

**H.R. 31, LUMBEE RECOGNITION ACT,  
AND H.R. 1385, THOMASINA E. JOR-  
DAN INDIAN TRIBES OF VIRGINIA  
FEDERAL RECOGNITION ACT OF  
2009.**

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**LEGISLATIVE HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

Wednesday, March 18, 2009

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**LEGISLATIVE HEARING ON H.R. 31, "LUMBEE  
RECOGNITION ACT," AND H.R. 1385,  
"THOMASINA E. JORDAN INDIAN TRIBES OF  
VIRGINIA FEDERAL RECOGNITION ACT OF  
2009."**

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**Wednesday, March 18, 2009  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C.**

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The Committee met, pursuant to call, at 10:02 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Hastings, Kildee, Faleomavaega, Napolitano, Holt, Bordallo, Heinrich, Christensen, Kratovil, Smith, Wittman, Broun and Lummis.

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

The CHAIRMAN. The Committee on Natural Resources is meeting today to conduct a hearing on H.R. 31, the Lumbee Recognition Act, and H.R. 1385, a bill which would grant Federal recognition to six Indian tribes residing in the Commonwealth of Virginia.

We have with us several Native Americans and other individuals from North Carolina and Virginia who have come here this morning to give and listen to testimony of great importance.

We are also very honored to have with us today the Governor of Virginia, Governor Tim Kaine. Governor, we welcome you.

Governor KAINE. Thank you, Mr. Chairman.

The CHAIRMAN. Both of these bills were considered by the Committee last Congress and passed by the House of Representatives.

With respect to the Lumbee bill, quite frankly, and it pains me to say this, I feel that we are all starring in the movie Groundhog Day. The legislation passed the House in the 102nd Congress, it passed the House in the 103rd Congress, and it passed the House in the 110th Congress, always by large margins. Yet here we are again, at the beginning of the 111th Congress, starting the process all over once again.

Time and time again, the hopes and dreams of the Lumbee people have been raised, only to be dashed as each Congress fails

to get the job done. Yet throughout these long decades, you have continued to hold your heads high, with the dignity and respect you deserve.

I do not need to go through the long history of this struggle. It is well documented and will be further documented during the course of this hearing, as has the saga of the six Virginia tribes which are the subject of H.R. 1385.

Two years ago marked the 400th anniversary of the founding of Jamestown, Virginia. At the time, many Americans were startled to learn that the very Native Americans who greeted the English settlers are still not Federally recognized as tribes.

The members of these six Virginia 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 all other legal documents, but they have endured. They have kept their traditions alive and continue to function as governments.

In closing, I can assure you that the Committee will continue to press forward on tribal congressional recognition when the circumstances indicate it is necessary to do so, and we will also continue to work to reform the Federal acknowledgment process that has long been considered broken by all involved in the process, including Congress.

Both the Lumbee and the Virginia tribes require the attention of Congress. Let us now seriously go about the business of rectifying wrongs to the Lumbee and the Virginia tribes.

Before I recognize the Ranking Member, Mr. Hastings, I want to also recognize two colleagues of ours from whom we will be hearing on the panel—first being my dear friend from Northern Virginia, Congressman Jim Moran, who has been quite a leader not only from his position on the House Appropriations Committee, but each and every day of the year he has been a leader for his Virginia tribes and on a number of other issues that come before this body.

Congressman Mike McIntyre from the State of North Carolina has also been a tremendous leader for his Lumbee Tribe, and I wish to recognize his valuable leadership and day-to-day help on this issue as well.

[The prepared statement of Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, Chairman,  
Committee on Natural Resources**

This morning the Committee is meeting to conduct a hearing on H.R. 31, the Lumbee Recognition Act, and H.R. 1385, a bill which would grant federal recognition to six Indian Tribes residing in the Commonwealth of Virginia.

We have with us several Native Americans and other individuals from North Carolina and Virginia who have come here this morning to give, and listen to, testimony of great importance. We are also honored by the presence of the Governor of Virginia, Tim Kaine.

Both of these bills were considered by the Committee last Congress, and passed by the House of Representatives.

With respect to the Lumbee bill, quite frankly, and it pains me to say this, I feel like we are all starring in the movie Ground Hog Day. The legislation passed the House in the 102nd Congress. It passed the House in the 103rd Congress. And it passed the House in the 110th Congress. Always by large margins.

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But they have endured, kept their traditions alive and continue to function as governments.

In closing, I can assure you that the Committee will continue to press forward on tribal congressional recognition when the circumstances indicate it is necessary to do so. And we will also continue to work to reform the Federal Acknowledgment Process that has long been considered broken by all involved in the process, including Congress.

Both the Lumbee and Virginia tribes require the attention of Congress. Let us now seriously go about the business of rectifying wrongs, to the Lumbee and to the Virginia Tribes.

Thank you.

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The CHAIRMAN. I now recognize the Ranking Member, Mr. Hastings. We will be hearing from Heath Shuler as well. Where is Heath?

VOICE. He is right there.

The CHAIRMAN. OK. Yes. Heath will be testifying perhaps on a different side of the issue, but we will hear his testimony as well.

The gentleman from Washington, Mr. Hastings?

**STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you, Mr. Chairman. I want to thank you for holding this hearing on H.R. 31 and H.R. 1385.

There are a number of new Members of this Committee, and I think it is good for them to be able to hear the testimony on this and the information that they will be receiving.

I want to say generally it seems that the Lumbee and the six Virginia tribes, they generally enjoy the support of their respective representatives and in this case their state Governors. I am one that generally believes in deferring to the judgment of Members on matters affecting their district. Unfortunately, this principle is not consistently applied in this Congress, but that would be an issue that can be discussed in other venues, I suppose.

Having said this, I do have concerns with H.R. 31 and H.R. 1385. Recognition of a tribe conveys a unique set of benefits, legal immunities and responsibilities. It affects the tribe's individual members, and it has an impact on states, counties, local towns and other tribes. It affects the Federal government's ability to deal with hundreds of recognized tribes at a time when the Federal budget is stretched thin and a huge backlog of unmet needs exist across Indian country.

These factors in and of themselves don't necessarily mean tribal recognition is not warranted for the Lumbee or the six Virginia tribes, but these are the practical and political realities that must

be faced when the choice is made to seek recognition in the legislative arena.

Another concern I have is how the Lumbees and the six Virginia tribes are deemed to be tribes, but not the other tribes that have petitioned through the Department of the Interior for recognition. Some of these tribes petitioned long ago, even as early as the 1970's and the 1980's. In many cases, or in some cases, their petition are considered ready.

Also, other Members of Congress have sponsored bills to recognize their tribes in their states or districts. There seems to be no clear reason why these groups are not under consideration today while the Lumbees and the six Virginia tribes are receiving such consideration and likely are to be considered on the House Floor in the near future.

Even though the Bureau of Indian Affairs regulatory process for considering recognition petitions has its problems, it does use a fixed set of seven mandatory criteria to judge whether a tribe is a tribe within the meaning of the Federal law.

I hope the Committee carefully considers whether it would be more appropriate to defer to this process. If we do not, then perhaps such a lack of faith in this system suggests it is time for Congress to stop just ignoring the issue and instead examine the purpose and continued usefulness of the BIA process altogether.

I say that for both recognized tribes and those seeking recognition. It is a matter of fundamental fairness to ensure recognition is not given in an arbitrary manner that could undermine the status of all who hold it.

Mr. Chairman, I hope there will be further discussions as to what kind of criteria we use in considering H.R. 31 and H.R. 1385 and whether such criteria will be applied equally for other petitioners. Neither this Committee, nor for that matter, Congress should be acting in an arbitrary, unclear and subjective way when considering recognition of a tribe.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Ranking Member,  
Committee on Natural Resources**

Mr. Chairman, thank you for holding a hearing on H.R. 31 and H.R. 1385. There are a number of new Members of the Committee who may not have been exposed to tribal recognition issues before today and this hearing should be very informative for them.

It seems that the Lumbee and the six Virginia tribes generally enjoy the support of their respective Representatives and State governors. I am one that generally believes in deferring to the judgment of Members on matters affecting their districts. Unfortunately, this principle is not consistently applied in Congress.

Having said this, I have concerns with H.R. 31 and H.R. 1385. Recognition of a tribe conveys a unique set of benefits, legal immunities, and responsibilities. It affects the tribe's individual members, and it has an impact on states, counties, local towns and other tribes. It affects the federal government's ability to deal with the hundreds of recognized tribes in a time when the federal budget is stretched thin and huge backlogs of unmet needs exist across Indian Country.

These factors in and of themselves don't necessarily mean tribal recognition is not warranted for the Lumbee or the six Virginia tribes. But these are the practical and political realities that must be faced when the choice is made to seek recognition in the legislative arena.

Another concern I have is with how the Lumbees and the Virginia tribes are deemed to be tribes, but not the other tribes that have petitioned for recognition.



Some tribes petitioned long ago, even as early as the 1970's and 1980's. Their petitions are considered ready. Other Members of Congress have also sponsored bills to recognize other tribes. There seems to be no clear reason why these groups are not under consideration today, while the Lumbees and the six Virginia tribes are receiving such consideration and are likely to be considered on the House Floor in the near future.

Even though the Bureau of Indian Affairs regulatory process for considering recognition petitions has its problems, it does use a fixed set of seven mandatory criteria to judge whether a tribe is a tribe within the meaning of Federal law. I hope the Committee carefully considers whether it might be more appropriate to defer to this process. If we do not, then perhaps such a lack of faith in this system suggests it is time for Congress to stop just ignoring the issue and, instead, examine the purpose and continued usefulness of the BIA process altogether. For both recognized tribes and those seeking recognition, it is a matter of fundamental fairness to ensure recognition is not given in an arbitrary manner that could undermine that status for all who hold it.

Mr. Chairman, I hope there will further discussion as to what kind of criteria we should use in considering H.R. 31 and H.R. 1385, and whether such criteria will be applied equally for other petitioners. Neither this Committee, nor Congress, should be acting in an arbitrary, unclear and subjective way when considering recognition of a tribe. Thank you.

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The CHAIRMAN. Thank you, Mr. Hastings.

The Chair will move on to our first witness today, The Honorable Tim Kaine, the Governor of the Commonwealth of Virginia. We recognize or the Chair recognizes certainly the time constraints under which the Governor is operating today. We will attempt to be gentle with our questions and brief and allow you to proceed now in any manner that you wish.

We do have your prepared testimony. It will be made a part of the record as if actually read, and you may proceed as you desire.

**STATEMENT OF HON. TIM KAINÉ, GOVERNOR,  
COMMONWEALTH OF VIRGINIA, RICHMOND, VIRGINIA**

Governor KAINÉ. Thank you, Mr. Chairman. It is an honor to be with you this morning on a very important issue. I will just summarize a couple of points from the written testimony.

To begin, I want to thank the Chair for your leadership on this issue and your support for the Virginia tribes. To Congressman Moran, who will speak later, his strong leadership on this issue is much appreciated in Virginia, as well as the co-sponsors of this bill, Congressman Wittman and other members of the Virginia delegation. We appreciate your leadership.

This bill deals with tribes who encompass the best known stories of the interaction between those who settled this country from Europe and the Native populations who lived in this land when the settlement occurred. There is no story that is better known about the interaction between the Europeans who came to this country and became Americans and the Indian tribes than the story of the Jamestown settlers, Pocahontas and the Powhatan Nation.

It is a story that is a powerful story in our memories, but also it is a powerful story even to today because if it were not for the forbearance of these tribes and even the assistance of these tribe during the early difficult years at Jamestown, it is very clear that the Jamestown settlement would have perished and then the history of Virginia and of the Nation would have been a different history.

And yet despite the fact that this is probably the best known story of the interaction between Native Americans and these European settlers, there are 562 Federally recognized tribes and none of the Virginia tribes are recognized, and so that naturally calls forth the question why, and I think there are two reasons. Neither of these reasons should stand as a bar to recognition of these tribes. In fact, I think the statement of the reasons demonstrates why this bill is so powerful and so right.

First, the Virginia tribes did something that in retrospect was unfortunate. They made peace with the English before we had an American government. They were willing to lay down arms and they were willing to welcome settlers to this new world with the English Government in the 1600s, and as a result they never entered into treaties with the U.S. Government, and that has made the process of their recognition more difficult.

There is a wonderful tradition that I get to enjoy as Governor of Virginia. Every year since 1677, as a result of a treaty with King Charles II, the Virginia tribes come to the Governor's Mansion and present a tribute to the Governor in lieu of taxes, a tribute of wild game and gifts, and that has been an unbroken tradition now for over 300 years. But it should not be held against these tribes that they made peace with our people before there was an American government.

It is also a bit ironic they made peace with our people, but members of these tribes have fought side-by-side with our people in every war that this country has been involved with from the Revolutionary War to the present. These are great patriots who have been involved side-by-side with us ever since those treaties were signed in the 1670s.

So the first reason for nonrecognition of these tribes is basically they laid down arms and made peace with us too soon. The second reason is a more sinister reason. Beginning in 1924, Virginia passed a law, the Racial Integrity Act, that was in place from 1924 until it was struck down by the Federal Courts in 1967.

That law, which came out of the misguided eugenics movement in the 1920s, systemically denied the heritage and the recognition of Virginia Indians as Indians, and in fact under the very strict application of that law by a Virginia public official, Walter Plecker, for over 25 years the documents and records pertaining to Virginia tribal members were systematically altered and changed, and everyone who was a Native American had their records changed to colored.

That was the state policy, and because the records were changed it made it so much more difficult for these tribes to present the historic case that would be required to go through the BIA process. Virginia perpetrated this monstrous injustice for a very long time. Thank goodness it was struck down.

In the 1980's, under successive leadership of both Democratic and Republican Governors and Democratic and Republican members of our state legislature, what we have done at the state law is to apologize, to state recognize these tribes with a state recognition beginning in the 1980's and to begin an earnest quest on behalf of the overwhelming majority of Virginians to see that these injustices are righted and that the Virginia tribes be recognized.

And so those are the two reasons why these tribes that are among the best known in the United States have never been recognized by the Federal government. They made peace with the English rather than with the United States, and their records were systematically altered due to official state policy in the Commonwealth for over 40 years. Neither of these reasons should block the recognition of these tribes. In fact, the two reasons I think really compel the reverse response; that it is now past time that they be recognized.

Let me say one final word just as a personal story. Mr. Chairman, you referred to the Jamestown commemoration. It has been one of the great pleasures of my term as Governor to be able to preside over the commemoration of the 400th anniversary of Jamestown Island, and I had your Governor, because your state is named after the virgin queen, Queen Elizabeth, with me as we welcomed Queen Elizabeth to the Governor's Mansion and to Jamestown in May of 2007.

That commemoration gave us reason for pride, but also sadness. In 1957, when we celebrated the 350th anniversary, the stories of the Virginia Indian tribe were just sideshows, entertainment. It wasn't seriously told, and there wasn't serious recognition and appreciation for the amazing role that these tribes played in our future to this day.

In 2007, we wanted to do it better and so the stories of these tribes were an integral part of what we celebrated as Jamestown's 400th. The tribes went to England and were recognized as royalty, as a nation that entered into treaties with the English Government, received a recognition on the English shores that they never received here.

That was a wonderful and a bittersweet moment, but we all were struck in trying to recognize 400 years of Virginia and American history that these tribes were still not recognized, so although we were able to include them and tell the story in a completely different way than we had done it 50 years ago, that felt good.

And yet there was a hollowness in our feeling that we had come a long way because we still weren't completely there, and it took away from our 400th commemoration that these tribes were still not recognized Federally.

Again, we bear a huge burden of this on the state side, and I will candidly admit that as I have done. Had it not been for this policy of rewriting the records the BIA process might have been easier, so we bear the burden for that 40 years of injustice in dealing with these tribes, but we have now recognized them.

With the tremendous history and connection of these tribes' stories with the American stories, it would be our supreme delight as a Commonwealth if these tribes could join the 560 plus tribes that have been recognized by the Federal government and have their status as sovereign nations finally acknowledged by this nation.

Thank you very much.

[The prepared statement of Governor Kaine follows:]

**Statement of The Honorable Timothy M. Kaine, Governor,  
Commonwealth of Virginia**

Thank you for the opportunity to speak with you today in support of Federal Recognition for Virginia's Native American Tribes. We are proud of Virginia's Native

Tribes and the contribution their communities have made to our Commonwealth and the Nation.

I am here today because recognition of these Tribes by the Federal Government is long overdue.

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.”

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 settlers 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 the settlers survive those first harsh winters.

Almost two years after the 400th anniversary of the first permanent English Settlement at Jamestown, 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.

The eight Virginia Tribes—the Chickahominy, Eastern Chickahominy, Mattaponi, Monacan Indian Nation, Nansemond, Pamunkey, Rappahannock and the Upper Mattaponi—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 332 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.

I do not believe that the Virginia Tribes should be penalized for having decided early on to begin peaceful relations with the settlers who are our ancestors.

#### **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”. From that point on 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.”

- Ironically, 1924 is the same year that the Federal Government guaranteed Native Americans full citizenship and the corollary right to vote.

The Racial Integrity Act was not struck down by the Federal Courts until 1967. 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 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.” The Virginia Tribes have also submitted letters of intent and partial documentation to petition for Federal acknowledgment.

Unfortunately, these applications have been denied as incomplete. Without proper records and complete documentation the Tribes cannot fulfill the requirements of the BIA process. As a result of years of systematic efforts to deny their heritage the ability of Tribes to comply with the BIA process has become nearly impossible.

These are the two reasons why the Virginia Tribes have never been recognized: they laid down their arms and made peace in the 1670s and then their collective heritage was denied by Commonwealth policy during the 1900s.

Helen Rountree, noted anthropologist and expert on Native-Americans in Virginia, 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.

#### **Need for Congressional Action—**

It is clear that political action is needed to remedy what bureaucracies cannot fix. Justice begs for a congressional response.

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. 1385). The Tribes view Federal recognition as a basic issue of equality with the other 562 tribes. The six Tribes that are working together for recognition under H.R. 1385 are the Chickahominy, Eastern Chickahominy, Monacan Indian Nation, Nansemond, Rappahannock and the Upper Mattaponi.

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. 1385, 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.

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 Chairman 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 also heartened by the bipartisan Virginia Delegation support for H.R. 1385 and thank Representatives Gerry Connolly (D-VA), Tom Perriello (D-VA), Rob Wittman (R-VA), and Bobby Scott (D-VA) for their original co-sponsorship of the legislation.

It is time for these Virginia native peoples to be recognized by their own country. Indeed, Federal 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.

I strongly believe that our recent commemoration of the 400 years of modern Virginia history will be incomplete without successful Federal recognition of these Virginia Tribes. Virginians consider this a matter of fundamental justice and an acknowledgment of the fact that we would not be what we are today had these Tribes supported the settlement at Jamestown Island.

The Virginia Tribes are a part of us. They have been in our schools, worked with us, and served in all of our wars from the Revolution to the current day. This should be acknowledged. They should be officially recognized.

It is time to finally right an historic wrong for Virginia and the Nation.

Thank you for the opportunity to testify today on this important issue and I welcome your questions.

---

The CHAIRMAN. Thank you, Governor. We appreciate very much the manner in which you delivered your testimony, empathy and

certainly a recognition of the struggle that these tribes have faced. We appreciate very much your being with us today.

Governor Kaine. Thank you.

The CHAIRMAN. I have no questions. The gentleman from Washington?

Mr. HASTINGS. Thank you, Mr. Chairman, and thank you, Governor Kaine, for being here. I just have one question, maybe two.

Do you support the provision in that bill that prohibits the tribes from conducting gaming under the Indian Gaming Regulatory Act?

Governor Kaine. Congressman, I do. If I could write it myself, I would rather have them have the exact same rights as Virginia citizens have—no more, no less—and we don't have gaming in Virginia.

Mr. HASTINGS. Right.

Governor Kaine. I don't think they should have less rights than Virginia citizenry as a whole has.

The language currently is even stronger than that so that if 50 years from now the Governor or the general assembly were to allow more gaming in Virginia, and it is not that likely even 50 years from now, I think they should have the same rights as other Virginia citizens, but the tribes have always maintained that gaming and gambling is not their issue at all and so this language, which I think will help it pass, is language that I support.

Mr. HASTINGS. Do you think in a larger sense that that should be a condition of recognition of tribes in general?

Governor Kaine. I don't know. Really the circumstances of tribes in different states is not something that I have really studied.

I do know these tribal leaders in Virginia pretty well. We have breakfast every Thanksgiving together, as I have mentioned.

