See H.Rep.No.1654, 84th Cong., 2d sess; S.Rep.No.84-2012, 84th Cong., 2d sess. The figure was erroneous. According to a correction to the figure published in contemporaneous newspaper accounts of the statement, the Senator intended to refer to 4,000 Indian families, not 4,000 individual Indians. The total tribal population in 1956 was set in this account at 27,726. This account is consistent with 1950 federal census data.

³Because of the history of relations with the State, in which the recognized tribal name was changed several times over the years, the Tribe viewed the "giving of a name" as recognition. Even today, tribal members who inquire about the status of the pending bill will sometimes ask when Congress will give the Tribe its name.

ment and terminated any federal services and supervision. See 25 U.S.C. § 691. Federal recognition and federal services are often confused and erroneously used interchangeably. Because of the close connection between federal recognition and the provision of federal services, etc., the error is understandable, but nonetheless federal recognition and federal services are not synonymous and should not be used interchangeably. In lieu of the above quoted language, we would substitute the following: "The trust relationship between the Federal government and the Siletz Indians is hereby restored."

See 1977 U.S. Code Cong. And Admin. News, p. 3700. The 1956 Lumbee Act should be similarly construed to recognize the Tribe, even though there was no clear intent to provide federal Indian services. In effect, Congress simultaneously recognized and terminated the Tribe.

Administrative and judicial interpretation of the 1956 Lumbee Act

Since 1956, federal agencies and courts have reached varying conclusions regarding the effect of the 1956 Lumbee Act. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the act, although not granted federal services. See "American Indians: Facts and Future," Toward Economic Development for Native American Communities, p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. See Memorandum, April 10, 1970, on Extending Federal Jurisdiction and Services to Hill 57 Indians, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 act left the Lumbees' status unchanged, i.e., it neither recognized the Tribe nor terminated the Tribe's eligibility for services it might otherwise receive. The one court to construe the statute concluded it was intended "to designate this group of Indians as 'Lumbee Indians' and recognize them as a specific group.," but not to take away any rights conferred on individuals by previous legislation. *Maynor v. Morton*, 510 F.2d 1254, 1257-1258 (D.C. Cir. 1975) [holding that the so-called half-bloods certified under the Indian Reorganization act were eligible to receive Bureau of Indian Affairs' services].

The Congressional Research Service (CRS) thoroughly reviewed the history and various interpretations of the 1956 Lumbee Act in 1988. It did so in response to a request from the Senate Select Committee on Indian Affairs, which had under consideration at the time H.R. 1426, a bill to provide federal recognition to the Lumbee Tribe. The CRS concluded as follows:

The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

Memorandum dated September 28, 1988, reprinted in S.Rep.No.100-579, 100th Cong., 2d Sess.

Whatever its ambiguity otherwise, the 1956 Lumbee Act indisputably makes the Lumbee Tribe ineligible for the administrative acknowledgement process. See 25 C.F.R. Part 83. Under the acknowledgement regulations, the Secretary of the Interior cannot acknowledge tribes that are subject to legislation terminating or forbidding the federal relationship. *Id.*, § 83.3(e). In a formal opinion issued on October 23, 1989, the Solicitor for the Department of the Interior concluded that the 1956 Lumbee Act is such federal legislation and, as a result, the Department is precluded from considering any application of the Lumbee Tribe for federal acknowledgement.

Thus, the Tribe continued its efforts to obtain full federal recognition from Congress. Companion bills were introduced in the 100th Congress for this purpose, H.R. 5042 and S. 2672. Hearings were held on the bills, once again establishing the Lumbee's tribal existence, and the Senate bill was reported favorably out of committee. Neither bill was enacted, however. Companion bills were introduced in the 101st Congress to recognize the Tribe [H.R. 2335 and S. 901], but neither was enacted. Once again in the 102d Congress, companion bills were introduced [H.R. 1426 and S. 1036]. This time, the House of Representatives passed the bill [with 240 yeas, 167 nays, and 25 not voting], but the Senate failed to invoke cloture on debate [with 58 voting for and 39 voting against] and the bill failed. In the 103d Congress, H.R. 334, a bill virtually identical to that passed in 1991, was introduced; the bill passed the House again but was never acted on in the Senate. Most re-

cently, the 108th Congress considered similar bills, S. 420 and H.R. 334 and the 109th Congress considered S. 660 and H.R. 21.