Mr. HASTINGS. Yes.

Governor Kaine. And others are members of my administration. They are very unequivocal in their intention not to have gaming or gambling, so that has not been a challenging issue in this context.

Mr. HASTINGS. Good. OK. Thank you very much, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman from American Samoa, Mr. Faleomavaega?

Mr. Faleomavaega. Thank you, Mr. Chairman. I want to thank you for your leadership and our distinguished Ranking Member also for bringing these important pieces of legislation for consideration by our Committee.

I also want to offer my personal welcome to the Governor of the State of Virginia, Governor Kaine, and my good friend and colleague, Congressman Jim Moran, for his leadership and efforts in bringing this before the Committee.

I was very moved by Governor Kaine's statement of the fact that no other leaders in the State of Virginia would know more about the history and the relationship between the State of Virginia and some five or six Indian tribes, and after 400 years of this relationship it now has finally been brought to the forefront.

I am certain that many Members of this Committee have never even known the fact that all these laws have caused a lot of problems. I recall that we even had miscegenation statutes that prohib-

ited the states from marrying any person of color. Call it a racist statute as far as I am concerned.

I want to share with Governor Kaine and would certainly welcome his comments to the fact that I had a little bit of experience in reading and trying to review exactly what the essence of what has been our relationship, our national policy toward the Native American Indians.

I think our first national policy was to kill the Indians, get rid of them. Then the next national policy that we tried to propound or even promote, assimilate the Indians. Make them part of all Americans. Don't even recognize them and their given character and ethnic recognition, so assimilation was the next national policy that we had in mind. Then the termination. Don't even recognize Indians.

The problem now of recognition. In 1934, we passed a statute, a national statute, saying in order to be an American Indian you have to be 50 percent blood or more. If that is not the most racist statute that I have ever heard. How do you blood quantify a human being? Does 49.9 percent make you less Indian, even if it were born and raised in the reservation?

I mean, this is the kind of national policy that the Indians have had to ensure for all these years. Now we have what is known as the Federal acknowledgement process. This is a regulatory process, and there is nothing in the Constitution nor any Federal statute that prevents the Congress at any time to give Federal recognition to any tribe.

So I don't think we are circumventing the process. The problem is that this process has been an absolute failure. We are trying at least as Members of this Committee to see if we can propose legislation that will better improve the process.

Mr. Chairman, I recall years ago in this very Committee we had the gentleman to testify who actually wrote the Federal acknowledgement process, coming up with some seven criteria that these Indian tribes have had to go through to say OK, I am an Indian, even to the point of examining the teeth that they have. What makes them separate as Indians to the rest of America? I mean, you talk about such an undignified—it is just unbelievable what the American Indians have had to go through in doing this.

I will say, Governor Kaine, I really, really appreciate your comments, your statement concerning this proposed legislation. Mr. Chairman, my good friend, the distinguished Ranking Member, I absolutely support this piece of legislation, and I hope my colleagues will do the same.

One question just to Governor Kaine. When you said was it Pocahontas that was primarily involved?

Governor KAINE. Pocahontas and Powhatan, yes.

Mr. FALEOMAVAEGA. And would it be safe to say that without these Indians our first settlers that came from the Old World would have died if it had not been for the love and affection from one human being to others?

Governor KAINE. Absolutely. There is no doubt the Jamestown settlement would have perished if it had not been for the forbearance and the assistance of the Virginia tribes who enabled it to survive.

Mr. FALEOMAVAEGA. I just want to say something in closing. I remember seeing a cartoon, Mr. Chairman. It was a spaceship. There were two Indians talking to each other, and this spaceship came down. They said oh, no. Here we go again.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Virginia, Mr. Wittman?

Mr. WITTMAN. Thank you, Mr. Chairman. I want to begin by thanking Chairman Rahall and Ranking Member Hastings for calling this hearing and for this bill to come before us.

Governor Kaine, welcome today. It is good to have you here.

Governor Kaine. Thank you.

Mr. WITTMAN. Good to see you. Representative Moran, thank you so much for sponsoring the bill. Both of you have been great leaders on this issue, and I think it is near and dear to all of our hearts concerning recognition for Virginia tribes. It is absolutely long overdue, and I appreciate, Governor, your leadership and, Representative Moran, your leadership on this issue.

I wanted to begin by talking a little bit about the Commonwealth's efforts to recognize tribes. Can you tell us a little bit about the criteria the Commonwealth uses for recognition for tribes, and is that process similar to the BIA process?

Governor Kaine. We do not have a regulatory agency that would be the equivalent of the BIA, but beginning again in the 1980's, and I don't have the precise dates, there was a profound recognition that this Racial Integrity Act had been a monstrous injustice, that these tribes were part of who we are and helped us become the Commonwealth we are.

And so the legislature, Congressman Wittman, began to enact statutes to recognize tribes based on historic research that had been presented by individuals with the tribes themselves. And also academics who have studied this issue often made it the focus of their entire career and so the tribal recognitions that were done, they were done in a legislative process, but they were based upon historic materials that were presented and scrutinized by the legislature prior to the recognitions.

Mr. WITTMAN. Can you tell us a little bit about what gave the Commonwealth the level of certainty in recognizing these tribes, just as where the level of validity stood in their mind about recognizing tribes?

Governor Kaine. Congressman Wittman, because these were actions taken by the legislature before I was involved in state politics I can kind of report secondhand.

Mr. WITTMAN. Yes.

Governor Kaine. But it was scrutiny of the historic records and academic materials and oral folklore of the tribe members themselves.

Two of the tribes in Virginia have reservation lands that were committed to them beginning with the treaties, but the six tribes that are the focus of this bill, they have tribal properties but not sort of in the formal reservation sense.

But they presented their own material, and then the academics in Virginia, both working with the tribes and working at some of the state's institutions, gathered other material. These were not close questions. It was not difficult for the legislature ultimately to



review the historic record about these tribes and concludes that, yes, they were a part of these original Virginia tribes that welcomed the English to Virginia in 1607.

Mr. WITTMAN. It seems to where the process Virginia then has pursued is very, very similar to the BIA process and their designations, so it seems like that Virginia has already gone through that process, something very similar to what has gone forth on other tribes that have been recognized at the Federal level, so it seems like the ground has kind of been paved by Virginia.

Governor KAINE. Indeed. Indeed.

Mr. WITTMAN. You know, you brought up a great point earlier talking about the service of our Native American tribes in Virginia in the military.

Can you tell us a little bit about the legacy of service of our tribal members and also how the recognition effort would affect them?

Governor KAINE. Absolutely. Absolutely, Congressman Wittman. We have been able to determine, and we will submit this to the Committee, that there are hundreds of members of these Virginia tribes that have served in the military at least from the Civil War forward. Previous to the Civil War the records are more difficult, but from the Civil War forward there are hundreds.

We can say with confidence that among these tribes there is at least one Silver Star winner, two Bronze Star winners and—a little irony that we kind of discovered as we did this research—at the same time as Virginia was denying the tribal membership of the Indians in our Racial Integrity Act, the U.S. military was stamping on the dog tags of these brave folks in the service Native American, so the U.S., at least in the military, was recognizing these individuals as tribal members at the same time that Virginia was erasing the record of their being members of these proud tribes.

Mr. WITTMAN. Well, that is great. I tell you, we appreciate their service, and we hear many stories of their bravery during these American conflicts. They stood there shoulder to shoulder with other folks that had recognition and more rights than our Native American folks. We want to make sure that we are doing everything we can obviously to help them out.

I again want to thank you for your leadership on this issue. You have been tremendous there in Virginia not only in your vocal support, but also in the things that you do, in the actions that your administration takes and the appointments that you make in making sure that you not only walk the walk or, excuse me, talk the talk, but walk the walk as far as how we should be recognizing our Native American tribes there in Virginia, so we really appreciate that, and thank you so much for coming up today.

Governor KAINE. Thank you, Congressman Wittman. Thank you very much.

Mr. WITTMAN. Thank you, Mr. Chairman.

[The prepared statement of Mr. Wittman follows:]

**Statement of The Honorable Robert J. Wittman, a Representative in  
Congress from the State of Virginia, on H.R. 1385**

Chairman Rahall,

Thank you for your support and for calling this hearing on H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. I appreciate Governor Kaine's time and testimony in support of federal recognizing Vir-

ginia's Tribes. Also, I appreciate and want to recognize Rep. Jim Moran who has long championed this effort. Finally, thanks to Chief Adkins of the Chickahominy Tribe and Dr. Rountree for their testimony.

As a cosponsor of H.R. 1385, I support Congressional action to federally recognize Virginia's Indian tribes. My congressional district includes the tribal seats of the Upper Mattaponi in King William County and the Rappahannock Tribe in King and Queen County.

I recognize and appreciate the Bureau of Indian Affairs (BIA) "federal acknowledgement process" and their preference for recognition to work through the Department of Interior. However, I believe that a strong case can be made that due to several factors Virginia Indian recognition may be an exception to that rule.

As the witnesses have outlined today, law and politics of the Commonwealth of Virginia discriminated and effectively "erased" legal documentation of the Virginia Indian's heritage. After the Civil War, policies forced Indians to register birth, death and other official documents as either "white" or "colored." These policies have made it difficult if not impossible to ever meet the BIA's criteria for recognition.

These Virginia Indian tribes are important culturally and historically to the Commonwealth of Virginia. Tribal ancestors from these tribes populated coastal Virginia when Captain John Smith and the first permanent English colony in the "new world" was founded at Jamestown in 1607. These "first contact" tribes' history and culture has been intertwined with birth of our nation for over 400 years. Today, these tribes continue to preserve a culture and heritage important to Virginia and the nation.

I support H.R. 1385, and look forward to Congressional action on this important effort to federally recognize Virginia's Indian tribes.

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The CHAIRMAN. The gentlelady from Guam, Ms. Bordallo?

[No response.]

The CHAIRMAN. The gentleman from Nebraska, Mr. Smith?

[No response.]

The CHAIRMAN. No? OK. The gentleman from New Mexico, Mr. Heinrich?

[No response.]

The CHAIRMAN. Governor, we said we would get you out by 10:30. It is now 10:29 and 45 seconds. Thank you for being with us.

Governor Kaine. Thank you, Mr. Chairman. Thank you to the Members of the Committee. I appreciate it.

The CHAIRMAN. Our next panel is composed of five of our colleagues, two being co-sponsors of the pending legislation before our Committee, first being Congressman Mike McIntyre from North Carolina in favor of H.R. 31, who has been an invaluable leader on this issue; Congressman Jim Moran, whom I have already recognized and salute for his leadership on H.R. 1385.

Two of the next three gentlemen are former members of this Natural Resources Committee, the gentleman from North Carolina, Health Shuler, the gentleman from North Carolina, Mr. Walter Jones, and they are also joined by our colleague from North Carolina, Patrick McHenry.

We welcome all of you to the Committee on Natural Resources. We do have your prepared testimonies. It will be made part of the record as if actually read, and you may proceed in the order that I recognized in whatever summary manner you wish.

Mike, do you want to go first?

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

Mr. MCINTYRE. Thank you, Mr. Chairman, and thanks to all of you for having this opportunity for us to testify about the Lumbee Indian Tribe today.

Chairman Rahall, the members of the Lumbee Tribe and I appreciate your leadership and support and persistence in the fight for Lumbee Indian Federal recognition. We know that the Lumbee Tribe has no better friend than this Congress and you, Mr. Chairman, and I thank you on behalf of all the Lumbee members when I say thank you for your consistent leadership in this issue.

I would like to ask, Mr. Chairman, unanimous consent to place into the record over the last 32 years—Jim Hunt, Jim Martin and Mike Easley—and a letter from our newest Governor, Governor Beverly Perdue. The letter should be forthcoming.

I would like to ask unanimous consent to enter all four of these letters into the record.

The CHAIRMAN. Without objection. It will be made part of the record.

Mr. MCINTYRE. Thank you.

**[NOTE: The letters listed in chronological order follow:]**

- Martin, Hon. James G., Governor, State of North Carolina, Letter to Senator Daniel K. Inouye, Chairman, Senate Select Committee on Indian Affairs, dated July 30, 1991, submitted for the record
- Martin, Hon. James G., Governor, State of North Carolina, Letter to The President, The White House, dated October 18, 1991, submitted for the record
- Hunt, Hon. James B., Jr., Governor, State of North Carolina, Letter to The Honorable Bruce Babbitt, Secretary, U.S. Department of the Interior, dated January 28, 1993, submitted for the record
- Hunt, Hon. James B., Jr., Governor, State of North Carolina, Letter to The Honorable Bruce Babbitt, Secretary, U.S. Department of the Interior, dated March 11, 1993, submitted for the record
- Easley, Hon. Michael F., Governor, State of North Carolina, Letter to The Honorable Nick J. Rahall, Chairman, Committee on Natural Resources, and The Honorable Don Young, Ranking Minority Member, Committee on Natural Resources, dated April 18, 2007, submitted for the record
- Hagan, Hon. Kay R., U.S. Senator, State of North Carolina, Letter to The Honorable Mike McIntyre, U.S. Representative, State of North Carolina, dated March 18, 2009, submitted for the record
- Perdue, Hon. Beverly, Governor, State of North Carolina, Letter to The Honorable Nick J. Rahall, Chairman, Committee on Natural Resources, and The Honorable Doc Hastings, Ranking Minority Member, Committee on Natural Resources, dated May 1, 2009, submitted for the record



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

JAMES G MARTIN  
GOVERNOR

July 30, 1991

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,

Handwritten signature of James G. Martin in cursive script.  
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

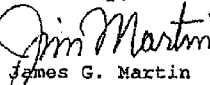
The President  
The White House  
Washington, D.C. 20500

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 27603-8001

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

SEARCHED	INDEXED	SERIALIZED	FILED
FEB 03 1993			
FBI - RALEIGH			

Probleme brand lex transmittal memo 1/27/93

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.

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 state recently and I appreciated the opportunity to meet with you.

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

I would like to reiterate my strong support for the Congressional process for federal recognition of the Lumbee Indian tribe in North Carolina. As you know H. R. 334, 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.

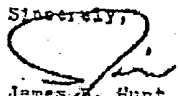
Federal recognition of the tribe has been endorsed by the N.C. Commission of Indian Affairs, the Governors' Interstate Indian Council, and the National Congress of American Indians which is the oldest and largest Indian organization in the country.

In 1956 a bill was passed by the Congress to recognize the Lumbee tribe, but it denied the tribe the benefits or 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 any way possible to help the Lumbee Tribe receive Congressional recognition. I am confident that this recognition is not only in our state's and the tribe's best interest, but in the interest of the United States as well.

Sincerely,

  
James B. Hunt, Jr.



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.

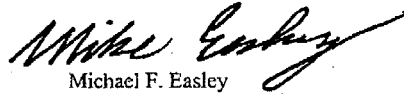
In the past, federal recognition has been denied because of opposition by the Bureau of Indian Affairs and Department of Interior on budgetary grounds. Each of several federal investigations into the Lumbees' history, genealogy and ethnicity has concluded that the Lumbees are in fact American Indians. 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,

A handwritten signature in black ink, appearing to read "Mike Easley", written in a cursive style.

Michael F. Easley

KAY R. HAGAN  
NORTH CAROLINA

SENATE BOX 1460A  
DIXIE BUILDING  
WASHINGTON, DC 20540  
(202) 224-6342

United States Senate  
WASHINGTON, DC 20540

March 18, 2009

The Honorable Mike McIntyre  
U.S. House of Representatives  
2437 Rayburn House Office Building  
Washington, DC 20515

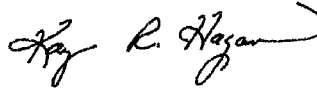
Dear Congressman McIntyre:

I write today to express my support for the Lumbee Recognition Act (H.R. 31) and to commend your ongoing efforts to ensure that the more than 40,000 members of the Lumbee Tribe of North Carolina are afforded access to critical federal services through the Bureau of Indian Affairs (BIA).

Like you, I am fully supportive of the administrative process by which prospective tribes may apply for federal acknowledgement through the BIA. This process is essential to ensure that BIA programs are properly targeted to support eligible individuals and communities nationally. Unfortunately, legislative language included within the 1956 Lumbee Act precludes the tribe from consideration for federal acknowledgment through this otherwise effective administrative process. Thus, while the Lumbee were identified in federal legislation as a tribe more than 50 years ago, existing law strictly limits the group's ability to access vital services otherwise available to a federally designated tribe.

With this in mind, I join you, the Obama Administration, and the more than 170 co-sponsors of H.R. 31 in supporting legislative efforts to correct this longstanding exclusion, and anticipate the opportunity to work with my colleagues in the Senate to advance this significant legislation.

Sincerely,



Kay R. Hagan  
United States Senator



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR  
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE  
GOVERNOR

May 1, 2009

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 Doc Hastings, Ranking Member  
Natural Resources Committee  
United States House of Representatives  
1329 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Rahall and Congressman Hastings:

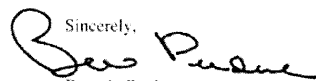
Thank you for the opportunity to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America.

I am writing to express my support for the century-long effort of the Lumbee Tribe of North Carolina to attain a favorable decision on federal recognition. Both Republican and Democratic administrations have supported Lumbee efforts, and the State of North Carolina has recognized the Lumbees as a Tribe. The Lumbee people have waited too long on a decision on federal recognition, and the US Congress should give them this opportunity.

As you know, the Lumbee Tribe has sought federal recognition since 1888, after being recognized by the State of North Carolina as the "Croatan" Tribe in 1885. In 1956, the Congress acknowledged that Lumbees were Indians, but at the request of the Department of the Interior, included language in this legislation that precluded access to federal funds. This left the Lumbees without a federal relationship as an Indian tribe. This provision also halted the efforts of the Lumbees to gain federal acknowledgement through the federal acknowledgement process at the Department of the Interior. I understand that Congress has enacted special legislation to address special circumstances such as these.

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.

Thank you for your consideration.

Sincerely,  
  
 Beverly Perdue

BEP/ceh



LOCATION: 116 WEST JONES STREET • RALEIGH, NC • TELEPHONE: (919) 733-5811  
WWW.GOVERNOR.STATE.NC.US

Mr. MCINTYRE. Mr. Chairman, as we look at the situation I would also like to lay before the Chairman an editorial from the Fayetteville Observer, which is a newspaper in North Carolina that has recently had a series of articles that go into great detail about this situation and gives a very strong opinion about why Lumbee recognition is important in its investigative capabilities.

And also we have a statement from President Obama in support of this bill and would like to enter that in the record as well.

The CHAIRMAN. Without objection. Your request is granted.  
 Mr. MCINTYRE. Thank you.  
 [The statement from President Obama follows:]

**Official Statement of President Barack Obama submitted for the record by  
 Keith M. Harper, Attorney at Law, Kilpatrick Stockton LLP, Washington,  
 D.C.**

Because of unfortunate congressional action in the 1950s, the Lumbee Indians have been deprived of the ability other non-federally recognized tribes enjoy to seek federal acknowledgment through administrative means. Accordingly, consideration of Lumbee recognition has delayed 50 years. Senator Obama believes there are rare circumstances when Congress should intervene and recognize a tribal group, when the equities of a particular situation call out for immediate and decisive action. The case of the Lumbee Indians of North Carolina is one such rare case. Relegating this tribal group so long deprived of due process of law to what is widely viewed as a troubled and slow administrative process after such an extraordinary lapse of time would, simply put, not be fair,

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[The editorial from the Fayetteville Observer submitted for the record by Mr. McIntyre is copyrighted and has been retained in the Committee's official files.]

Mr. MCINTYRE. Mr. Chairman, over the last six years the Lumbee Tribe and many of its members have faithfully traveled to Capitol Hill. We have with us Chairman Goins, and I would like the Chairman and some of the other tribal leaders who are here to stand and be recognized. Thank you for coming today. We have many more who are out in the hall waiting to come in and join us.

The Lumbees are now attending their sixth hearing in six 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 the last six years.

In fact, the Lumbees have been patient. For a hundred years they have been coming before Congress with regard to this issue, and in 1956 the Congress recognized the Lumbees in name, but did not complete the recognition process.

We know that in the 110th Congress this Committee passed and the full U.S. House voted in a bipartisan way by exactly a two-thirds vote, 256 to 128, to say yes to Lumbee Federal recognition, and then the Senate Indian Affairs Committee also voted to send this bill to the Floor of the Senate. Unfortunately, with the national elections that occurred last fall, the Senate did not take final action on the bill so here we are again.

Mr. Chairman, no doubt the time has come finally for recognition. We know that indeed for discrimination to end it is time for 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 sure that issue may well be raised again today.

That statement is nothing more, Mr. Chairman, than a dagger in the heart of good, decent and honorable people who contribute to our society in every way, who have served in our nation's militaries, who serve as judges back in my home town of Lumberton, who serve in the state legislature in Raleigh on behalf of the county that I live in.

In fact, I am a minority in my home county. The Lumbee Indians are the plurality in terms of population. They have held positions of leadership on the school board, on the county commission, in the state legislature and the judicial system. Our current county clerk, our current county registrar of deeds, are all Lumbee Indians.

It shows that they have earned the respect and merited the respect of the general population back home. In fact, I grew up and went to a tri-racial high school, and Robeson County is the most ethnically diverse county of all 100 counties in North Carolina according to the last U.S. Census. The Lumbees have shown their leadership, their commitment, their willingness to make a difference in all phases of life.

There have been some comments also about going through the process and the fairness of the process. Let me just jump to the heart of that issue. The Lumbees have been examined 11 times by the Bureau of Indian Affairs. They have gone through the process, so why do we have this bill before Congress? Let us get to the bottom line.

The Solicitor General has stated back in 1989 that because Congress took action in 1956 in recognizing the tribe in name, but never completed the process, Congress has to finish the process. The Lumbees are the only tribe in America in this situation. It is a very direct situation. It will not have implications for other tribes like we have heard comments about and I am sure we will hear more about today.

There were two other tribes in America in this situation, and Congress acted on them both and completed the recognition and gave those tribes recognition. That will be documented in further testimony by other witnesses today. The only tribe in America left in limbo, this legal limbo, are the Lumbees, and it can't just be sent to the BIA because the Solicitor General has already stated that Congress needs to resolve it.

Our good friends on both sides of the aisle understood this, and that is why we had such an overwhelming two-thirds vote from liberals, conservatives, moderates, Republicans, Democrats. We had votes in fact not only from folks from across the nation, but even when it went to the Senate we saw strong bipartisan support as Senators Dole and Byrd supported this measure when it was before the Senate during the last session.

The Governors that I mentioned earlier represent both Republican and Democratic Governors from North Carolina as well, and they understand the plight that the Lumbees have had over these years.

I have to tell you that as I go home virtually every weekend, as I spend time with my friends from the Lumbee community, in my home county where approximately 40,000 of the 55,000 Lumbees reside, I know the injustice they feel in their hearts and the indignity they know in their minds that our own Federal government, despite all their contributions, despite their hard work, despite their commitment, despite their being here even before the first Englishman arrived on the coast of North Carolina at Roanoke Island, that our Federal government still doesn't give them the dignity of being fully recognized.

I know that it is time for Congress to be able to proceed without further delay. Indeed, we know that justice delayed is justice denied. For a hundred years this tribe has been denied that justice, and we know now for over the last 52 years, after Congress did finally act and recognize the Lumbee Tribe in name, that justice has continued to be delayed.

It is now indeed time to move forward. It is time indeed for discrimination to end and recognition to begin.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McIntyre follows:]

**Statement of The Honorable Mike McIntyre, a Representative in Congress from the State of North Carolina, 7th Congressional District**

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, the members of the Lumbee Tribe and I appreciate your leadership, support, and persistence in the fight for Lumbee Indian federal recognition. The Lumbee Tribe has no better friend in this Congress than Nick Joe Rahall, and I know that I speak on behalf of all the Lumbee members when I say, "thank you."

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 32 years—Jim Hunt, James Martin, and Mike Easley. These letters show bi-partisan support for federal recognition for the Lumbee Tribe from our state's highest official.

Mr. Chairman, over the last six years, the Lumbee Tribe and many of its members have faithfully traveled to Capitol Hill. They are now attending their sixth hearing in six 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.

In the 110th Congress, this committee passed and the full U.S. House voted in a bi-partisan way, 256-128, to say yes to Lumbee federal recognition. The Senate Indian Affairs Committee also passed the bill but unfortunately, the full U.S. Senate did not act on this bill. So, here we start again.

Mr. Chairman, the time has come for positive finality on this issue. The time has come for passage in the House, passage in the Senate, and signature by President Obama who has said he supports Lumbee federal recognition.

Once and for all, the time has come for discrimination to end and recognition to begin! This is the Lumbee Tribe's time!

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, 121 (First petition to Congress was in 1888) of the 233 (2009-1776=233) 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. 31, legislation that I have introduced to grant the Lumbees federal recognition. I am pleased to report to the Natural Resources Committee, that 179 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!

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The CHAIRMAN. Thank you, Mike.  
Jim?

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

Mr. MORAN. Thanks very much, Mr. Chairman. I don’t want to reiterate what the Governor has already said and said so articulately, but I very much appreciate you bringing this bill up again. This has been a long and in many ways a very painful process, particularly to our friends, the Virginia Indian tribes.

Chief Stephen Adkins of the Chickahominy Tribe is here. Other relatives and friends are here. You will hear from Helen Rountree, an esteemed historian.

This is a difficult thing for this country to come to grips with. To respond to my good friend, the Ranking Member, Mr. Hastings, there are two unique circumstances surrounding the Virginia Indian tribes, and to the extent that history is one sequence of ironies after another this takes the cake because these were the Indians that enabled the first English settlement in 1607 to survive. They taught them how to survive.

In 1677, they signed a treaty with King Charles II of England, so they were never officially at war with the settlers and in fact never had any leverage to acquire sovereignty for their tribe, even though the treaty that they signed is the longest celebrated treaty in the history of the United States. It is celebrated every single year and celebrated by Virginia, and yet they are not recognized.

The principal reason is the second unique circumstance to Virginia's Indian tribes, and it goes back to the beginning of the 20th century. In 1924, there was a law passed in Virginia called the Racial Integrity Act. A guy by the name of Dr. Walter Plecker, who was an avowed white supremacist, took it upon himself to lead the effort to implement this Racial Integrity Act.

And so he went to the state and local courthouses and expunged the records, reclassifying in Orwellian fashion every document, particularly birth certificates, of Native Americans to make sure that all nonwhites were recorded as the official term was colored.

In fact, if you were an Indian woman who gave birth in a hospital, you could not take your child out of the hospital until you checked a form identifying yourself as colored. They were given two lines. One white. One colored. You had to check that.

Now, it was targeted at Native Americans in the Commonwealth of Virginia to ensure that they lost their identity. To call yourself a Native American put you at risk of one year in jail. That is how severe the law was.

If you wanted to be married, you had to travel out of the state. Also, even to enlist in the military and to be identified as a Native American you had to travel out of the state.

Finally it was struck down, this law, in 1967, but between 1924 and 1967 virtually all of the public and most of the private records that confirmed the existence of Native Americans in Virginia were destroyed. That is why they can't go to the Bureau of Indian Affairs and get their recognition. This is a unique situation.

They were told maybe it might be possible sometime if you go through the traditional process, but it will not be in your lifetime—Chief Adkins can tell you that; they were told that—because there isn't the paper documentation. Some historians have called this a paper genocide. They wiped out all evidence of Native Americans.

I won't go further into the reasons why the ruling elite in Virginia wanted so desperately to do that and all. It goes back to Pocahontas' descendants and so on. But there is no doubt these tribes exist, have existed.

Now let me just give some insight into the issue about gambling. The only people who would allow them to receive any manner of education were the Christian missionaries and so they happened to be very strong, religious people, and they don't believe in gambling. You know, there are a number of clubs down the street from where they live that have bingo night and so on. They don't have any. They are allowed to do that. They won't do it. So again the irony of making this a restriction.

And in this law the MGM, the Harrahs, all of these billionaires, Sheldon Adelson, billionaires that have made money from gambling, they can make all the money they want, but the Virginia Indian tribes can't make a dime from gambling, even if the Virginia law is changed. That is how restrictive this legislation is.

But it is about their dignity, being recognized for who they are. That is what this legislation is all about. You know, this will bring closure to something that has just been an absolute travesty. That I am aware of, I don't have one Native American who is a constituent, but the problem is, and I think all of you, and Mr. Faleomavaega voiced it particularly. When you realize the history,



the travesty of justice that has occurred here, you feel almost a personal responsibility to rectify it.

That is what this bill will do. I thank you for considering it, and I trust this year it will finally be passed. Thank you, 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**

Mr. Chairman, thank you and thank you Members of the Natural Resources Committee who have been particularly sensitive during your service here in Congress to the needs of Native Americans and Virginia's Indian people.

The Virginia Indians who are here with me in this hearing room and their friends and relatives who could not make today's trip to the Capitol are not myths or legends. They are the blood descendants of a proud people who populated the Mid-Atlantic and were part of the Powhatan Confederacy. They were the first to greet the English in 1607 and ensure their survival for the first few years of their settlement at Jamestown. And, they have continued to exist as a people and as tribes ever since.

Two years ago, this nation celebrated the 400th anniversary of the settlement of Jamestown. But while the anniversary brought greater notoriety to the Virginia Indians, it was not a celebration for the descendants of Pocahontas, for they have yet to be recognized by our federal government. Unlike most Native American tribes that were officially recognized when they signed peace treaties with the federal government, Virginia's six Native American tribes made their peace with the Kings of England. Most notable among these was the Treaty of 1677 between these tribes and King Charles II. This treaty has been recognized by the Commonwealth of Virginia every year at Thanksgiving when the Governor accepts tribute from the tribes in a ceremony now celebrated at the State Capitol. Last November, I had the honor of attending the 331st ceremony affirming that treaty. I understand the event marks the longest celebrated treaty in the United States.

The history of Virginia tribes is unique in two important ways that are relevant to why they are here today. The first explains why the Virginia tribes were never recognized by the federal government; the second explains why congressional action is needed. First, by the time the federal government was established in 1789, the Virginia tribes were in no position to seek recognition. They had already lost control of their land, withdrawn into isolated communities, and the state had stripped them of most of their rights. Lacking even the rights granted by the English Kings, much less our own Bill of Rights, the tribes found that federal recognition was nowhere within their reach.

The second unique circumstance for the Virginia tribes is what they experienced at the hands of the state government during the first half of the 20th Century. It has been called a paper genocide. At a time when the federal government granted Native Americans the right to vote, Virginia's elected officials adopted racially hostile laws targeted at those classes of people who did not fit into the dominant white society. The fact that some of Virginia's ruling elite claimed to be blood descendants of Pocahontas in their view meant that no one else in Virginia could make a claim they were Native American and a descendant of Pocahontas' people. To do so would mean that Virginia's ruling elite were what they decreed all non-whites to be: part of "the inferior Negroid race."

With great hypocrisy, Virginia's ruling elite pushed policies that culminated with the enactment of the Racial Integrity Act of 1924. This act directed state officials to destroy or alter all public records that might affirm the existence of Native Americans. One state official, Walter Plecker, an avowed white supremacist, spent his career as Director of the State Office of Vital Records sacking state and local courthouse records and reclassifying in Orwellian fashion other documents to make sure all non-whites were recorded as "colored."

The law targeted Native Americans with a vengeance, denying Native Americans in Virginia their identity. To call oneself a Native American in Virginia was to risk a jail sentence of up to one year. In defiance of the law, members of Virginia's tribes traveled out of state to obtain marriage licenses or to serve their country in wartime. The law remained in effect until it was struck down in federal court in 1967. In the period between 1924 and 1967, state officials waged a war to destroy all public and many private records that confirmed the existence of Native Americans in Virginia. Historians have affirmed that no other states' efforts compare to Virginia's efforts to eradicate its citizens' Indian identity.

All of Virginia's state-recognized tribes have filed petitions with the Bureau of Acknowledgment 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 acknowledgment process is already expensive, subject to unreasonable delays, and lacking in dignity. Virginia's "paper genocide" 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 them.

It wasn't until 1997, when then 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 or to recover documents that were purposely destroyed during the "Plecker Era."

In 1999, 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, Virginia's Senators and I have introduced legislation to recognize the Virginia tribes.

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 European settlers stepped foot in America. They are here with us today.

I know there is resistance in Congress to granting any Native American tribe federal recognition. And I can appreciate how the issue of gambling and its economic and moral dimensions has influenced many Members' perspectives on tribal recognition issues. The six Virginia tribes are not seeking federal legislation so that they can build casinos. They find this assertion offensive to their moral beliefs. They are seeking federal recognition, because it is an urgent matter of justice, and because elder members of their tribes, who were denied a public education and the economic opportunities available to most Americans, are suffering and should be entitled to the federal health and housing assistance available to federally recognized tribes.

To underscore this point, the legislation I introduced includes language approved last session by the House of Representatives that would prevent the tribes from engaging in gaming on their federal land, even if everyone else in Virginia were allowed to engage in Class III casino-type gaming.

In the name of decency, fairness, and humanity, the Virginia tribes deserve federal recognition. It is long overdue and would bring closure to the centuries of injustice Virginia's Indians have endured.

Again, I appreciate your leadership and responsiveness in scheduling this hearing, and I would be pleased to respond to any questions.

Thank you.

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**Cosponsors of legislation introduced by Rep. Jim Moran  
recognizing six Virginia tribes**

THE HONORABLE NICK J. RAHALL II

THE HONORABLE ROBERT WITTMAN

THE HONORABLE GERALD A. CONNOLLY

THE HONORABLE RAÚL GRIJALVA

THE HONORABLE TOM PERIELLO

THE HONORABLE BOBBY SCOTT

THE HONORABLE NEIL ABERCROMBIE

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The CHAIRMAN. Thank you, Jim.  
Heath?

**STATEMENT OF 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 Hastings for holding this hearing today and for all the good work they have done on behalf of Native Americans.

In 1978, the Department of the Interior recognized the need to end the inconsistency process of Native recognition and adopt uniform guidelines for Federal recognition. The Lumbee Recognition Act would bypass this process. I cannot support this legislation.

I believe the Federal government's process allows for the evaluation necessary to make an informed and accurate decision. This process requires that any petition 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 field of genealogy, anthropology and Native American history.

Members of the Congress should not arbitrarily rule on the identity of a people without establishing the facts. 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 the situation is to allow the Lumbee to complete the administrative process at the Office of Federal Acknowledgement in the Department of the Interior. This process protects not only the integrity of the United States, but also the political and cultural integrity of established Indian tribes.

To preserve the integrity of Native American recognition, I have introduced H.R. 839, which would allow the Lumbee to undergo the process through the Department of the Interior.

I also ask unanimous consent to insert a statement from Chief Michell Hicks of the Eastern Band of Cherokee Indians, who strongly oppose H.R. 31, into the record.

The CHAIRMAN. Without objection. Request granted.

[The statement from Chief Michell Hicks of the Eastern Band of Cherokee Indians follows:]

**Statement of Principal Chief Michell Hicks,  
The Eastern Band of Cherokee Indians, on H.R. 31**

Chairman Rahall, Ranking Member Hastings, members of the House Natural Resources Committee, I appreciate the opportunity to provide this written testimony to this Committee on behalf of the Eastern Band of Cherokee Indians.

The Eastern Band strongly believes that Congress should not enact H.R. 31. As I have testified on behalf of the Eastern Band a number of times before this Committee and 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,"<sup>1</sup> 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 genea-

<sup>1</sup>"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).

logical 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. Congressman Heath Shuler (D-NC) has introduced H.R. 839 that would all Indian groups that fall under the 1956 Lumbee Act to complete the administrative process. This is the fair way to address this issue.

### **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."<sup>2</sup>

Dr. DeMarce's research demonstrates that many Lumbee families migrated into the Robeson County, North Carolina, area from other places prior to 1800.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> In fact, there is evidence that non-Indians in the area did not consider these Lumbee families to be Indians in the 1840s.<sup>6</sup> 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.<sup>7</sup>

<sup>2</sup>"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).

<sup>3</sup>Virginia 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.

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

<sup>5</sup>DeMarce, *Legends* at 37.

<sup>6</sup>DeMarce, *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.*

<sup>7</sup>DeMarce, *Legends* at 30.

More broadly, Heinegg states that the Lumbees from Robeson County were not Indians but “African American as shown by their genealogies.”<sup>8</sup>

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.”<sup>9</sup> 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.”<sup>10</sup> The Lumbee claims of Indian ancestry allowed Lumbee children to go to different schools from the children of newly freed slaves.<sup>11</sup> According to DeMarce, not until after the Civil War did most communities of African Americans advance a claim of also being of Indian ancestry.<sup>12</sup>

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.”<sup>13</sup>

*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 acknowledgment 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.

*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.<sup>14</sup> 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

<sup>8</sup>Heinegg at 22.

<sup>9</sup>Virginia DeMarce, “Verry Slightly Mixt’: Tri-Racial Isolate Families of the Upper South—A Genealogical Study,” *National Genealogical Society Quarterly* 81 (March 1992): 6.

<sup>10</sup>Heinegg at 25.

<sup>11</sup>Heinegg at 25. According to the 1956 Lumbee Act, the Lumbees themselves were persons “owning slaves.”

<sup>12</sup>DeMarce, *Tri-Racial Isolates* at 7.

<sup>13</sup>109th Congress, Campisi testimony at 38.

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

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.<sup>15</sup>

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...”<sup>16</sup>

#### *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.<sup>17</sup>

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.”<sup>18</sup>

#### *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.”<sup>19</sup> As stated above, the term “Siouan” is a reference to a generic linguistic classification 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.<sup>20</sup>

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

The federal acknowledgment 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.”<sup>21</sup> The regulations define “historical” in this context as “dating from first sustained contact with non-Indians.”<sup>22</sup> 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

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

<sup>16</sup> Heinegg at 17.

<sup>17</sup> Id.

<sup>18</sup> Campisi testimony, 109th Congress at 40.

<sup>19</sup> Id. at 9.

<sup>20</sup> 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).

<sup>21</sup> 25 C.F.R. § 83.7(e).

<sup>22</sup> Id. at 83.1.

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.”<sup>23</sup>

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.<sup>24</sup>

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.”<sup>25</sup> 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 acknowledgment 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 acknowledgment process have expressed some concern about the absence of a genealogical connection between the modern day Lumbee Tribe and the historic Cheraw Tribe.”<sup>26</sup>

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 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

<sup>23</sup> 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.

<sup>24</sup> Id.

<sup>25</sup> Campisi Testimony at 21.

<sup>26</sup> “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.

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 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?<sup>27</sup>

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.”<sup>28</sup>

#### **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. 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-Hilu-I 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.

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

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



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.<sup>29</sup>

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.<sup>30</sup>

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 under the 1956 Lumbee Act, would be authorized to submit petitions to OFA for federal acknowledgment. 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.<sup>31</sup>

**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 acknowledgment. On May 15, 2008, the Congressional Budget Office determined that, based on an estimate of 54,000 Lumbees, that the cost of this legislation would be \$768 million over five years. Yet the Lumbees claim over 64,000 service population. The real cost of this bill would be much higher than this estimate.

<sup>29</sup> Id. at 202.

<sup>30</sup> Id. at 202-03.

<sup>31</sup> Id. at 206.

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.

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Mr. SHULER. Thank you, Mr. Chairman, for allowing us to have this hearing today. I would certainly like to say I certainly miss the Committee work and being on this Committee. Thank you, sir.

[The prepared statement of Mr. Shuler follows:]

#### **Statement of The Honorable Heath Shuler, a Representative in Congress from the State of North Carolina**

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

Mr. Chairman, every time a legislative body has tried to resolve the Lumbee issue, they have made the situation worse.

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

I believe the federal acknowledgment 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 Lumbee. 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 Lumbee 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.

The CHAIRMAN. We miss having you on the Committee, Heath. Patrick McHenry?

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

Mr. McHENRY. Thank you, Mr. Chairman and Ranking Member Hastings. I appreciate the opportunity to testify today about this important legislation that affects North Carolina and our folks at home.

Mr. Chairman, Native Americans across this country are looking to Congress to help on a number of high priority issues, and I know the Committee is concerned about this, including Indian health care reform, fixing the U.S. Supreme Court's decision regarding land trust issues and tribal sovereignty protection from the Employee Free Choice Act.

Unfortunately, we are discussing the Lumbee Recognition Act today. It is a highly controversial piece of legislation in North Carolina and many parts of Indian Country as well. My position on this bill is very straightforward. All groups seeking Federal acknowledgement as Indian tribes should go through the administrative process of the Department of the Interior.

In this case, the Department has stated that the 1956 Lumbee Act prevents the Lumbee from going through the process, so Congress should lift that restriction. That is why I have co-sponsored and supported Congressman Heath Shuler's legislation. It removes the barrier set forth in the 1956 Lumbee Act and provides the Lumbee with the same opportunities to attain Federal recognition as other tribes have.