Legislative precedent for the bill

Only one other tribe in the history of federal Indian affairs has been placed by Congress in precisely the same position as the Lumbee Tribe, that is, half in and half out of the federal relationship, by special legislation.⁴ In 1968, Congress enacted a special act regarding the Tiwas of Texas, 82 Stat. 93, one that was modeled on the 1956 Lumbee Act and left the Tiwas in the same legal limbo.

Like the Lumbee Tribe, the Tiwas of Texas had been long recognized by the state. In the 1968 Tiwa Act, Congress designated and recognized the Indians as Tiwas, expressly terminated any federal trust relationship, and precluded the delivery of federal Indian services—just as it had done in the 1956 Lumbee Act. In fact, the Senate committee specifically noted in its report on the 1968 Tiwa Act that the bill was “modeled after the act of June 7, 1956 (70 Stat. 254), which relates to the Lumbee Indians of North Carolina.” S.Rep.No.1070, 99th Cong., 2d Sess. According to the Department of the Interior, this 1968 Tiwa Act made the tribe ineligible for administrative acknowledgement, a decision that clearly presaged the Department’s construction of the 1956 Lumbee Act in 1989. Because of this unique circumstance, the Department expressed no opposition to special legislation extending full recognition to the Tiwas of Texas. In 1987, Congress removed the Tiwas of Texas from the restrictions imposed upon them in the 1968 Tiwa Act. Congress enacted the Ysleta del Sur Pueblo Restoration Act, Pub.L. 100-89, Act of August 18, 1987, 101 Stat. 667, to restore the federal trust relationship with the Ysleta del Sur Pueblo of Texas, previously known as the Texas Tiwas. Just as the 1968 Tiwa Act created a special circumstance justifying special legislation for that tribe, so does the 1956 Lumbee Act for the Lumbee Tribe.

Further, just as it did for the Tiwas of Texas, the Congress should enact comprehensive legislation as proposed by the Lumbee Tribe, legislation that resolves all related issues—status, service delivery area, base roll, jurisdiction, etc. The Congress should not enact another half measure, one that repeals the 1956 Lumbee act and requires administrative action on the Tribe under the acknowledgement regulations for numerous reasons.

First, as a matter of fundamental fairness, the Congress should deal with the Lumbee Tribe just as it has every other tribe in the same situation, that is, by enacting recognition legislation because the tribe is ineligible for the administrative process. Congress has never passed special legislation that would require administrative action on a tribe that is under present law ineligible for the administrative process. The Lumbee Tribe is the last tribe in the country left in that position. There is no legitimate reason to depart now from Congress’ legislative tradition in such circumstances, particularly since to do so would impose a tremendous burden on the Tribe—first, obtaining the passage of special legislation amending the 1956 Lumbee act, and second, subjecting the Tribe to the intrusive, time consuming, and expensive administrative acknowledgement process.

Second, there is no good purpose to be served by sending the Lumbee Tribe to the current administrative process. That process provides the Department an opportunity to examine a group’s history and community to determine whether the group is, in fact, an Indian tribe. The Department of the Interior and the Congress have already made that inquiry with regard to the Lumbee Tribe on numerous occasions. In response to the Tribe’s repeated requests to Congress and the Department for federal recognition, the Congress and the Department have compiled a voluminous record on the Tribe’s history and community. Because that record plainly establishes the status of the Lumbee Indians as an Indian tribe, further study of the Tribe would be a considerable waste of time (indeterminate period before active consider-

⁴There is a third tribe that was subject to similar legislation—the Pascua Yaquis of Arizona. In 1964, Congress passed a statute conveying federal land to the Pascua Yaqui Association, Inc., an Arizona corporation. See 78 Stat. 1195, Pub. L. 89-14. The final section of this statute, like the Lumbee and Tiwa acts, provided that the Yaqui Indians would not be eligible for federal Indian services and none of the federal Indian statutes would apply to them. Congress has since extended full federal recognition to the Pascua Yaqui. See 25 U.S.C. § 1300f. The position of the Pascua Yaqui was somewhat different from that of the Lumbees and Tiwas, since the earlier federal statute involved a state corporation and arguably would not have recognized a tribe, even without the termination language. Also, the Pascua Yaqui recognition legislation was enacted in 1978, before the administrative acknowledgement process was in place. Nonetheless, the Department proposed that Congress repeal the 1964 Pascua Yaqui bill and require that the Yaquis go through the soon to be established administrative acknowledgement process. See S.Rep.No. 95-719, 95th Cong., 2d Sess. 7, reprinted in 1978 U.S. Code Cong & Admin. News 1761, 1766. Congress refused to do so and enacted the recognition legislation.

ation and between five and ten years time before final agency action) and substantial waste of tribal and federal resources (in the hundreds of thousands of dollars.)