To the extent the process needs to be reformed, we should let Congress or the agency focus on the process instead of individual recognition bills. I cannot support this legislation which would allow the Lumbee to circumvent the established process we have while other groups are still diligently working through the recognition process at the Office of Federal Acknowledgement. I think it would be unfair to those groups to go around and circumvent this process.

Also, it is unfair to existing Federally recognized tribes, such as the Eastern Band of Cherokee, who do not want to see its cultural identity undermined by legislation such as this today. Federal recognition matters get caught up in emotion and—well, let us be honest—politics. We should take the politics out of the Federal recognition process and allow the Office of Federal Acknowledgement to do its job.

I appreciate the Committee's indulgence in allowing me to testify today. Thank you, Mr. Chairman. Thank you, Ranking Member Hastings. I look forward to your questions.

[The prepared statement of Mr. McHenry follows:]

**Statement of The Honorable Patrick McHenry,  
Tenth District of North Carolina, on H.R. 31**

Mr. Chairman, Indian tribes across the country are looking to the U.S. Congress for help on a number of high priority issues: Indian health care reform, fixing the U.S. Supreme Court's decision regarding land trust issues, and tribal sovereignty protection in the Employee Free Choice Act.

But this Committee's first action of the new Congress is to consider the "Lumbee Recognition Act," a bill that is highly controversial not only in Indian country but also in Congress.

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 the Interior. In this case, the Department has stated the 1956 Lumbee Act prevents the Lumbee from going through the process, so Congress should act to lift that restriction. This is why I support Congressman Shuler's legislation; it removes the barriers set forth in the 1956 Lumbee Act and provides the Lumbee with the same opportunity to attain federal recognition as other tribes have.

To the extent that the process needs to be reformed, we should let Congress or the agency focus on the process, instead of individual recognition bills.

I cannot support this legislation, which would allow the Lumbee to circumvent the process, while other groups diligently work toward the goal of recognition through the Office of Federal Acknowledgement. This would be unfair to those groups.

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

Federal recognition matters get caught up in emotion and, let's face it, politics. We should take the politics out of federal recognition and allow the Office of Federal Acknowledgement to do its job.

Thank you.

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The CHAIRMAN. Thank you, Patrick.

Another former Member of our Committee, the gentleman from North Carolina, Walter Jones. Welcome.

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

Mr. JONES. Mr. Chairman, thank you. It is really nice to come back to the Committee. I am sorry I couldn't continue to serve on it. You were always an outstanding Member certainly, Mr. Hastings and many other people who are still here, Mr. Kildee and my friend from Guam. We just thank each and every one for the opportunity today.

I am going to be very brief because Mr. Shuler and Mr. McHenry have taken many of the words that I would use, but I will say this. My respect for this Committee will continue until the day I leave Congress and after that time.

I think what you are being asked to do by passing this legislation, and I don't have a better friend—he is my brother in Christ—than Mike McIntyre. I know he is doing this for the right reasons, and he believes that. I will always respect him for that. But as Mr. Shuler said and Mr. McHenry said, we are bypassing the process. The process, good or bad, maybe the process needs to be changed, but I don't think it needs to be changed with this legislation.

Mr. Shuler said and Mr. McHenry said this will circumvent the process. It is my understanding and the reason I joined Mr. Shuler in H.R. 839 was that this would give an advantage to the Lumbees if they deserve that advantage to move them in front of the list, to give them a chance to go ahead and have their case heard.

As Mr. McHenry has said, there are many questions, right or wrong, about the historical history of the Lumbees. In fact, when Mr. McIntyre said a hundred years ago they weren't known as Lumbees at that time, so I think there are some legitimate questions that all of us as American citizens, we want our people who have fallen, as Mike said, for this country to be recognized, the

people who are working, whether they be Lumbees or not, but this process is too important to scrap.

If you let one bill come through the House and the Senate then you know better than I, Mr. Chairman and Ranking Member. You know what is coming next. You are going to have a whole trainload of groups out here in this country that are going to ask for the same consideration and the same recognition, and I do not believe sincerely that that is what this Congress should be about.

Particularly, the Indians of this country have been never given the proper respect for what they did for this country. We have a process to give them that respect. If Mr. Shuler's bill will help move some of the groups like the Lumbees who for years have been feeling like they have not gotten that recognition, to move it forward then I think maybe I would hope the Committee would look at both bills before you would just pass H.R. 31 and move it through the process without having the proper review by the Bureau of Indian Affairs.

So with that, Mr. Chairman, I know the Committee will do what it thinks right, and I will agree with that whatever the Committee decides, but please be careful on this issue. It really does need careful, careful study and consideration. And look seriously at Mr. Shuler's bill, if the Committee would do so.

I yield back the balance of my time.

[The prepared statement of Mr. Jones follows:]

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

Chairman/Ranking Member, thank you for the opportunity to testify today. As a former member of this Committee, I have long been interested in the issue of federal acknowledgment, and I believe this is an important matter for the Committee's consideration.

I do not believe, however, that Congress should disregard the federal acknowledgment process at the Department of the Interior. We may not like its results or its inefficiencies, but it is still necessary to help answer the difficult questions about the merits of federal acknowledgment. Yes, Congress has acknowledged tribes in the past. But since 1978, the federal government has had a process in place to answer these difficult questions.

To this end, I have cosponsored a bill (H.R. 839) with my fellow North Carolinian Heath Shuler that would address this issue as it relates to Indian groups whose access to the process has been limited by the 1956 Lumbee Act. I believe Congress should lift that restriction and let all those groups complete the process, even on an expedited basis. Under the Shuler bill, the Lumbee are one of the groups that would be free to access the process once again.

Furthermore, I would argue that Congress is not well equipped to deal with the complex questions inherent in federal recognition. It's not like other situations in the past where there is absolutely no doubt about the identity of the tribe because of treaty relations with the United States. In this case, the Lumbees have never had such a relationship.

Mr. Chairman, to the extent that the recognition process needs to be reformed, then let us focus on reforming that process. But let us not let politics reign and throw merit out the window by pursuing individual recognition bills.

Thank you.

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The CHAIRMAN. The Chair wishes to thank our colleagues for being with us this morning.

Let me say first to the opponents of this legislation, and it is no secret. I am on record numerous times as stating the process of recognition is broken. There is a need to examine it very closely, and in this regard the Chair will work with those that have introduced

legislation such as Mr. Shuler, and certainly Mr. Faleomavaega on our Committee is deeply involved in this whole recognition process, as is Mr. Kildee.

We will continue to examine this process. It is hopeful we can fix it. I hope that this Committee under this Chairman will have it fixed for this whole process, but we know that it has been circumvented, if you will, or that there has been such recognition bills that have occurred in the past. I had the whole list here, but I am not going to enumerate those recognitions that have been granted by the Congress, at the same time recognizing that the process is broken.

So I just have one quick question for Heath, and I am sure you have been asked this before and it is no surprise to you, but the Eastern Band of Cherokee Indians in your district. Let me ask you. How were they recognized? Through what process?

Mr. SHULER. I don't recall how they were recognized. It was obviously well before my time.

The CHAIRMAN. Well, perhaps the Chair can help you. By Congress through legislation in 1868.

Mr. SHULER. You know, I do look at it like this. I mean, where does the Trail of Tears begin? I mean, it begins there, not on the eastern part of North Carolina.

The CHAIRMAN. The gentleman from Washington, Mr. Hastings? [No response.]

The CHAIRMAN. The gentleman from Michigan, Mr. Kildee?

**STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. KILDEE. I apologize for being late since these bills are of great interest to me, but I will submit a statement and make remarks just at this point.

I passionately support the recognition of the sovereignty of the Lumbee Tribe and the Virginia tribes. I think this is a question of justice. I do it out of a sense of justice. I have studied this now for 33 years, and this Congress has been studying this for 33 years.

We are told leave this to the bureaucrats. They are the experts on this. Well, I carry this with me wherever I go. It says here the Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes. Congress, not faceless bureaucrats. Congress shall have the power.

Let me tell you. When this Constitution was written one could see openly the culture and the history of both these tribes, the Lumbee and the Virginia tribes, and I suggest that we follow the Constitution, which gives Congress the power, and not ever defer our power to bureaucrats. I yield back the balance of my time.

[The prepared statement of Mr. Kildee follows:]

**Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan, on H.R. 31 and H.R. 1385**

Mr. Chairman, thank you for holding this hearing today on H.R. 31, the Lumbee Recognition Act and H.R. 1385, the Thomasina C. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009.

In my forty-five years of involvement in Indian affairs, I have observed that few issues generate as much passion and conviction as Federal recognition. I am sure that today's hearing will demonstrate this point.

About fifteen years ago, I sponsored legislation that reaffirmed Federal recognition for three tribes in Michigan (Little Traverse, Little River, Pokagon) each having signed treaties with the United States and each having their unique Federal status unilaterally stripped away from them by the Federal Government. It took a long time and effort, but I was able to get those measures passed as law.

I'm not sure that my legislation would have passed in today's environment where so many of our colleagues express concerns about Indian gaming everytime we consider legislation that relates to Federal recognition, tribal land or economic development.

Nevertheless, Congress certainly has the authority to pass Federal recognition legislation and has done so many times. In my view, Congress has sufficient experience with these bills in general and knowledge of the Lumbee and Virginia Tribes in particular to support final passage of both measures.

I strongly support both bills. While I respect my colleagues and friends whose positions are contrary to mine, I believe that these bills will bring justice long denied to the Lumbee and Virginia Tribes.

I look forward to hearing the testimony from our witnesses today.  
Thank you.

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The CHAIRMAN. Thank you, Dale.

The gentleman from American Samoa, Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Mr. Chairman, just for the record I do want to associate myself with the statements that have been made earlier by Governor Kaine and our colleague, Congressman Moran, in full support of the proposed legislation to recognize the tribes from the State of Virginia.

I also want to note, Mr. Chairman, that I have the utmost respect for my colleagues, Congressman McHenry, Congressman Shuler and Congressman Jones, whom I have known for many years.

I never questioned the sincerity in their intention in wanting to do this the right way, understanding also that some may have said that this is politics, but I want to commend my good friend, Congressman McIntyre, for his tireless efforts for all these years in trying to right the wrongs that we have done.

Tremendous injustice has been done against the Lumbee Indians. I think 110 years is long enough for any tribe to live in maligned, even streaks of racism, and the history that they have tried earnestly to seek recognition.

If you want to talk about history, the 1956 Act definitely did recognize the Lumbee Indians as a Federally recognized tribe, but guess the reason why Congress did not give full recognition?

The Lumbee Indians is the largest tribe east of the Mississippi, and at that time the Congress said well, we just don't have enough funds to go around, so therefore while we recognize the Lumbees as a tribe at this point in time, no, for some quirk or whatever happened that transpired in that period of time, they were never given that proper recognition.

I want to say again we had the gentleman, the bureaucrat, the expert in this very Committee testify before this Committee who wrote the Federal acknowledgement process regulation, if you will, who developed the seven criteria points that the tribes have had to go through before they could be given recognition.

I will get the exact words that he had spoken before this Committee, Mr. Chairman. He said if I were going to go through this process, even I would have objected to the seven criteria that I wrote in establishing this Federal recognition process.

I might also add with tremendous respect to my colleagues who do not support the Lumbee bill that is now before us, and I want to note to my good friend, Congressman Jones, yes, we are being very, very careful. In the 20 years that I have served as a Member of this Committee, Mr. Chairman, I can't think of a tribe that I have spent more time reading about its history, reading through the congressional proceedings, reading about the contradictory statements that have been made by the so-called experts, the bureaucrats.

Even they don't agree among themselves and to the point of saying genealogically or historically. The problems that even the fact organization or this little bureau that is within the Department of the Interior with the limited resources that they have, some of these tribes have had to go through 15, 20 years because they could not meet the seven criteria.

As I recall, the Lumbee Indians have had to expend over \$500,000 to try to go through the process, so I want to say with tremendous respect to my good friends, Mr. McHenry and Mr. Shuler and Mr. Jones, I believe 110 years is long enough for these people who have had to endure the pain and the suffering of being maligned and to suggest that they are not Indians. I don't need to go through the fact that they also bleed and died for our nation's defense, and I don't think there is any question of that.

To my good friend, the Co-Chair of our American Indian Congressional Caucus, Mr. Kildee, and Mr. Cole I am sure if he was here he would have spoken. You know, we had the Ranking Member for years, the gentleman from Alaska, Mr. Young, supporting this legislation. I can't think of a better person.

This is not a Republican or a Democratic bill, by the way. This is a bill for America, for these fellow Americans who are just simply saying give us justice. Give us fairness. We should support this legislation, Mr. Chairman.

I yield back.

The CHAIRMAN. The gentlelady from Guam, Ms. Bordallo?

Ms. BORDALLO. Thank you, Mr. Chairman. I really don't have a question. Much of this is new to me, but I am learning a great deal.

I am a sponsor, and I support both bills, the Lumbee Tribe and the Virginia tribes. After hearing the comments of our esteemed Member, Mr. Kildee, that the responsibility of recognizing these tribes lies with Congress, I can't imagine that we would do anything else but to go forward and take the responsibility upon ourselves.

I don't understand why it has taken so long. Certainly a hundred years or how many years here we have talked about what is the biggest obstacle that these tribes have in being recognized? Can anybody give me that information?

Mr. MCINTYRE. I would say that to the extent that my colleague, Mr. McHenry, although he is on the opposite side of the bill, that unfortunately politics was the reason in the past that this has not happened. Whatever those politics may be, and that can be subject to a much lengthier discussion, the point is today it is time to put those kind of political bickerings aside.

When you have folks as wide and varied as Mr. Young, who is the former Chairman and now Ranking Member, as Mr. Rahall, as



the two Republican Senators that supported this that North Carolina had last session, Mrs. Dole, who formerly served, realized the injustice that had occurred when Senator Helms blocked this bill.

If we want to be blunt politically, he blocked it all through his tenure, even though it passed the House twice under my predecessor. Ms. Dole recognized the injustice. The first bill that she dropped as United States Senator was the Lumbee bill that paralleled the same bill that I had in the House, and she stood on a stage with me in Lumberton, my hometown, in front of nearly 800 folks from our county, mainly Lumbees, but we had African-Americans and whites there too, who stood there and cheered that finally the politics in this was over. They could see a senator and a congressman, a Republican and a Democrat, stand together to say it is time for this justice to quit being delayed.

So I would hope that those kinds of politics are behind us now. We have already heard that the Lumbees have been examined in the process 11 times. They have done everything they physically and possibly could, as well as historically and research, and now they have the opportunity to go forward. The only thing that remains the barrier is an action by Congress, which the Solicitor General has already said is what is required.

Just as Mr. Kildee pointed out, it is our constitutional duty. It is time to get on with it. Thank you.

Ms. BORDALLO. I thank the gentleman for answering my question.

Mr. Chairman, if politics is the root of all of this, then I say we should go forward and take care of—yes?

Mr. FALEOMAVAEGA. Will the gentelady yield?

Ms. BORDALLO. Yes, I will.

Mr. FALEOMAVAEGA. I will submit to the gentelady that just as we have heard from Congressman Moran and Governor Kaine, that if these Indian tribes in Virginia had to go through the seven criteria of the Federal acknowledgement process they would have failed miserably because all the records have been expunged based on this racial legislation that Virginia had to abide by to say that if you are of color—not necessarily being black. Any person of color is discriminated against in the worst way.

This is part of this big debate that went over. I think at that time it was known as craniology. They even determined by race that your brain determines if you were the most intelligent species there is, and it got to the point where this is where the Aryanism that Hitler had propounded about the white supremacy race and that everybody else of color were less human, if you will.

So all this is part of what happened here, and the Indians are caught in between in this whole debate about making examinations of you physically.

I would say to the gentelady if the seven criteria is what we are insisting upon, these Indian tribes of Virginia will never see the light of ever being recognized because they would fail automatically, and I thank the gentelady.

Ms. BORDALLO. I thank the gentleman.

Mr. Chairman, I say we go forward. We have been assured by the President that he supports these bills, so I don't think we just

wasted too much time, and we definitely should go forward. Thank you.

The CHAIRMAN. The gentlelady from the Virgin Islands, Dr. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chair. I don't have any questions.

I want to second that we should move forward with this. I think it is a travesty that we are here meeting again on this issue, and I look forward. I support both bills. I think with the support of the President of the United States also on record for the recognition of these two tribes I think they have waited too long, and I hope that we can get this done.

I know the House can get it done, and I hope the Senate will follow and we can have these tribes finally recognized.

The CHAIRMAN. The gentleman from Maryland, Mr. Kratovil?

Mr. KRATOVIL. Thank you, Mr. Chairman. I do have a question.

In terms of official recognition being granted to these tribes, what percentage have been recognized through the administrative process if you will, Heath, that you suggest we should follow, and what percentage has been granted by Congress?

Mr. SHULER. Well, obviously in 1978—

Mr. KRATOVIL. It doesn't have to be addressed. It is not directly addressed to Heath. Anybody.

Mr. SHULER. Right. 1978 is when the Department of the Interior started the acknowledgement process, so we have through the Office of Federal Acknowledgement since 1978, and that is when obviously some of those changes we are talking about with the teeth and other things were eliminated in 1978.

Mr. KRATOVIL. OK. Anybody else, too. When was the last time we had one that was recognized through this process that many of you are suggesting is broken?

Mr. SHULER. You would have to ask the staff that.

Mr. KRATOVIL. Anybody know?

Mr. MCINTYRE. There have only been a dozen—around about a dozen—tribes or maybe 13 tribes. We will be glad to let our experts, who are in the next panel, answer that more directly, Frank, but about a dozen tribes have been recognized through the BIA process.

There have been 562 tribes recognized overall either by Congress or through other special legislation or special legislative administrative action.

Mr. KRATOVIL. OK.

Mr. SHULER. The Lumbees have gone through that recognition process, and then right before the end they have withdrawn I think two times.

Mr. KRATOVIL. OK. And when was the last time there was recognition granted through the official administrative process?

Mr. SHULER. You will have to ask the staff that.

Mr. HASTINGS. Would the gentleman yield?

Mr. KRATOVIL. Yes.

Mr. HASTINGS. Since this process started there have been 16 tribes that have been recognized. The last one was in February of 2007. So there have been 16 since the process started.

Mr. KRATOVIL. And how many have been seeking it?

Mr. HASTINGS. There is a whole number right now that are on the queue, and I think there is something like nine tribes that are all ready. All the criteria has been satisfied.

Mr. KRATOVIL. I will yield.

Mr. HASTINGS. I thank the gentleman for yielding.

Mr. KRATOVIL. Thank you.

Mr. FALEOMAVAEGA. I thank the gentleman for yielding. One of the problems that we faced in the acknowledgement process is the poor tribes have to come up with the money to pay for the research and to go through the whole—just as I have said, a good example is the Lumbees that have had to bear a tremendous financial burden.

I will say to the gentleman many of these tribes will not be able to meet that simply because financially they are unable to provide the funding to do the research and stuff.

Mr. KRATOVIL. But it is fair to say that the vast majority have been recognized through some other form other than this process? Substantially more?

Mr. MCINTYRE. That is abundantly correct, yes, and we will have an expert from the Administration that can go into that detail. Not since 1978 though.

Mr. KRATOVIL. OK.

Mr. MCHENRY. And obviously in terms of the length of our country, this recognition process established by Congress is shorter in duration. Therefore, you can understand that in a 200 year history and we have a roughly 30 year process established, obviously the numbers are larger.

But the point that I think Congressman Shuler and I, as well as Congressman Jones, are making is that we have an established process, and what we would like to do is reform that process and make it work. Otherwise it is largely irrelevant. Congress is picking, based on obviously our notion of genealogy, which let us be honest. It is more political than it is historical, and so that is what we are advocating.

Congressman Shuler's legislation would in fact put the Lumbee at the front of the line, let them go through the process and have a timeframe under which they could get an answer. I think that is really what this is all about.

Mr. MCINTYRE. There is no sense at all that the Lumbees are jumping in the front of the line. They have waited over a hundred years.

Congress did act in 1956 by recognizing the fact that they were a tribe that should be recognized by their name, but did not complete the process. The reason we are here is because the Solicitor General has said Congress has got to act.

And why would we be reforming a process until it is broken? My colleagues have said about well, the process needs to be reformed. It needs to be improved. OK. Yes, it does. Otherwise you wouldn't have all these tribes that have had to wait for recognition. You wouldn't have the situation of tribes having to spend all this money and then wait years and years and years.

Again, I know the Administration will speak to the particular situation involving it, but the only other two tribes that were like the Lumbees Congress has corrected. Both these tribes, the Pascua

Yaqui Tribe of Arizona and the Ysleta del Sur, which were known as the Tiwas of Texas, were in the same limbo where Congress had acted by recognizing them in name, but never completed the process. Congress went back and corrected it.

So the Lumbee Tribe, 57,000, are now the only tribe in America in this situation. This is not going to open a floodgate. It is not going to open the doors. No other tribe is in this situation in America, and no other tribe has a ruling that the Solicitor General has made saying you have to go back and correct it, Congress, if you are going to grant full recognition.

So while we can hear all the concerns, the fact of the matter is in this case this only applies to the Lumbees, and they are the only tribe being discriminated against and not being allowed to go forward, and only Congress can fulfill that constitutional responsibility.

Mr. KRATOVIL. Thank you.

Mr. FALCOMAVAEGA. Will the gentleman yield?

The CHAIRMAN. The Chair will respond to one of the questions the gentleman from Maryland asked, a very good question as well, and that is the Committee does have a list of some 20 tribes that have been recognized since 1978 since the administrative process was set in place by legislation.

The Chair will both give this to the gentleman from Maryland as well as provide it for the record.

[The list of tribes follows:]

**PETITIONS - RESOLVED - 66**  
(as of September 22, 2008)

**By the Department of the Interior: 47**

**Status Determined through Acknowledgment Process: 44**

**Acknowledged through 25 CFR 83: 16**

Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)

Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)

Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)

Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83)

Narragansett Indian Tribe, RI (#59) (eff. 4/11/83)

Poarch Band of Creeks, AL (#13) (eff. 8/10/84)

Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87)

San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90)

Mohegan Indian Tribe, CT (#38) (eff. 5/14/94)

Jena Band of Choctaws, LA (#45) (eff. 8/29/95)

Huron Potawatomi Inc., MI (#9) (eff. 3/17/96)

Samish Indian Tribe, WA (#14) (eff. 4/26/96)

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of MI (#9a) (eff. 8/23/99)

Snoqualmie Indian Tribe, WA (#20) (eff. 10/6/99)

Cowlitz Tribe of Indians, WA (#16) (eff. 1/4/02)

Mashpee Wampanoag, MA (#15) (eff. 2/15/07)

Mr. KRATOVIL. Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. Just one quick thought too?

The CHAIRMAN. The Chair will recognize the gentleman from American Samoa.

Mr. FALEOMAVAEGA. OK. Just to note also the fact that what happened was that Congress punted. In its primary responsibility to give recognition to the tribes, by implied consent, it never bothered to do anything other than to allow the bureaucracy to develop its Federal acknowledgement process.

This is not a congressional process. It is a process that came about by regulation, and we have just kind of sat by and just kind of allowed this regulatory process to continue. How bad it is, I think we are still trying to make improvements by making it as a statutory mandate by Congress, but at this point in time Congress

has not acted so this is the reason why we continue to flip flop like this.

But it does not in any way under the Constitution or by any Federal statute that prevents the Congress from enacting a recognition Act just as a good example of what is now before us. I thank the gentleman.

The CHAIRMAN. The Chair wishes to thank our colleagues for their time and testimony this morning, and you are dismissed.

Our next panel is composed of one individual, Mr. George Skibine, the Acting Deputy Associate Secretary for Policy & Economic Development, Department of the Interior, Bureau of Indian Affairs, who will be testifying on both of the pending bills.

Mr. Skibine, did I pronounce your name right?

Mr. SKIBINE. Yes, Mr. Chairman.

The CHAIRMAN. Thank you for being with us today. We do have your prepared testimony, and it will be made part of the record as if actually read. You may proceed as you desire.

**STATEMENT OF GEORGE SKIBINE, DEPUTY ASSISTANT SECRETARY FOR POLICY & ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS; ACCOMPANIED BY LEE FLEMING, DIRECTOR OF THE OFFICE OF FEDERAL ACKNOWLEDGEMENT**

Mr. SKIBINE. Thank you very much. My name is George Skibine. I am currently not what it says on the card here. I am not the Acting Deputy Associate Secretary.

I am the Deputy Assistant Secretary for Policy & Economic Development for Indian Affairs at the Department of the Interior. I have assumed the responsibilities of the Assistant Secretary since May of last year. Accompanying me today is Mr. Lee Fleming.

The CHAIRMAN. Excuse me. The Chair will stand corrected then, and the word Acting will be struck from everywhere in the record.

Mr. SKIBINE. OK. All right.

The CHAIRMAN. Thank you.

Mr. SKIBINE. Accompanying me today is Mr. Lee Fleming, who has been suffering for the past 10 months under my dictatorship. He is the long-serving Director of the Office of Federal Acknowledgement. We certainly hope that the Obama Administration will have a permanent Assistant Secretary for Indian Affairs very soon.

I am here today to provide the Administration's testimony on H.R. 31, the Lumbee Recognition Act, and H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009. My statement is in the record so I am not going to repeat. I am going to just make a few statements.

As a general proposition, the Department prefers that groups seeking Federal recognition petition the Department under the process in 25 C.F.R. Part 83. However, we recognize that there are rare circumstances when Congress should intervene and recognize a troubled group, and the case of the Lumbee Indians is one such case. As a result, we support H.R. 31 with amendments as discussed in my written statement.

I will mention a few of these amendments that we feel are necessary. First is under H.R. 31 any fee land that the Lumbee seeks to convey to the United States to be held in trust that would be

an on-reservation trust acquisition if the land is located within Robeson County, North Carolina.

The current language in the bill implies that the Secretary has the authority to take land into trust for the tribe. However, the bill does not expressly provide that authority, and we think that Section 4 of the bill should be amended to clarify that Congress intends to delegate authority to the Secretary to acquire land in trust for the Lumbee Indians, and we believe that provision is necessary because of the recent Supreme Court decision in *Carcieri v. Salazar*, which potentially calls into question the ability of the Secretary to take land into trust for tribes that are recognized after 1934.

So we feel that many of the Congress' restoration legislation that I have seen has included provisions specifically authorizing and sometimes even requiring that land be taken into trust within a specific geographic area, and for this tribe essentially that means that they are never going to have a problem with the *Carcieri* decision, and to make sure that that doesn't happen here we feel that that should be clarified in the bill.

The other issues that I wanted to briefly mention is that the bill does grant jurisdiction to the state in criminal and civil matters, but it does not address whether the tribe would continue to have civil regulatory jurisdiction over its members on its territory.

We believe that the tribe continues to have that jurisdiction under the bill, but I think it would be good that at least there was some clarification that that is the case so that the tribe continues to enjoy the attributes of sovereignty that all recognized tribes have so far.

Right now in the bill the Department has two years to essentially verify the role of the tribe, and we would like to talk to the Committee about that because it is not exactly clear to us what it is that we are supposed to be verifying and because we do not have a membership roll currently for the tribe potentially there are a lot of members. This may take more than two years for us to do so, depending on what we are required to do, so the timeframe here may cause a problem for us.

With respect to H.R. 1385, we neither support nor oppose the bill. We are staying neutral in a sense because we do not have sufficient information to determine why the groups cannot go through the Part 83 process that we have.

We have heard testimony today about that, but in fact I think these groups have furnished to us their information that essentially would permit us to say with certainty that there are these issues that exist with respect to the genealogy, another issue that it would have to go through under the Part 83, so for this reason we are unable to make that determination.

We recognize that Congress, as has been stated by Mr. Kildee, has certainly the authority to recognize tribes under the Constitution.

This concludes my opening statement. I would be pleased to answer questions.

[The prepared statement of Mr. Skibine follows:]

**Statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior, on H.R. 31 and H.R. 1385**

Good afternoon, Mr. Chairman, Mr. Ranking Member, and Members of the Committee. My name is George Skibine. I am currently the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior. I am here today to provide the Administration's testimony on H.R. 31, the "Lumbee Recognition Act" and H.R. 1385, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment 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. Acknowledgment carries with it certain immunities and privileges, including governmental activities exempt 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 the Department's administrative recognition process that requires groups to go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

To be granted Federal acknowledgment under the Department's Part 83 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 under the Part 83 regulatory process.

**H.R. 31, the "Lumbee Recognition Act"**

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 acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been deprived of the ability to seek Federal acknowledgment through administrative means.



There are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case. We support H.R. 31 with amendments as discussed below.

H.R. 31 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 petition under the Department’s acknowledgment regulations. The Office of Federal Acknowledgment has received letters of intent to petition from six groups that may overlap with each other. In addition, we have identified over 80 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 based on the group’s current governing document and its current membership list. Not doing so could potentially expose the Federal government to unwarranted lawsuits and possibly delay the recognition process for the other groups of Indians in Robeson and adjoining counties not enrolled in the Lumbee Tribe.

Under H.R. 31, any fee land that the Lumbee seeks to convey to the United States to be held in trust shall be considered an “on-reservation” trust acquisition if the land is located within Robeson County, North Carolina. The current language in the bill implies that the Secretary has the authority to take land into trust; however, the bill does not expressly provide that authority. Section 4 of the bill should be amended to clarify that Congress intends to delegate authority to the Secretary to acquire land in trust for the Lumbee Indians.

In addition, the bill would prohibit the Lumbee Indians from conducting gaming activities under any federal law, including the Indian Gaming Regulatory Act or its corresponding regulations.

Under H.R. 31, 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.” The legislation, however, does not address the State’s civil regulatory jurisdiction, which includes jurisdiction over zoning, and environmental regulations. Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership 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 40,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by other Federally recognized Indian tribes. In our experience verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller tribes. While we believe there are approximately 40,000 members, we do not currently have access to the Lumbee’s membership list 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. 31 is silent as to the meaning of verification for inclusion on the Lumbee group’s membership list roll.

In addition, section 3 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs and budget for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs and budget for programs administered by the Department of the Interior and the Department of Health and Human Services is the President’s Budget.

Should Congress choose not to enact H.R. 31, the Department feels that at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians and all groups “residing in Robeson and adjoining counties of North Carolina” the opportunity to petition for Federal acknowledgment as an Indian tribe under the Department’s regulations.

**H.R. 1385: “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009.”**

H.R. 1385 would provide 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, all of which are currently petitioners in the Department's Federal acknowledgment process. Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department's acknowledgment regulations. The purpose of the technical assistance reviews 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 to demonstrate their ability to meet all seven mandatory criteria.

The Department acknowledges the authority of Congress to recognize Indian tribes, but again, in most circumstances we prefer the uniformity and certainty provided by the existing administrative process.

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

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Mr. SKIBINE. I have asked Mr. Fleming—well, he is gone now—to provide if he has any answers on statistics that were required by the gentleman from Maryland.

The CHAIRMAN. Go ahead.

Mr. FLEMING. OK.

The CHAIRMAN. State your name, please, for the record.

Mr. FLEMING. Lee Fleming.

The CHAIRMAN. Your name and position?

Mr. FLEMING. Director of the Office of Federal Acknowledgement.

Some of the questions were involved with the number of decisions that have been resolved under our acknowledgement process. We have on our website the status summary of acknowledgement cases, and the Department has resolved 47 petitioning groups in their acknowledgement process.

Forty-four went specifically through 25 C.F.R. Part 83, and, out of the 44, 16 were acknowledged and 28 were denied. One was clarified by legislation, and two were clarified by other means.

Of the petitioners that have been resolved by Congress, two were restoration bills and two were recognition bills, so that is nine specifically of petitioners that have been resolved, and then there are 10 petitioning groups that have been resolved by other means, so when you add 47 by the Department, nine by Congress and 10 by other means of the petitioning groups, 66 petitions have been resolved by the Department or by Congress or by other means, and this is all on our website.

The CHAIRMAN. Thank you very much for supplying that information. We appreciate it.

Let me first ask unanimous consent that our colleague from North Carolina, Mr. McIntyre, be allowed to be a part of the podium and ask questions.

[No response.]

The CHAIRMAN. Without objection. We welcome you.

Mr. Skibine, let me ask you. I understand you are a former director at Office of Indian Gaming.

Mr. SKIBINE. That is correct.

The CHAIRMAN. Then having served in that position, there is probably no one better to answer this question that I have.

Does the gaming language in H.R. 31, the Lumbee bill, or H.R. 1385, the Virginia tribes bill, allow any of these tribes to open a casino?

Mr. SKIBINE. In my opinion, the answer to that is no. We believe that the language, which is similar in all the bills, is ironclad in terms of preventing tribes from gaming, so we certainly agree with Congressman Moran, who testified before, that gaming is not going to be an option for the groups under consideration.

The CHAIRMAN. Even if the Governor and/or the legislature of the affected states were to approve such?

Mr. SKIBINE. That is correct.

The CHAIRMAN. Thank you. Your testimony recommends amendments to the Lumbee Recognition Act, and you refer to them in your oral testimony as well, and we do look forward to working with you to resolve these issues. I am sure you will work with us on that as well.

Mr. SKIBINE. Absolutely.

The CHAIRMAN. The Chair recognizes the Ranking Member.

Mr. HASTINGS. Thank you, Mr. Chairman, and welcome, Mr. Skibine, to the hearing. Thank you very much for your testimony.

In 2007, somebody that has a similar position with you, Assistant Secretary for Indian Affairs, testified here on what is essentially the same bill or a similar bill regarding the Lumbees two years ago, and they testified more on the process, saying that the Lumbees should go through the regular process and therefore did not endorse the bill.

Now, your testimony was pretty straightforward. You endorsed the bill.

Mr. SKIBINE. That is correct.

Mr. HASTINGS. OK. Given that there has been no Assistant Secretary of Indian Affairs that have even been nominated let alone confirmed, who made that decision then that the Department should endorse this bill?

Mr. SKIBINE. The decision was made by the political leadership at Interior.

Mr. HASTINGS. And who is that?

Mr. SKIBINE. Well, I am not sure. We propose testimony, and then it is cleared through the Department. It is then cleared by the Office of Management and Budget. So involved in our process is the Deputy Chief of Staff, Renee Stone, and the Associate Deputy Secretary.

Mr. HASTINGS. Well, let me ask you then. Was Secretary Salazar involved in this decision?

Mr. SKIBINE. That I do not know because I think—

Mr. HASTINGS. You don't know.

Mr. SKIBINE.—that they probably talked to the Secretary, but I was not involved in those discussions.

Mr. HASTINGS. OK. So what I have heard you say so far is you don't know if Secretary Salazar has endorsed this, but it was a political decision, and that decision came out of OMB?

Mr. SKIBINE. Well, for every bill OMB needs to clear the testimony so that is what happened here.

Mr. HASTINGS. So your interpretation is that the endorsement of this bill, contrary to what was the position of Interior two years ago, was a political decision made at OMB?

Mr. SKIBINE. No. The Department. It was the Department's position, and OMB essentially has to look—

Mr. HASTINGS. OK. All right. Now I am getting it. So the Department, your Department, said that you were going to endorse this legislation?

Mr. SKIBINE. That is correct.

Mr. HASTINGS. Who is that?

Mr. SKIBINE. In the Department?

Mr. HASTINGS. Yes.

Mr. SKIBINE. Well, it is, as I said, the political leadership.

Mr. HASTINGS. But I am asking. So who is the person?

Mr. SKIBINE. Well, as I was beginning to say, we work with the Deputy Chief of Staff.

Mr. HASTINGS. Who is that?

Mr. SKIBINE. Renee Stone.

Mr. HASTINGS. So Renee Stone is the Deputy Chief of Staff?

Mr. SKIBINE. For the Secretary.

Mr. HASTINGS. For the Secretary.

Mr. SKIBINE. Right. And the Deputy Associate Solicitor, Laura Davis.

Mr. HASTINGS. And so Laura Davis works for Ms. Stone? Is that correct?

Mr. SKIBINE. No. She works for the Secretary.

Mr. HASTINGS. For the Secretary?

Mr. SKIBINE. Right.

Mr. HASTINGS. But you don't know if the Secretary was involved in that directly because you got your correspondence with those two people?

Mr. SKIBINE. Personally I do not know. That is correct.

Mr. HASTINGS. OK. And then I know the testimony always has to be gone through OMB, so OMB bought off on this. I just find that rather strange.

But you have no position on the other bill regarding the Virginia tribes?

Mr. SKIBINE. On the Virginia bill, that is right. We do not, neither support nor oppose that bill.

Mr. HASTINGS. You said a rare case. Why is the Lumbee situation rare?

Mr. SKIBINE. The Lumbee situation is rare because the Lumbee Tribe, the Lumbees, as was stated in the previous panel, are unable to go through the restoration process in Part 83 because of an Act of Congress that essentially has been interpreted by the Solicitor to prohibit them from going through that process.

Mr. HASTINGS. Mr. Shuler's legislation would essentially negate that position. Do you have a position on Mr. Shuler's bill?

Mr. SKIBINE. No, I do not.

Mr. HASTINGS. Did you run that up the flagpole?

Mr. SKIBINE. No, I do not. We are not testifying to that.

Mr. HASTINGS. I mean did you ask if anybody in the Department had a position on Mr. Shuler's bill?

Mr. SKIBINE. No, I did not.

Mr. HASTINGS. OK. How come? The reason I ask is if your answer is because legislation prohibits them to go through the normal process and a bill has been introduced that if it would pass would allow them to go through the normal process, why wouldn't you run that up the flagpole?

Mr. SKIBINE. Excuse me. I am sorry. I got distracted.

Mr. HASTINGS. Well, I am just saying if your answer to me as to why Lumbee is a rare circumstance, the Lumbee issue is a rare circumstance, mainly Congress' Act of 1956, and legislation has been introduced by Mr. Shuler that would correct that, why wouldn't you check with people above you to find out what their position is on that bill?

Mr. SKIBINE. Well, because we were not asked to testify on that bill, so essentially that was not an issue at this point.

But I think that in looking at the Lumbee bill, the reasons that were eloquently stated by the gentleman from American Samoa. We think that as a matter of equity and good conscience it is time for the Lumbee Tribe to be recognized, and we stand on that.

Mr. HASTINGS. As I said in my opening statement, the process here is what a lot of this is focused on. I think there are compelling arguments, frankly, why Congress should take this action, which they have a right to do, but I am just trying to figure out what the process is.

Mr. Chairman, thank you very much for your indulgence.

The CHAIRMAN. The Chair would just respond twice to the gentleman from Washington.

First of all, the Secretary works for the President of the United States. Second, the Chair did not schedule a hearing on Representative Shuler's bill, so perhaps that is a reason why the Department did not express a position on Representative Shuler's bill because it was not scheduled for a hearing today.

Mr. HASTINGS. Would the gentleman yield?

The CHAIRMAN. Sure.

Mr. HASTINGS. Yes. I recognize that, but I was just struck by his response and so that was a normal thing to follow up, but I thank you for that.

I could ask, if I may, if he would submit at least for the record the process that he laid out here for the record in writing. I would appreciate that.

Mr. SKIBINE. Sure. We will do that.

Mr. HASTINGS. Thank you.

The CHAIRMAN. Thank you.

The gentleman from Michigan, Mr. Kildee?

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

Mr. Skibine, do you think that Congress to streamline things should delegate its power of taxation to some bureau in the Executive Department?

Mr. SKIBINE. I don't believe so.

Mr. KILDEE. OK. I am glad to hear you say that. Do you think it should delegate its appropriations power to some bureau?

Mr. SKIBINE. I don't believe so either.

Mr. KILDEE. Do you think it should delegate its war power to someone like Rumsfeld?

Mr. SKIBINE. I am not going to take a position on that one.

Mr. KILDEE. You are very prudent. You know, on the very same page where it says Congress shall have the power to regulate commerce with foreign nations and among the several states and with Indian tribes, all the powers I mentioned are on that very same

page. As a matter of fact, regulating Commerce with the Indian tribes is even placed higher than the war powers on the same page.

I mean, I take an oath every two years to uphold this Constitution. I don't take any oath to uphold what any bureau may say. I have some good friends in the Bureau, but I take an oath and that oath is very serious. In my religion, if I violated that oath it would be a sin. In law, it would be a crime. It is a very serious thing.

Those words weren't put there just willy nilly. Our founding fathers really were trying to figure out a way to position the Federal government vis-à-vis the Indians, so it said we are going to treat them then with the same respect as sovereign nations, as France and Germany. As a matter of fact, when you go down to read the treaties you can find the treaties we made with France and other countries and the Indian treaties.