Third, despite some suggestion to the contrary by other witnesses, there is simply no magic to the current administrative acknowledgement process. That process is not the source of all knowledge or wisdom regarding the status of Indian tribes. To the contrary, the overwhelming majority of tribes now recognized by the United States were recognized by Congress. According to a GAO report, there were 561 federally recognized Indian tribes as of November 2001. Of those, 530 were recognized by Congress and 31 were recognized by the Department of the Interior. Out of the 31 recognized by the Department of the Interior, 10 were recognized before the 1978 regulations were adopted, 14 were recognized after 1978 and under those regulations, and 7 were recognized after 1978 but without regard to the regulations. In short, there is no historical or other necessity for subjecting the Lumbee Tribe to the current administrative process.

Finally, given the hundred year history summarized above, the Lumbee Tribe has every reason to be skeptical of unbiased and even-handed treatment by the Department of the Interior. The Department has successfully blocked federal recognition of the Tribe for over one hundred years, both before Congress and administratively. It is simply not realistic to expect the Department now to do what it has never been able to do in the past—base its judgment about the Lumbee Tribe purely on the facts and not on fiscal or other considerations.

For more than one hundred years now, the Lumbee Tribe has been studied and “processed.” The record produced by these studies, even those by the Department, consistently shows an independent Indian community descended from Cheraw and related Siouan speaking tribes that has existed from white contact until the present as a separate community with known and visible leaders. Under present law, the Lumbee Tribe can only be recognized by an act of Congress. Legislative precedent under these circumstances supports the enactment of H.R. 65, comprehensive recognition legislation, not another half measure.

Major provisions of H.R. 65

Congressman McIntyre’s bill is appropriately structured as an amendment to the 1956 Lumbee Act, thus allowing Congress to complete the task it began in 1956. Specifically, the bill provides for:

- explicit federal acknowledgement of the Tribe, including the application to the Tribe of all laws of the United States of general applicability to Indians and Indian tribes;⁵
- the eligibility of the Tribe and its members for all programs, services, and benefits provided by the United States to Indian tribes and their members, such services to be provided in the Lumbees’ traditional territory of Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina;
- the determination of a service population, to be done by the Secretary of the Interior’s verification that all enrolled members of the Tribe meet the Tribe’s membership criteria; and
- the granting of civil and criminal jurisdiction to the State of North Carolina regarding the Lumbee Tribe, to insure consistent and continuous administration of justice, until and unless the State of North Carolina, the Tribe, and the United States, agree to transfer any or all of that authority to the United States.

These are provisions typically found in recognition legislation and reflect the federal policy of self-determination for Indian tribes. Most importantly, it finally accomplishes the goal long sought by the Lumbee people—treatment like every other recognized tribe in the United States.

⁵One of the statutes generally applicable to Indian tribes is the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq [IGRA.] This statute was enacted in 1988, exactly one hundred years after the Lumbee Tribe first sought federal recognition. Clearly, the Lumbee Tribe’s quest is not motivated by gaming; neither has the Tribe expressed any current interest in gaming. However, the Tribe strongly believes that Congress should not pick and choose among statutes that apply to it and subject it, once again, to second class treatment as compared to other recognized Indian tribes. It should be noted, though, that Congressman McIntyre’s bill imposes greater restrictions on the Tribe’s ability to game under IGRA than on those tribes that are recognized through the administrative process. H.R. 65 does not create an Indian reservation; as a result, even if the Lumbee membership authorized tribal leadership to negotiate a gaming compact with the State (the Lumbee tribal constitution explicitly requires a special tribal referendum to authorize such), land for such uses could only be taken into trust by the Secretary of the Interior with the consent of the Governor of North Carolina. In contrast, tribes acknowledged through the administrative process can by-pass gubernatorial consent through the designation of an initial reservation by the Secretary of the Interior. 25 U.S.C. §2719(b)(1)(B)(ii).

Conclusion

Congress and the Department of the Interior have over the last century repeatedly examined the Tribe's identity and history and have consistently found the Tribe to be an Indian community dating back to the time of first white contact. There is no need for further study of the Tribe's history. There is no need for another half measure by Congress. There is need for an act of Congress that comprehensively and once and for all addresses the status of the Lumbee Tribe and all related issues. On the Tribe's behalf, I urge the committee's favorable action on H.R. 65.