I got started in this whole thing years ago. I read the Treaty of Detroit. That treaty was very important, so I wrote a bill to bottom out that treaty saying that any Michigan Indian can go to college, a public college of Michigan, and the state pays the tuition. That was my bill about 44 years ago. It is still the law.

But I got that from reading the treaty made with a sovereign nation under the power of this Constitution, and I think all of us up here take an oath each year, every two years, to follow the Constitution so we would not delegate our war power, our taxation power, any of these powers to a bureaucracy. We alone hold those powers given by the Constitution.

By the way, I do appreciate your personal work over there. You are the person who testified today, so I had to ask the questions of you. You would recognize this Constitution gives us enormous authority to govern this country?

Mr. SKIBINE. Absolutely, yes.

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

The CHAIRMAN. Thank you.

Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

For the record, I just want to say, Mr. Secretary, Secretary Skibine and Mr. Fleming, not at any time have I ever tried to suggest that the Federal Acknowledgement Division of the Department of the Interior are evil people or they try to do things. I never question your sincerity or your efforts to work accordingly to the regulations that have been provided.

I note with interest that Governor Kaine in his statement mentioned that these Indian tribes in Virginia did submit their applications through the FAP process, and it says that unfortunately, and I quote from the statement, "These applications have been denied as incomplete."

One of the examples as to why the applications have been noted incomplete was the fact that from 1912 to 1946 this gentleman by the name of Walter Plecker of the Virginia Bureau of Vital Statistics led an effort to actively destroy vital records and evidence of Indian existence in the Commonwealth of Virginia. I suspect this is probably true in many other states of this effort.

The practice was supported, and I am quoting from Governor Kaine's statement. "The practice was supported when the eugenics movement..."—you know, this is where craniology and all these

things, that a person's intelligence is determined by his physical being—"...was endorsed by Virginia universities and the Virginia General Assembly enacted a 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."

It was even criminal. If you declared yourself as a Native American, you will be put in prison for one year. So for this 30 year period, and I am just citing this example, Mr. Fleming, it would be totally impossible for these Indian tribes to combine with the seven criteria, given the fact that this is what states have done against the Indian tribes.

So I just wanted to note that for the record. Would you say that the criteria that has been stipulated under the FAP requirements, these Indian tribes would never have a chance to be recognized given the fact that what the state has done to them by way of just nudging them, if you want to put it in those terms?

Now, I notice that you neither recognized nor accept the applications of the Indian tribes of Virginia, but do you see the problems that we are having here if we are to depend entirely on the FAP process; that these tribes from Virginia would never see the day that they would be recognized because this is the kind of thing that was done against them?

Mr. FLEMING. I would respectfully disagree with your statements, and I do take a different view from Governor Kaine's information from his statement.

Records in Virginia do exist and they were not destroyed. The vital records of birth, marriage, divorce, death and probate, they are in the record. Not only are they in the hands of the individuals whom they pertain, but they are available at the local registrar level and the state registrar level.

In preparation for this hearing I wanted to reach into what evidence was submitted on behalf of the Virginia groups, and in 2001 this was the material that we received. In one of the group's materials were copies of vital records that were not destroyed. There were two marriage licenses and 17 copies of birth certificates.

Every one of these documents recorded these individuals or parents of these individuals as Indian or red. They were not altered. They were not destroyed. Of the 17 copies of the birth certificates issued between 1915 and 1949—

Mr. FALEOMAVAEGA. Reclaiming my time, the point that I am making here is this race-based statute in Virginia's past made it criminal for Native people to claim their Native American heritage. You go to jail if you say I am a Native American.

So you may say that the records are in there. Are you suggesting that Governor Kaine's statement—he lied before this Committee in what he is saying?

Mr. FLEMING. I wouldn't say that. I would say he may have been misinformed because I have copies of these birth certificates that have Walter Plecker's signature on them, and they do indicate Indian as how they were recorded, and they are.

Mr. FALEOMAVAEGA. Would you agree that the burden is on these Indian tribes that have to go through the whole process in figuring out that these records existed or maybe were deleted purposely because of this Virginia statute?

Mr. FLEMING. I would say that these groups have the opportunity to submit the same types of records that all the other petitioning groups submit, and these records do indicate racial designation of Indian.

If there are examples of records that have been destroyed, then we need to see the evidence of that situation. Our regulation allows for courthouses that may have been burned or records that have truly been destroyed, but we have before us 17 copies of birth certificates of individuals of one of the groups before this bill, and the records indicate Indian or red.

Mr. FALEOMAVAEGA. I don't think you get my point here, Mr. Fleming. The point I am making here is it is a criminal statute. To declare yourself a Native American—just to say I am Native American—you go to jail for one year.

What kind of a burden does that put on these Indian tribes from Virginia to go through the hurdle and say well, they changed the record to simply identify yourself as colored or white, but even to say you are Native American it is a criminal statute in the State of Virginia declaring yourself as an Indian.

Mr. FLEMING. But as you noted earlier, there were military records that are on the Federal level that indicates that these individuals fought with valor, and they were—

Mr. FALEOMAVAEGA. Reclaiming my time, Mr. Fleming, I want to say simply from what has been said I respectfully do not agree with your point of view on this, and I sincerely hope that the flagpole goes up to Secretary Salazar and to the White House that the same consideration ought to be given to what has happened to the six tribes from Virginia, the same problem that for 110 years the Lumbee Indians are now given at last, for the first time in my 20 years that I have been here, that now the White House has given acknowledgement and agreement that the Lumbees should be recognized after 110 years.

I yield back. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair will announce, after recognizing the next Member, Mr. Broun of Georgia, that we will recess for approximately 15 or 20 minutes to answer two roll calls on the Floor of the House.

Mr. Broun of Georgia?

Mr. BROUN. I thank the Chairman for yielding for my questions. I am sorry that I was late for this hearing. I was tied up in another committee, Mr. Chairman, and it made me run late.

I know there is an administrative procedure, as well as a legislative procedure, to try to designate various tribes. I would like to get the witnesses to just comment about the two procedures and whether it is your intent that the legislative procedure is not as valid or is not as good a way to seek a remedy for tribes that want to seek designation, so if you all would please comment on that?

Mr. SKIBINE. Well, in our view the legislative route that recognizes a tribe is clearly just as valid as the party D3 process because, as stated by Mr. Kildee, the Congress has the constitutional authority to recognize Indian tribes, and the Congress has passed numerous legislation.



These tribes are Federally acknowledged now and have the same rights as any other Indian tribe that has been recognized through the Federal regulation.

Mr. BROUN. Mr. Fleming, do you want to comment on that?

Mr. FLEMING. Well, I wanted to comment that in 1994 Congress passed the Federally Recognized Indian Tribe List Act, and in its findings it acknowledged that there were ways in which Indian tribes could be acknowledged through an Act of Congress or through the 25 C.F.R. Part 83 process.

The Judiciary Branch is listed, but our interpretation is that they review our administrative decisions under the Administrative Procedure Act, so those are the two mechanisms.

Mr. BROUN. Now, there have been many applications made to ask for designation, and many applications have been denied in that administrative process.

Is it your intent to try to include people or groups or tribes as designees, or is it more your intent to exclude people or tribal groups as designees?

Mr. FLEMING. Our process allows for a thorough review of the evidence under seven mandatory criteria. Groups will either meet the criteria or they will not.

Earlier I had mentioned that under our process directly 16 groups have been acknowledged as Indian tribes and 28 groups have been denied Federal acknowledgement, so the decisions are either positive or they are negative, and then our regulations allow for due process, and if a petitioner or interested party does not agree with the Department's decision then they may appeal before the Interior Board of Indian Appeals or they may challenge the decision in Federal Court under the Administrative Procedure Act.

Mr. BROUN. OK. Mr. Chairman, just for the sake of time I will yield back and I appreciate your time since we have a vote on.

Mr. MCINTYRE. Mr. Chairman, if he yields, may I just get a clarification on the statement he just made? I just want a clarification. May I?

You stated that 16 tribes have been recognized by the Bureau since the time the legislation passed? That is the statement you just made to Dr. Broun?

Mr. FLEMING. The 16 groups that have been acknowledged have been acknowledged since the beginning of our acknowledgement regulations in 1978.

Mr. MCINTYRE. And during that same time period, earlier it was stated in testimony that 20 have been recognized by Congress in that same time period, correct?

Mr. FLEMING. I recall the statement. My statistic is only of groups that are currently under our process.

Mr. MCINTYRE. OK.

Mr. FLEMING. It does not include tribes that were recognized through other avenues.

Mr. MCINTYRE. Thank you. Thank you, Mr. Chairman. I just wanted to make the point. Twenty by Congress. Sixteen through the process. Thank you.

The CHAIRMAN. The Chair recognizes the gentleman from Georgia.

Mr. BROUN. Thank you, Mr. Chairman. Just one quick house-keeping item. I would ask unanimous consent to have my written comments entered into the record.

The CHAIRMAN. Without objection. So ordered.  
[The prepared statement of Mr. Broun follows:]

**Statement of The Honorable Paul C. Broun, a Representative in Congress  
from the State of Georgia**

Thank you, Chairman Rahall and Ranking Member Hastings for holding this important hearing today. I appreciate the opportunity to hear testimony and ask questions from the witnesses today on H.R. 31, the Lumbee Recognition Act, and H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009.

I remain concerned with several aspects of both pieces of legislation before us today. There has been much debate over whether federal recognition of these tribes is warranted. Recognizing these tribes through the legislative process would go around the Department of Interior's existing Federal Acknowledgement Process that other groups seeking recognition have had to complete. I am also very concerned about the significant cost that would be placed on the American taxpayer.

Receiving Federal acknowledgment would enable these Indian tribes to participate in Federal programs and provides them with special rights, services, and immunities. As such, I believe we must proceed with caution and make sure that circumventing the Bureau of Indian Affairs' recognition process is warranted and that a legislative solution is needed.

Mr. Chairman, thank you for calling this hearing. I look forward to hearing from our witnesses.

The CHAIRMAN. Does the gentlelady from the Virgin Islands wish to be recognized before we break for votes?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I want for the record just to say—I should have said this earlier—that the limitation on gambling does give me some concern.

I realize it is in the legislation and it is done, but I just think it is unfair for us to put the tribe to have to give up something that would normally be their right to participate in to get Federal recognition.

I have one question I guess for Mr. Skibine.

Mr. SKIBINE. Skibine.

Mrs. CHRISTENSEN. OK. Thank you. Are you aware of any prior instances where previously ineligible tribes for the administrative process were made eligible by Congress and required to go through that process?

Mr. SKIBINE. No, actually we are not aware of any tribe, any such tribe.

Mrs. CHRISTENSEN. That has been ineligible by the administrative process where Congress overturned that? We have never done that?

Mr. SKIBINE. And then has required them to go through the process? No, we are not aware of that.

Mrs. CHRISTENSEN. Thank you. I guess that would be my only question, Mr. Chairman. I yield back the time.

The CHAIRMAN. Thank you. Does the gentlelady from Wyoming wish to be recognized quickly before we go to break, or would she rather wait until we come back?

Ms. LUMMIS. Thank you, Mr. Chairman. I would prefer to wait until we come back.

The CHAIRMAN. Fine.

Ms. LUMMIS. Thank you.

The CHAIRMAN. The Committee will stand in recess for approximately 15 or 20 minutes. We do have two votes on the House Floor.  
[Recess.]

The CHAIRMAN. The Committee on Natural Resources will come to order and recognize the gentleman from Washington, Mr. Hastings.

Mr. HASTINGS. Mr. Skibine, just one thing. We kind of had the conversation here and the exchange about how this decision was made. I just wanted to clarify that we did ask you for written explanation of how that decision—

Mr. SKIBINE. Yes.

Mr. HASTINGS. OK. I just wanted to clarify that. Thank you.

Mr. SKIBINE. And we will provide that.

Mr. HASTINGS. Thank you very much. Appreciate it.

The CHAIRMAN. Does the gentleman from North Carolina, Mr. McIntyre, wish to ask questions?

Mr. MCINTYRE. No, sir. No further questions. We are looking forward to our next panel from the Lumbee Tribe, and we want to thank these gentlemen for their testimony.

The CHAIRMAN. OK. We were holding for Ms. Lummis, who wanted to come back. We are unable to locate her at this time, but we do ask unanimous consent—at least I ask unanimous consent—that she be allowed to ask questions for the record in writing and that you be available to respond to those.

Mr. SKIBINE. Yes, we will.

The CHAIRMAN. That your response will be made part of the record as well.

Mr. SKIBINE. Yes.

The CHAIRMAN. OK. Thank you, Mr. Skibine. We appreciate your testimony and your patience in being with us today.

Mr. SKIBINE. Thank you very much.

The CHAIRMAN. Our Panel No. 4 will be composed of the following individuals: The Honorable James Ernest Goins, Chairman, the Lumbee Tribe of North Carolina, Pembroke, North Carolina, testifying on H.R. 31;

The Honorable Stephen R. Adkins, Chief, Chickahominy Tribe, on behalf of the Virginia Indian Tribal Alliance for Life, Charles County, Virginia—maybe that is supposed to be County—in regard to H.R. 1385;

Mr. Gerald L. Danforth, Retired Chairman, the Oneida Tribe of Wisconsin, Oneida, Wisconsin, on H.R. 31; Ms. Arlinda F. Locklear, Esquire, attorney for the Lumbee Tribe of North Carolina, from Washington, D.C. on H.R. 31;

Dr. Helen C. Rountree, Ph.D., Professor Emerita of Anthropology, Old Dominion University, Hampton, Virginia, on H.R. 1385; and Mr. Michael Cook, the Executive Director, United South and Eastern Tribes, Inc., from Nashville, Tennessee, testifying on H.R. 31.

Ladies and gentlemen, we welcome you to the Committee on Natural Resources and appreciate your patience in being with us all morning as you have. We do have your prepared testimony, which will be made part of the record as if actually read, and you may proceed as you desire in the order in which I announced you.

The first one will be Chairman Goins.

**STATEMENT OF HON. JAMES ERNEST GOINS, CHAIRMAN,  
LUMBEE TRIBE OF NORTH CAROLINA, PEMBROKE, NORTH  
CAROLINA**

Mr. GOINS. Thank you. Chairman Rahall, Congressman Hastings and Members of the Committee, thank you for the opportunity to testify in support of H.R. 31, a bill to recognize the Lumbee Tribe of North Carolina.

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

Mr. Chairman, my name is James E. Goins, and I am Chairman of the Lumbee Tribe. I am the great, great grandson of Solomon Oxendine, who along with 44 other tribal leaders petitioned the Federal government for recognition in 1888. Today I come before you once again requesting Federal recognition for my people.

I am joined by The Honorable Gerald Danforth, former Chairman of the Oneida of Wisconsin, who will testify about his experiences, visit and support for full Federal recognition of the Lumbee Tribe. Finally, I am accompanied by our attorney on recognition, Arlinda Locklear, who will also testify about the need for legislation to recognize our people.

In a short film, I would like to share with you two parts of our community and history. Critics of the Lumbee always become believers once they visit our territory, so I bring to you the land of the Lumbee and hope that you, too, can support our cause.

We begin with the Lumbee River, the place where we have always lived. Like other tribes, we draw our name, Lumbee, from this river, which is an important part of our identity. Lumbee is the only name my people have selected for themselves.

St. Anna Church is shown here. It is one of 120 Indian churches in our territory and is one of the oldest. It has been led by Lumbee ministers for more than 100 years. This church is located in Dechava settlement and was a staging area for Fred Baker, a special Indian agent ordered by the Commission of Indian Affairs to study my people. His report, one of 11 done by the Federal government on the Lumbee, stated that over 2,000 Lumbee tribal members met him at St. Anna.

Mr. Chairman, I have these 11 reports and request that they be made part of the record.

The CHAIRMAN. Without objection. The request is granted.

**[NOTE; The reports have been retained in the Committee's official files.]**

Mr. GOINS. Mr. Chairman, each and every one of these reports identifies us as Indian and notes the strength of our community and leadership.

In this panoramic view of St. Anna's Church, we see the Lumbee River holding its Methodist conference created in 1900. Today this association remains the only all Indian religious conference in the country.

Education has always been important for the Lumbee Tribe. When the state recognized us in 1885, it established a school system controlled by the tribe and limited eligibility to our children. Here is one of the earliest pictures of one of our all Indian schools. Here is Prospect School that fits on the porch of the old Cheraw settlement.

Prospect School has a student population that is 99.8 percent Indian. The principal, teachers and, yes, even the superintendent of Robeson County Public Schools are all Indian. This school is very dear to my heart. My grandfather, my father and I attended this school. My children attended this school, and now my grandchild attend this school. Because we live in predominantly Lumbee communities, most of our children attend predominantly Indian schools.

In 1887, the Indian Normal School was founded to train Indian teachers for our Indian school system. It has been in operation ever since and is now the University of North Carolina at Pembroke. North Carolina recently designated this campus as a historical Indian college.

This is the family homeplace of the tribe's most famous hero, Henry Berry Lowry. Lowry led the effort to protect our people against constriction and to hard labor by the local militia during the Civil War. He watched the militia execute his father and brother in 1865. They are buried here. This began Lowry's 10 year war to protect our people.

Here you see Red Banks where the BIA proposed to establish a land trust program for our people in 1935, but the BIA transferred the program to the Department of Agriculture. Even so, an all Indian agricultural farming co-op was established here and is the longest running such co-op in the country.

Now you see a Lumbee homecoming held annually in Pembroke. Over 25,000 Lumbees gather to celebrate our heritage. Mistakenly, these streets were closed in 1956 to celebrate what we thought was full Federal recognition with the passage of the Lumbee Act. This was one of the many Acts introduced in Congress to recognize the tribe. The 1956 Act was the only one that passed. It recognized us as Lumbees, but at the same time terminated the tribe.

Finally, our veterans. Honor, duty and love of country are qualities that our Lumbee veterans instill in our youth. My father and uncle served in World War II and passed these qualities down to me. I privately enlisted 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 finish what it started, Mr. Chairman, in 1956. In the words of our good friend, Congressman McIntyre, it is time for the discrimination to end and recognition to begin.

Thank you, sir.

[The prepared statement of Mr. Goins follows:]

**Statement of The Honorable James Ernest Goins, Chairman,  
Lumbee Tribe of North Carolina, on H.R. 31**

My name is James Ernest Goins and I am Chairman of the Lumbee Tribe. I want to express the Tribe's appreciation to Chairman Rahall for his support for our bill and the opportunity to testify at this hearing in support of H.R. 31, a bill that

would extend full federal recognition to the Tribe. I also want to express the Tribe's deep gratitude to Congressman McIntyre for his hard work and leadership on this issue. Lumbee history will record his faithfulness to the Lumbee cause.

As have generations of Lumbee leaders before me, I proudly appear today in support of H.R. 31 and the federal recognition for the Tribe that it would provide. Congress has deliberated on this issue for more than one hundred twenty years now and, on the Tribe's behalf, I urge the committee to report H.R. 31 favorably so that we can move one step closer to justice and fair treatment for the Tribe.

#### **The Lumbee desire for federal recognition**

I am a direct lineal descendant of tribal leaders who first petitioned the United States for federal recognition in 1888. This petition to Congress was a request for federal recognition and financial support for the education of Lumbee children. At the time, the State of North Carolina had just established a separate school system for the education of Lumbee children; at the same time, the State approved two years funding for a normal school to train teachers for our schools, but none for purchase of land or construction of a school building. The Tribe donated the land and built the school but had trouble keeping the normal school open with so little support from the State. So, the Lumbee Tribe sought recognition from Congress for the purpose of supporting the Tribe's normal school. The Congress referred the request to the Department of the Interior and the Department gave what was to become its stock response to the Lumbee quest for recognition:

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 tribe.

This was a theme that we were to hear often from the federal government—you know you are Indian and you are in need but we have too little funding to assist you.

In 1899, Congressman John Bellamy introduced a bill that would recognize the Croatan Indians and provide assistance to the Indian normal school. In 1905, our people made a third effort. A rally was held at the Indian normal school for the purpose of securing a federal census of Indians in the community and federal support for the Indian school. Both these efforts failed.

Between 1910 and 1924, no less than five separate bills were introduced to obtain federal recognition and assistance for the Indian normal school in Robeson County. Congress asked the Department of the Interior to investigate the history and needs of our people three times during this period. Each time the Department acknowledged that we were Indians, but each time the Department recommended against the bill, mostly for fiscal reasons.

During the 1930s when my people were attempting to organize under the Wheeler-Howard Act, my wife's grandfather helped raise money to send our people to Washington. Their pleas met with the same results. Dr. Swanton from the Bureau of Ethnology was sent to investigate our origins and history. He concluded that the Lumbee people are descendants of the Cheraw Indians. But the effort failed.

Then, in 1935, Assistant Solicitor Felix Cohen put in writing a plan that would allow the Indians of Robeson County to organize under a constitution. Tribal leaders immediately submitted a request to organize to the Department of the Interior. Commissioner Collier sent an Indian agent, Fred Baker, to Robeson County to work out a plan for land resettlement so that a reservation might be created for qualified half-bloods. The Indian agent reported in 1935 that he had met with approximately 4,000 members of the Indian community and found strong support for the idea. That meeting was held at a small Lumbee church between Prospect and an adjoining Lumbee community, known as Pembroke. In his report to Washington, he described this meeting:

It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all 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. They hailed with joy the offer of the government; many of the old people could not restrain their feeling,—tears filled many eyes and flowed down furrowed cheeks. We must confess to the fact that our own feelings were deeply touched as the old people expressed so deep a longing to have a piece of land on which they could live in peace...

The agent concluded, "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."

Justice did not come that time either. The plan was contingent upon certification of Indians in the county as half or more Indian blood. Initially, Assistant Commissioner Zimmerman and Assistant Solicitor Cohen had thought that Indian school enrollment records, other state records, and oral tradition would all be used in this process. But in the end, the determinations were made based solely on physical measurements and features, e.g., body measurements, skin pigmentation, and facial features, which have since been discredited as having no scientific basis. Only 209 tribal members agreed to submit to these tests, out of which 22 were eventually certified as half-bloods. This effort eventually failed, too.

In the early 1950s, the Tribe once again looked to legislation as the answer. After obtaining state legislation in 1953 recognizing the tribe under the name Lumbee, the Tribe sought federal recognition legislation on the same terms. In 1956, Congress did pass the Lumbee Act, designating the Indians in Robeson and adjoining counties as Lumbee Indian. But at the request of the Department of the Interior, the bill was amended before enactment to provide that Lumbees could not receive services as Indians. Thus, we failed once again because of the intervention of the Department of the Interior.

Our latest effort for special legislation began about twenty years ago, after the Department of the Interior had promulgated regulations on recognition. In December 1987, the Tribe filed a fully documented petition for federal acknowledgment. Two years later, the Solicitor's Office decided that the Lumbee Tribe is not eligible for the administrative process because of the termination language of the 1956 Lumbee Act added at the request of the Department of the Interior.

Even so, some say repeal the 1956 Lumbee Act and force the Tribe to go through the administrative process. My answer to this is to pose the following question: What will the Department of the Interior learn that its experts haven't already told them? Every time a bill was introduced in Congress to recognize us, the Department studied our history and community, but opposed the bill because money was too short. How much do our people have to take? How many times does the Department of the Interior have to study our history? We believe enough is enough and the time has come for Congress to finish what it started in 1956.

Our people lost control over our Lumbee schools because we are not federally recognized. When a federal judge ordered North Carolina to disband its segregated schools, the Tribe lost its separate schools. This was a serious blow to our people's independence. Without federal recognition, we cannot have full charge of our communities. Without federal recognition, we will continue to be treated as second-class Indians.

### **The Lumbee community and governance**

My family and I are typical of Lumbee families. Let me share a little about myself and my family to illustrate the strength and ties that bind our people.

I am the son of Ernest and Ola Jacobs Goins and a son of the Prospect community, oldest documented Lumbee community located in the historic Cheraw settlement. My wife is Diane Locklear Goins, a Lumbee, and a retired schoolteacher, who taught at Pembroke Elementary School, a Lumbee school, for 31 years. Diane grew up in the Union Chapel Lumbee community, the home community of my mother. My oldest daughter Rhonda is a Rehabilitation Coordinator with the Robeson County Mental Health Department where she works with children from birth to three years of age. My daughter Jacqueline is a Lumbee educator at a predominantly Lumbee school. My youngest daughter Jamie recently served as an Ambassador with the Americans for Indian Opportunity's American Indian Ambassador Program. All my sons-in-law are Lumbee Indians and grew up in Lumbee communities in Robeson County.

My family, like other Lumbee families, takes pride in our community and maintains a strong sense of tribalism. Because our communities are composed of large extended families, our children are not only our children but also the sons and daughters of our Lumbee communities. Children are raised by the whole family, not just mothers and fathers. Our people live in parallel worlds. We know what it is to be Lumbee and we know about the world outside the Lumbee world.

Throughout my life, I attended all Indian churches. Growing up in Prospect community, I attended Prospect United Methodist Church, located immediately across from the Prospect School. The Prospect United Methodist Church is the largest American Indian church in the United Methodist Church. I now attend Union Chapel Holiness Methodist Church, my wife's home church. This church is part of the Lumbee River Holiness Methodist Conference (LRHMC), founded by the Lumbee people in 1900. This religious conference is composed solely of Lumbee churches.

I attended Prospect School, an all-Indian school. Its teachers and principals were all Indian. This school was part of the separate school system established for the Lumbee Tribe by the State in 1885. Only a rural country road separates the school from my church. During the school year, I—along with all other students—marched across that road for “religious emphasis week”. I have grandchildren who attend Prospect School today. And they continue to cross the road one week during the school year where they receive one hour of religious training. Today, however, students are required to obtain parental consent.

My schoolteachers were also my Sunday school teachers. The headmen of the community, being also the heads of our large extended families, selected the teachers for our schools. They also decided who could attend our schools. Both my paternal and maternal grandfathers, Willie Goins (Prospect community/school) and Anderson Jacobs (Union Chapel community/school) were among these headmen. They, along with the headmen from other Lumbee communities, had sole authority to decide who attended Indian schools and who would be allowed to teach in these schools. Teachers were selected based not only on qualification but also on their moral character. As religious and school leaders, these tribal leaders not only shaped our schools, churches, and communities, they ultimately governed the Tribe.

After graduating from Prospect School in 1966, I enlisted in the United States Army and was severely wounded in the rice paddies of Vietnam on December 31, 1969. The men in my squad called me “Chief” and gave me the job of walking point through the jungles. Like all Lumbee veterans, I am proud of my service to this country and I wear its medals with pride: the Purple Heart, the Bronze Star, and the Air Medal. My father, too, served this county in World War II. Indeed, Lumbee people have served this country as far back as 1775 when we fought side by side with the colonists. The only war the Lumbees did not serve in was the Civil War. During that period of time, we engaged in our own war against the Confederacy.

Our connection to the land we call home and to each other is typical of Indian people. We draw our strength from home, known to others as Robeson County. Regardless of where a Lumbee may reside, home is always Robeson County. And when two Lumbees meet for the first time, the first question asked is who are your people, i.e., your family lines. All Lumbees know their family history three generations back and with a little discussion any two Lumbees can connect themselves either by direct kinship or marriage. These bonds—the ties to our land and each other—are the ties that have enabled us to survive as a tribe even without federal recognition.

For most of our history, the Lumbee tribe has functioned with informal leaders, people typically drawn from the leading families within our communities. These leaders took whatever steps were required to protect our people, including self-defense such as during the Civil War, and handled all our government-to-government relations with the State of North Carolina. Recently, our people decided to establish a formal tribal government. We adopted a constitution with three branches of tribal government: a tribal chairman with executive powers, a tribal council with 21 members representing districts within the Lumbee territory, and a tribal court to hear disputes rising under tribal law among our members. This tribal government has been recognized by the State of North Carolina as the governing body of the Lumbee Tribe and I am the Tribal Chairman elected in accordance with its terms.

### **Lumbee membership**

Because the Tribe has not historically received services or other benefits for its members, the Tribe did not historically maintain a formal membership list. Informal and partial lists of tribal members have been prepared for various purposes, though. For example, attendance at the Lumbee schools was limited to Lumbee children and committees of Lumbee leaders (sometimes call blood committees) had authority to determine a child's eligibility to enroll. These committees produce partial membership lists.

A few lists of tribal members can also be found in our churches' records. Since Lumbee people have historically attended all Indian churches, these lists are among the Tribe's base rolls. Finally, the United States census has occasionally prepared special Indian censuses to count Indians. The censuses are excellent records because Indian households are listed by order of visitation. So the censuses provide of record of families that comprise our communities, e.g., Prospect, Pembroke, Union Chapel, Saddletree, and Fairgrove. This collection of documents—school and church records and federal Indian censuses—was used to compile a base roll for the Lumbee Tribe.

As part of the Tribe's effort to write a petition for federal recognition under the regulations, the Tribe initiated a formal enrollment process. The Tribe reduced to writing the membership criteria that it has always used informally and prepared a complete list of its members. There are two membership criteria: first, the person must prove descent from an ancestor on the base roll; second, the person must



maintain contact with the Tribe. To us, maintaining contact means that you must be known to us, that is, known to be related to one of the families at home. Unless the Tribe knows you, then you are not allowed to enroll even if you can prove descent from a Lumbee ancestor. And the data in every application for enrollment is confirmed before an individual is enrolled. Using this process, we have enrolled approximately 55,000 members.

**Conclusion**

The Lumbee Tribe believes it is time for Congress to finish what it began in 1956 and enact Mr. McIntyre's recognition bill. The Lumbee people have been patient and persistent in their quest for federal recognition, but I can tell you that our people have had about enough. The time has come for the United States to acknowledge the fact that the Lumbee people are and have always been an Indian tribe. This is the truth of the Lumbee people. It is a truth that North Carolina has long acknowledged. It is a truth that other Indian people and experts on Indian history accept. And it is a truth that the Department of the Interior has known for one hundred years.

On behalf of the Lumbee people, I thank the committee for the opportunity to share our story with you and urge the committee to act favorably on H.R. 31.

The CHAIRMAN. Thank you.  
Chief Adkins?

**STATEMENT OF HON. STEPHEN R. ADKINS, CHIEF, CHICKAHOMINY TRIBE ON BEHALF OF VIRGINIA INDIAN TRIBAL ALLIANCE FOR LIFE, CHARLES COUNTY, VIRGINIA**

Mr. ADKINS. Thank you, Chairman Rahall, Ranking Member Hastings and other distinguished Members of this Committee, for having me here today to speak on House Bill 1385.

I would like to request that the written testimony from the six tribes represented in this bill be introduced into the record.

The CHAIRMAN. Without objection. The request is granted.

Mr. ADKINS. Before I begin my remarks, Mr. Chairman, I must acknowledge you and the House of Natural Resources Committee, who heard testimony in H.R. 1294, carried the bill to the full House and led the bill to its eventual passage by the U.S. House of Representatives in May 2007.

Today we thank you for again picking up the mantle and shepherding this true and just cause for the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi, the Rappahannock and my tribe, the Chickahominy, the tribes named in H.R. 1385. Thanks to Congressman Jim Moran for introducing this bill.

We are honored to be testifying here today alongside the Governor of the Commonwealth of Virginia, Timothy Kaine, who, in his inaugural address, pledged his strong support for Federal recognition of these Virginia Indian tribes and has continued his strong support throughout his tenure.

We are also pleased to testify along with Dr. Helen Rountree, a renown anthropologist specializing in the heritage of the Virginia Indian tribes.

Finally, let me acknowledge the leaders of the aforementioned tribes whose compelling stories to a large degree mirror my own.

Mr. Chairman, it saddens me that we have to appeal to the legislative body of arguably the greatest country in the world, a country noted worldwide as a champion of human rights, to find redress to correct this wrong that Virginia Indians have endured since the United States was formed, a country who in its search to form a

more perfect union systematically ignored those very people who helped ensure the survival of the first permanent English settlement at Jamestown.

Early in the relationship between the Virginia Indians and the Colonists, it became very apparent that there was a need to delineate a framework by which these two entities could live together peacefully. In recognition of that need, the Treaty of 1614 was established between the Chickahominy Tribe and the Colonists.

In the intervening years, several treaties were drawn between England and the Virginia Indian nations, culminating in the Treaty of 1677, which is referred to interchangeably as the Treaty of Middle Plantation or the Articles of Peace. It is noteworthy that those tribes listed in H.R. 1385 were in fact signatories to the Treaty of 1677.

The Indian nations of Virginia never took up arms against the United States, which perhaps explains why there was never a treaty between the Indian nations of Virginia and the United States. Without a treaty relationship, there was no official relationship between the aforementioned entities.

To make matters worse for the Virginia Indian nations of Virginia, the colonial government, through warfare and other means and later the Commonwealth of Virginia through the power of the pen, sought their elimination. The woes that plagued the Indian nations of Virginia were systemic. Those woes were given birth and perpetuated by a system that sought to deny the very existence of the Indian nations of Virginia.

The documentary genocide that the Virginia Indians suffered at the hands of Walter Plecker, who ruled over the Bureau of Vital Statistics in Virginia from 1912 to 1946, gained full momentum when the state's legislature enacted the Racial Integrity Act in 1924. This Act included penalties for assigning Indian names to Native infants or assigning the designation Indian to birth certificates.

Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Virginia Indian nations on vital records. This law stayed in effect until 1976 and caused many of our tribal members to have to travel out of state in order to be married as Indians.

This law also forced all segments of the population to be registered in birth as white or colored. State law declared there were no Indians in this state in 1924, and if you dared to say differently you went to jail or worse.

In 1997, legislation was passed that required the Commonwealth of Virginia to bear the cost of correcting the vital records of the Virginia Indians. Unfortunately, this legislation has not and cannot undo the damage done to my ancestors who endured humiliation in venues as disparate as trying to obtain marriage licenses or being inducted into the armed forces as Indians.

The six tribes in this bill gained state recognition in the Commonwealth of Virginia between 1983 and 1989. In 1999, we came to Congress when we were advised by the Bureau of Indian Affairs that many of us would not live long enough to see our petitions go through the administrative process. By the way, we have buried three of our Chiefs since then.

Actions taken by the Commonwealth of Virginia during the 20th century erased our history by altering records as part of a systematic plan to deny our existence. This state action distinguishes us from the other tribes in this country that were protected from this blatant denial of Indian heritage and identity.

As part of the Jamestown 400th anniversary commemoration, these tribes traveled to England in 2006 telling the story of Virginia's early history. The people of England have an enduring respect and love for Pocahontas. As we worshipped at St. George's Church, its congregation extended that same kind of love and respect toward us, and to my amazement the attitude of love and respect transcended the spiritual and emotional service within the church and was extended to us in every venue we visited. I believe our traveling to England and being embraced by its citizenry and elected officials represented a significant move toward reconciliation and healing.

A product of the research of the first permanent English settlement at Jamestown was the revelation of what our contributions had meant to its success. Honors from across the Commonwealth of Virginia have been held in rapt attention as we have shared our connection to England and our influence on the development of the embryonic seeds of democracy which took root in our homeland.

This is a proud story which deserves a happy ending, an ending that acknowledges the sovereignty of these six Virginia Indian nations. We must come full circle and be embraced by the Congress of the United States of America.

I and those Chiefs here with me stand on the shoulders of many others besides Powhatan and Pocahontas. We lament the passing of nine out of 10 of our countrymen by the end of the 17th century. To be sure, some of those who perished did not die by the sword. Some died from diseases alien to this land and some from other causes. However, the decimation of our ranks was tied directly to events that unfolded after the settlers arrived in 1607.

When we commemorated Jamestown's anniversary in 2007, those of Indian heritage in Virginia were reminded of that darker side of 17th century history. As Chief of our tribe, we have persevered in this process for one reason: We do not want our families to let the legacy of Walter Plecker stand. We want the assistance of Congress to give the Indian tribes in Virginia their freedom, their freedom from a history that denied their Indian identity.

Without acknowledgement of our identity, the harm of racism becomes a dominant history. We want our children and the next generation to have their Indian heritage honored and to move past what we experience and our parents experience.

We, the leaders of the six Virginia Indian 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 believe the Federal recognition of the Indian tribes will make a difference that goes beyond the stamp of recognition.

It will reconcile the history in this country between two cultures in a way that honors our history of learning to live together in peace. It will honor Natives that have served in the military and who as a percentage of their population have given the ultimate

sacrifice at a rate higher than any other racial group in the United States.

This is what we want for our people and for our nation. Our visit to England in which we shared our culture and history, described our contemporary lifestyles as both contributors to the American way of life and aspirants to the American dream, that has strengthened our resolve to obtain Federal acknowledgement.

What would Federal acknowledgement mean in the daily lives and the future of Virginia tribes? For one thing, it guarantees our access to archeological endeavors on public lands and rights-of-way and the ability to retrieve the bones of our ancestors from Federal repositories. It would create a government-to-government relationship between the tribes and the Federal government.

For years the Commonwealth of Virginia did not care about our story. Our public school curricula had scant mention of who we are, so mainstream America knows little about what has happened in those years between the 17th century and today. The fact that we were so prominent in the early history and then so callously denied our Indian heritage is a story that most don't recognize.

The Commonwealth of Virginia has taken definitive actions to right the wrongs inflicted upon its indigenous people and stands with us today. In 1983, the Commonwealth of Virginia established the Virginia Commission on Indians.

Governor Kaine has appointed Virginia Indians to boards, commissions and also leadership positions within the state agencies. He has ensured the involvement of Virginia Indians in defining and developing the 2008 standards of learning, which will influence the content of social studies textbooks to be used in Virginia's public schools.

We believe it is time for the U.S. Congress to stand alongside the Commonwealth of Virginia, to stand along the six tribes named in H.R. 1385 and grant us the recognition we deserve.

Chairman Rahall, we, the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi and the Rappahannock Tribes implore you to pass the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009.

I would like to add that action by the church, the Papal Bull 1452, gave Europeans the right to come in and pillage and steal our lands, so perhaps it is time to go back to the Old Testament and look at what Mordecai told Esther. He said perhaps you were put in such a royal position as you are for such a time as this.

Mr. Chairman, I believe that is why you are here today. I thank you for your time and your patience in hearing this testimony.

[The prepared statement of Chief Adkins follows:]

**Statement of The Honorable Stephen R. Adkins, Chief,  
Chickahominy Indian Tribe, on H.R. 1385**

Thank you Chairman Rahall and other distinguished members of this committee for inviting me here today to speak on House Bill 1385. Before I begin my remarks I must acknowledge you, Chairman Rahall, and the House Natural Resources Committee who heard testimony on H.R. 1294, carried the bill to the full house and led the bill to its eventual passage by the U.S. House of Representatives in May 2007. Today I thank you for again picking up the mantle and shepherding this true and just cause for the tribes named in H.R. 1385. The bill, introduced by Congressman Jim Moran is titled the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009. I am proud to appear before this Congressional Committee

today to speak on behalf of the six Tribes named in H.R. 1385: the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi, the Rappahannock, and my tribe, the Chickahominy. I am honored to be testifying alongside His Excellency the Governor of the Commonwealth of Virginia, Timothy Kaine, who in his inaugural address pledged his strong support for Federal Recognition of these Virginia Indian Tribes and whose strong support continues as evidenced by his presence here today. I am also pleased to testify along with 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 who has written several books on the Indians of Virginia. Finally let me acknowledge the leaders of the aforementioned tribes whose compelling stories to a large degree mirror my own.

It saddens me to my very core that we have to appeal to the legislative body of arguably the greatest country in the free world; a country noted worldwide as a champion of human rights, to find redress; to correct a wrong Virginia Indians have endured since the United States was formed. A country who in its search to form a more perfect union systematically ignored those very people who helped ensure the survival of the First Permanent English Settlement at Jamestown in what is now the United States of America.

Early in the relationship between the Virginia Indian Nations and the colonists it became very apparent that there was a need to delineate a framework by which these entities could coexist. In recognition of that need, the treaty of 1614 was established between the Chickahominy Tribe and the colonists. In the intervening years several treaties were drawn between England and the Virginia Indian Nations, culminating in the treaty of 1677 called, interchangeably, the treaty of Middle Plantation or the Articles of Peace. It is noteworthy that those tribes listed in H.R. 1385 were signatories to the treaty of 1677.

The Indian Nations of Virginia never took up arms against the United States which perhaps explains why there was never a treaty between the Indian Nations of Virginia and the United States. Without a treaty relationship there was no official relationship between the aforementioned entities. To make matters worse for the Indian Nations of Virginia the colonial government, through warfare and other means, and later the Commonwealth of Virginia, through the power of the pen, sought their elimination.

The woes that plagued the Indian Nations of Virginia were systemic. These woes were given birth and perpetuated by a system that sought to deny the very existence of the Indian Nations of Virginia. Things that other tribes took for granted like giving Indian babies traditional Indian names or ensuring proper racial designation on vital records were denied to many Virginia Indians.