[A statement submitted for the record on H.R. 1294 by Michael J. O'Connor, President, Virginia Petroleum, Convenience and Grocery Association, follows:]

Statement of Michael J. O'Connor, President, Virginia Petroleum, Convenience and Grocery Association

Good morning Mr. Chairman and members of the Committee. My name is Michael J. O'Connor, and I am the President of the Virginia Petroleum, Convenience and Grocery Association (VPCGA). The VPCGA is a non-profit, statewide trade association, founded in 1948, to represent the petroleum and food industries. Our membership includes approximately 450 independent businesses operating over 4,000 convenience and grocery stores from Pennington Gap to Chincoteague. These members employ more than 10,000 Virginians. Membership includes petroleum marketers, travel centers, convenience stores, and chain and independent supermarkets.

All of our members stand to be affected by H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007, should it be enacted. While honorable in its intentions, H.R. 1294 poses a serious threat to small businesses across our state. If passed, HR1294 will create an anticompetitive marketplace for goods such as tobacco and gasoline and will strain the state budget by reducing excise tax revenues on these goods.

I would like to address a misconception many have when they consider tribal recognition issues. Many people believe the only concern we should have when recognizing tribes is the potential for more gaming activity. That is not the reason for VPCGA's concerns. There is another issue that, if ignored, can be a major problem for states with new tribes—that problem is tribes opening retail operations that do not collect and remit state taxes.

In fact, if passed, the impact of H.R. 1294 will be multifaceted. The United States Government and the government of the Commonwealth of Virginia would recognize as sovereign the Chickahominy, the Chickahominy—Eastern Division, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond groups. As sovereign entities, these groups would no longer be subject to the police power or taxing power of the Commonwealth.

Pursuant to H.R. 1294, these groups would be permitted to purchase and take into trust land in some of the most populous counties in Virginia. In fact, it appears that one of the groups could acquire land anywhere in Virginia and turn it into a reservation. This will create havoc for state laws and law enforcement. For our members, the single greatest concern is that these tribes will have the ability to establish retail businesses outside of the jurisdiction of traditional state powers to collect taxes. This means that any convenience store, travel center, or smoke shop established by one of the recognized tribes could sell gasoline and tobacco to the public free of state taxes.

Virginia small businesses would suffer the consequences of this statutorily bestowed competitive advantage. Businesses would be hurt, some would likely go under, and the Commonwealth of Virginia would lose revenue.

The type of tax evasion I am speaking about is not conceptual. It is occurring today in many states and has led to high-profile disputes in New York, Oklahoma, Kansas and New Mexico, among others. In these states, Native American tribes have used recognition to open convenience stores and truck stops that sell gasoline and tobacco products tax-free to non-Native Americans in spite of U.S. Supreme Court rulings saying that such sales can be subject to state taxes. For instance, in New York it is estimated that \$360 to \$400 million of revenue is not recouped due to cigarette excise tax evasion alone by tribes.¹ Some estimate that New York State

¹ Representatives Alexander Grannis and William Magee, New York State Assembly, Uphold Tax Law on Indian Reservations, Letter to the Editors, The Times Union, Albany, New York (April 26, 2006).

has failed to recoup nearly \$4 billion in cigarette excise taxes on sales to non-reservation residents since 1995.² In Oklahoma it is estimated that the tobacco excise tax there is “under-collected by about \$4 million a month.”³

Nothing can erase the hideous racism or the marginalization of our fellow citizens of the Commonwealth that occurred for decades, but perhaps recognition can help heal some of those wounds.

Let me be clear about our position, we are NOT opposed to the recognition of any Virginia tribes.

However, the people whom I represent do not deserve to have their life’s investment threatened by a marketer selling gasoline to non tribal members at a 37 cent price advantage—an advantage that is achieved solely thru tax evasion. We have just emerged from a four year long debate in Richmond with a plan that will produce the first new road building program in a generation. Just imagine the impact to the Virginia Transpiration Trust fund if this legislation becomes law. Because this legislation is not just recognizing existing reservations but is pulling other areas of the state into new reservations, the incidence of excise tax evasion may be far reaching and competitively disadvantage large numbers of convenience store and motor fuels retailers.

Mr. Chairman, any legislation of this kind must ensure that non-tribal members are required to pay all excise taxes on gasoline, tobacco and other products. Accordingly, unless strong protections against excise and sales tax evasion are included the H.R. 1294, VPCGA must strongly oppose the bill in its current form.

However, we would welcome the opportunity to work with the Congressman Moran, and other proponents to address these concerns as this legislation evolves. Thank you for the opportunity to present our views.



²Id.

³Tom Droege, Henry: Tobacco Tax Loser is Likely, *Tulsa World*, (April 15, 2006).