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 situation and decided giving me a traditional Indian name was not worth the risk of going to jail. The documentary genocide the Virginia Indians suffered at the hands of Walter Ashby Plecker, a rabid 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 for several decades caused many of our parents to have to travel to Washington D.C. or elsewhere, 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. The Racial Integrity Act stayed in effect for half of my life. 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 Indian 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.

In 1997 legislation was passed that required the Commonwealth of Virginia to bear the costs of correcting the vital records of the Virginia Indians. Unfortunately, while this legislation allows those of the living generations to correct birth records, this 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 as disparate as trying to obtain marriage licenses or being inducted into the Armed Forces as Indian. The pain was the direct result of distorted, altered, incorrect records. We are seeking recognition through an act of Congress 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 the petition process 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 sought state or federal recognition.

Chairman Rahall, the Indian Nations of Virginia worked hand in hand with the Federal Jamestown 400th Anniversary Commemoration Commission and the Virginia Jamestown 2007 Committee to provide the world with an accurate view of those significant events that marked the 17th century in what is now known as the Commonwealth of Virginia.

These tribes traveled to England telling the story of Virginia's early history. We visited St. Georges Church at Gravesend where Pocahontas is entombed. The people of England respect and honor the memory of Pocahontas. As we worshipped at St. Georges, its living congregation gave us that same kind of respect and honor. 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. We were treated with dignity and respect at a level we have never experienced in our homeland. The citizenry and the elected officials were amazed that we are not officially recognized as Indian Tribes by the United States of America. As we traveled across Virginia and throughout the U.S. we found that people here shared the same amazement at our lack of federal recognition. I believe our people traveling to England and being embraced by its citizenry and elected officials represented a significant move toward reconciliation and healing.

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 Ann. The story of Chief Powhatan and his daughter Pocahontas is well known across this land. 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. A product of the research of the history of the first permanent English Settlement at Jamestown was the revelation of what our contributions meant to its success. Audiences across the Commonwealth of Virginia have been held in rapt attention as we have shared our research. We share our connection to England and our influence on the development of the embryonic seeds of democracy which took root in our homeland. This is a proud story which deserves a happy ending, an ending that acknowledges the sovereignty of these six Virginia Indian Nations. We must come full circle and be embraced by the Congress of the United States of America.

I and those Chiefs here with me, stand on the shoulders of many others besides Pocahontas and Powhatan. We lament the passing of nine out of ten of our countrymen by the end of the 17th century. To be sure, some of those who perished did not die by the sword; some died from diseases alien to this land and from other causes. However, the decimation of our ranks was tied directly to events that unfolded after the settlers arrived in 1607. During this period cultures were trampled upon and languages were cast aside. The native people who befriended these strangers ultimately died at their very hands. When we commemorated Jamestown's anniversary in 2007 and the birth of our Nation, those of Indian heritage in Virginia were reminded of this darker side 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. In 1997, Virginia passed the statute that acknowledged the state action re the vital records of Virginia Indians, 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 passage of the 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. 1385 feel that our situation clearly distinguishes us as candidates for Congressional Federal Recognition.

As Chief of my community, I have persevered in this process for one reason. I do not want my family or my community to let the legacy of Walter Plecker stand. I want the assistance of Congress to give the Indian Communities in Virginia, their freedom from a history that denied their Indian identity. Without acknowledgment of our identity, the harm of racism is the dominant history. I 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 believe the Federal Recognition of the Virginia Indian Tribes will make a difference that goes beyond the stamp of recognition. It will reconcile the history, in this country, between two cultures in a way that honors our story of learning to live together in peace and in love. It will honor our Natives who have served in the military and who, as a percentage of their population, have given the ultimate sacrifice at a rate higher than any other racial group in the United States. That is what we want for our people, and for our nation. Our visit to England in which we shared our culture and history, described our contemporary lifestyles as both contributors to the American way of life and aspirants to the American Dream, 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.

What difference would Federal Recognition make in the daily lives and in the future of the Virginia Tribes? It guarantees our access to archaeological endeavors on public lands and rights of way and the ability to retrieve the bones of our ancestors from federal repositories. It would create a government to government relationship between the tribes and the federal government. It would provide our youth of tomorrow the assurance of their existence in the future. It would mean that important medical and educational opportunities would exist for the members of the tribes.

The Commonwealth of Virginia has taken definitive actions to right the wrongs inflicted upon its indigenous peoples and stands with us today. In 1983 the Commonwealth of Virginia established the Virginia Commission on Indians which later became the Virginia Council on Indians. Governor Kaine has appointed Virginia Indians to boards, commissions and leadership positions within state agencies. He has ensured the involvement of Virginia Indians in defining and developing the framework for the standards of learning which will influence the content of history and social studies textbooks to be used in Virginia's public schools. We believe it is time for the United States Congress to stand alongside the Commonwealth of Virginia and the Tribes named in H.R. 1385 and grant us the Recognition we deserve.

Recognition acknowledges we were here first, we are still here, and we have a unique position within the fabric of this nation. Recognition now is about the future more so than it is about the past. The Virginia Tribes have been here for almost 20,000 years and we hope to be here another 20,000.

We, the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi, and the Rappahannock Tribes implore you to pass the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009.

Thank you,

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The CHAIRMAN. Thank you, Chief Adkins.  
Chairman Danforth?

**STATEMENT OF GERALD L. DANFORTH, RETIRED CHAIRMAN,  
ONEIDA TRIBE OF WISCONSIN, ONEIDA, WISCONSIN**

Mr. DANFORTH. Good afternoon, Chairman Rahall, Ranking Member Hastings, Members of the Committee. My name is Gerald Danforth, and I am an enrolled member of the Oneida Tribe of Indians of Wisconsin.

I served two terms as the Oneida Tribal Chairman and retired from that office in 2008. Prior to that I served four years as a judicial officer for the Oneida Appeals Commission, and I am a veteran of 30 years in the United States Navy, including service in Vietnam and Desert Storm.

It is an honor to be here today to testify before the House Resources Committee in support of H.R. 31, a bill that would provide for the Federal recognition of the Lumbee Tribe of North Carolina.

I first met Lumbee Indians while serving in the Navy stationed in Charleston, South Carolina, in 1967. Since then I served with Lumbee Indians from time to time throughout my Naval career, and later on in that career I met and became good friends with a Master Chief, David Locklear, who I knew to be a Lumbee Indian. I didn't realize then, though, that Lumbee Indians were a state recognized tribe and not a Federally recognized tribe.

In the year since, however, while serving as Oneida Tribal Chairman, I became much more knowledgeable about the Lumbee and about its many attempts to become Federally recognized. I have also come to know several Lumbees during my years of work in Indian Country.

The Lumbee Tribe's attorney, Arlinda Locklear, who you will hear from shortly, is also the Oneida Tribe's attorney in our land claims in New York. Other Lumbees work in Indian Country in other ways, as doctors, educators, in Federal agencies that provide services to all Indian people.

The Indian Claims Commission has a Lumbee who served as commissioner. The American Indian Policy Review Commission had a Lumbee commissioner and a Lumbee attorney as a task force member. So the Lumbees have been known throughout Indian country for generations.

Now, this past February I was asked to facilitate government-to-government discussions between the Lumbee Tribal Council and other Indian tribes across and throughout Indian country. I understand that there have been opposing points made by certain other tribes, and I know at least today the Cherokee, the Eastern Band Cherokee, are present, and I have great respect for Eastern Band. I have visited Eastern Band several times and have friends there as well. The Virginia tribes are here and other Indian tribes across the country are here.

So the line that I walk is a delicate line because I have friends and relatives on both sides of this matter. So out of respect for everybody, I will move forward with what I have to say.

Those opposing points, as I have reviewed them, as I understand them, and I don't think there are that many. I believe that with a review of the facts most of those opposing points are diminished, are removed. If not, they are mitigated to a point where any opposition is minimal. The effect of recognizing the Lumbee becomes very minimal if the full facts are reviewed, because, as I under-



stand some of the opposing points, they are based on inaccurate information or incomplete information.

I believe that the intertribal discussions that will occur throughout this process will help the Lumbee Tribal Council communicate with other tribes throughout the country in a way that they have an opportunity to state the facts of their case. I obviously agreed to assist, and I have been researching prior testimonies of Lumbee recognition bills, studying Lumbee history.

I recently spent four days in Robeson County, Lumbee homeland, to observe firsthand and to speak to members of the Lumbee community. During this four day visit I met the Tribal Council, administrative staff, elders, veterans, ministers, elementary and high school students and community members generally. We stopped during this tour at Prospect Church, where a group of approximately 20 ministers were having lunch, having a lunch meeting, making plans for a tribal wide revival for all the churches.

I have to say and emphasize I have never seen so many religious leaders per capita in any community I have ever visited. I couldn't get over that. But there was another interesting thing that I recognized is that those leaders were also members of the Tribal Council, business owners, educators and other administrative. They were family leaders and vice versa. As it turned out, the person who was chauffeuring me around this tour was on his last stages of becoming one of the religious leaders in the community. There were hundreds of them.

I think that one of the other great leaders we probably all know or have heard of from the Standing Rock Sioux. His name was Dr. Vine Deloria. He said it best when he said in one of his prior testimonies on behalf of Lumbee Federal recognition what he observed was this: A traditional Indian community more closely resembles what we find in Robeson County among the Lumbees. Large, extended families who exert social and political control over family members and who see their family as part of an extended people.

Our tour there in Robeson County also included a historic overview of the Lumbee and a presentation from the legal staff that had charted Lumbee family genealogy from the mid 1700s to present day.

A visit to one of the elementary schools and a high school gave me the opportunity to see the Lumbee students in their studies in the classroom, to see the young students as the teacher gave them the signal to return from the playground as they came running back, flush faced and ready to hit the books again. It is the same picture that I observed in Oneida and in many other—I should say any other—tribal school setting throughout Indian Country.

At the conclusion of my visit to Robeson County, the supportive testimony that I had read previously was made even more clear and convincing to me now. What I saw while visiting Lumbee brought to mind things I see in every Indian community, and, like in other Indian communities, there are settlements within the Lumbee community that are large, extended families.

Like in other Indian communities, there is broad knowledge among members of the Lumbee tribe about their genealogies, their family connections and their history. I heard these discussions

among the Lumbee people, young and old, over and over again every place that we went.

Finally, as in other Indian communities, there are famous former leaders who everybody knows and who everybody admires. Among the Lumbees, in my mind, was this individual named Henry Berry Lowry.

For these reasons that I have stated, there was no doubt in my mind that I was in Indian Country when I was among the Lumbee.

Now, while I can't speak on behalf of Indian Country on this matter, my outreach and informal discussions that I have had with tribal leaders from different parts of the country suggest there is significant support for the Federal recognition of the Lumbee. Many supporters are willing to commit their support to writing. Some are quietly supporting. Even some that I have talked to who I knew had opposed when I explained the facts as I understood them I could see them rethinking their position.

To my understanding, I think there are only a few points of contention. I believe a visit to Lumbee territory will convince any open-minded person that those points of contention are based on myth and not actual reality.

Today the United States recognize, as has been previously testified this morning, more than 560 Indian tribes, and each of those tribes have their own story of relations with the United States of land loss, of treaty violations, of discrimination and of the struggle to survive. I have learned that the Lumbee history is very much like that of other tribes, of land loss, of discrimination and of a struggle to maintain their independence.

The Lumbee have survived. Even without Federal recognition they have survived. That said speaks volumes in my mind to the governmental affairs that exist, however the design is, in Robeson County. So there is really no excuse for not treating the Lumbee Tribe like every other tribe in the country, and I believe H.R. 31 would do just that.

Chairman Rahall, Members of the Committee, thank you for treating this bill with the urgency that you have. Congressman McIntyre and co-sponsors of this bill, thank you for introducing this bill. Ya wago.

[The prepared statement of Mr. Danforth follows:]

**Statement of Gerald L. Danforth, Tribal Member and retired Chairman,  
Oneida Tribe of Indians of Wisconsin, on H.R. 31**

My name is Gerald L. Danforth and I'm an enrolled member of the Oneida Tribe of Indians of Wisconsin. I served two terms as Oneida Tribal Chairman; I retired from that office in 2008. Before that, I had served four years as a Judicial Officer of the Oneida Appeals Commission. I am also a veteran of thirty years in the United States Navy. I retired from the Navy as Force Master Chief, the highest rank, and one of only twelve, open to enlisted personnel.

It is an honor to be here today to testify before the U.S. House Resources Committee in support of H.R. 31, a bill to provide for the federal recognition of the Lumbee Tribe of North Carolina.

I first met Lumbee Indians while serving in the Navy, stationed in Charleston, South Carolina in 1967. During my naval career I served with Lumbee Indians from time-to-time, and later in my career I became good friends with Master Chief David Locklear, whom I knew to be a Lumbee Indian. I didn't realize then that the Lumbees were state recognized, but not a federally recognized tribe. In the years since however, while serving as Oneida Tribal Chairman, I became much more knowledgeable about the Lumbee Tribe and of its many attempts to become a federally recognized tribe.

I also came to know several Lumbees during my years of work in Indian country. The Lumbee Tribe's attorney, Arlinda Locklear, is also the Oneida Tribe's attorney in its land claims in New York. Other Lumbees work in Indian country in other ways—as doctors, educators, and in federal agencies that provides services to Indian people. The Indian Claims Commission had a Lumbee who served as commissioner. And the American Indian Policy Review Commission had a Lumbee commissioner and a Lumbee attorney as a task force member. So the Lumbees have been known throughout Indian country for generations.

This past February, I was asked to assist with facilitating government-to-government discussions between the Lumbee Tribal Council and other tribal leaders, pertaining to the Lumbee federal recognition. I understand that there have been opposing points made by certain tribes with regard to past Lumbee recognition bills for one reason or another. I believe however, the majority of those opposing points are based upon inaccurate or incomplete information. I find that a review of the facts and “the will to do what is right” can resolve, and if not, can certainly mitigate any seemingly negative effects the bill may have on other tribes. With that in mind, I anticipate these inter-tribal discussions will continue concurrently during this legislative session.

I obviously agreed to assist, and I've been researching prior testimonies of Lumbee recognition bills, studying Lumbee History, and I recently spent four days in Robeson County, Lumbee homeland, to observe first hand, and speak to members of the Lumbee Tribe.

During this four day visit I met the tribal council members, administrative staff, elders, veterans, ministers, elementary and high school students, and community members. I was invited to sit in on a tribal council session—there are twenty-one council members, and believe me, their debate mirrored that of the Oneida Council debates—I felt right at home, and was pleased that I didn't have to Chair the meeting.

In route to one of the Lumbee elementary schools, we made an unplanned stop at Prospect Church, where a group of approximately twenty ministers were having a lunch meeting to plan for a tribal wide revival for all the churches. I have never seen as many religious leaders per capita in any other community. Most interesting to me was that it appeared that ministers were also business owners, tribal government officials, tribal administrative staff persons, and family leaders and vice-versa (later, several Lumbee officials would corroborate this observation). Vine Deloria Jr. probably said it best in his testimony in support of a prior Lumbee federal recognition bill, “A traditional Indian community more closely resembles what we find in Robeson County among the Lumbees, large extended families who exert social and political control over family members, and who see their family as a part of an extended people.”

The tour also included a historic overview of the Lumbee and a presentation from the legal staff that had charted Lumbee family genealogy from the mid-seventeen hundreds to present day. A visit to one of the elementary schools and a high school gave me the opportunity to see the Lumbee students in their classroom studies and flushed-faced as they ran toward their teachers signal to return from the playground. I would have seen the same faces at any tribal school throughout the country.

At the conclusion of my visit to Robeson County, the supportive testimony I had read was made even more clear and convincing to me now.

What I saw while visiting the Lumbee community brought to mind things I see in every Indian community I visit. Like in other Indian communities, there are settlements within the Lumbee community that are large, extended families. As Dr. Deloria observed, this is the traditional way Indian people live and govern themselves. That is certainly the case within the Lumbee Tribe. Like in other Indian communities, there is broad knowledge among members in the Lumbee Tribe about their genealogies, family connections, and history. I heard these same discussions among Lumbee people, young and old, wherever I went in their community. Like in other Indian communities, there is little to no separation between business-social affairs and political affairs. I heard the same names over and over again while visiting the Lumbee community, whether the discussion was business, church affairs, tribal recognition, or politics in general. This is typical in Indian communities. Finally, like in other Indian communities, there are famous former leaders who stand out, who everyone knows, and who everyone admires. The one who stands out in my mind among the Lumbees is Henry Berry Lowrie. For all these reasons, there was no doubt in mind that I was in an Indian community while I was among the Lumbee.

While I can't speak on behalf of Indian country on this matter, my outreach and informal discussions with tribal leaders from different parts of Indian country sug-

gest that there is significant support for federal recognition of the Lumbee. Many supporters will commit their support to writing, while others, for their own reasons, are quietly supporting. Even some of those who have opposed prior Lumbee recognition bills, when given the facts surrounding the points of contention, seem to be re-thinking their position. To my understanding, there really are only a few points of contention. And a visit to the Lumbee territory will convince any open minded person that those points of contention are based on myth, not reality.

Today, the United States recognizes more than 560 Indian tribes. Each of those tribes has its own story of relations with the United States—of land loss, of treaty violations, of discrimination, of struggle to survive. I have learned that the Lumbee history is very like that of other tribes—of land loss, of discrimination, of struggle to maintain their independence. And the Lumbee have done survived this without federal recognition. There really is no excuse for not treating the Lumbee Tribe like every other tribe in the country.

To conclude, the Lumbee Indians have been steadfast in their determination to receive federal recognition longer than any other Indian tribe that I am aware of—more than one-hundred years! They have suffered discrimination to a degree far worse than one can imagine.

Today's Lumbee youth should not have to graduate from their classroom only to discover a world of social and political injustice, caused in large part by a precarious and unfair situation that denies them to proclaim themselves fully as Indian—equal to other Indians, with fair and equal treatment. It is time now to correct this problem.

Chairman Rahall, and Members of the Committee, thank you for treating this bill with the urgency that you have. Congressman McIntyre and Cosponsors, thank you for introducing this bill.

I'd be happy to answer any questions you may have.

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The CHAIRMAN. Thank you.  
Ms. Locklear?

**STATEMENT OF ARLINDA F. LOCKLEAR, ESQUIRE, ATTORNEY  
FOR THE LUMBEE TRIBE OF NORTH CAROLINA,  
WASHINGTON, D.C.**

Ms. LOCKLEAR. Thank you, Mr. Chairman, Mr. Vice Chairman and Members of the Committee. I appreciate the opportunity to testify today.

I have submitted a written statement for the record, so at this point in the proceeding I will just summarize a few of the more important points as the record has developed at this hearing.

First of all, I think it is safe to say that we could not possibly overstate the level of frustration that the Lumbee Tribe experiences when they hear the refrain the tribe is attempting to bypass the process by which they would be studied. That simply belies the history of the 120 year effort that the Lumbee people have undertaken.

Some context in that regard is necessary. The Lumbee Tribe first made its request for recognition to Congress in 1888. It did so in the form of a petition that, as you heard from the Chairman, his great, great grandfather also co-signed, addressed to the Congress, directly seeking assistance to provide funding from the Federal Indian Education Grant to the Indian school that had just been created by the State of North Carolina for the tribe. The school was created by the state, but it was badly funded and the tribe needed assistance to maintain its separate school system.

That petition was referred to the Department of the Interior. In 1890, the Department of the Interior responded in a letter directly to the tribe essentially apologizing, saying we understand the need,

but we have too few funds to provide services for those presently recognized, so we are not able to help you.

Starting in 1899, as a result of that initial failure, the tribe sought direct recognition by Congress in a series of special legislation. Between 1899 and 1936, there were roughly a dozen bills introduced in Congress to achieve that purpose.

Now, it is important to note that each of those bills followed on the heels of and in most cases were identical to the language of the most recent state legislation that had just recognized the tribe. That is an important point of history as we go forward, particularly as we look at the 1956 Act.

All of those bills failed, though, again mostly because of the cost of services. However, here is the important point about process. In response to those bills, and often times at the direction of Congress itself, the Bureau of Indian Affairs dispatched a series of its own experts to study the tribe, its community and its history. They began in 1912; the last one, as you saw from the list that the Chairman provided, in 1937.

Just one of those I would like to highlight for the Committee's consideration. In 1914, at the direction of Congress, the Bureau of Indian Affairs dispatched a special Indian agent, one of their own experts, to Robeson County to study the tribe and examine its history. As a result, in 1914, Special Agent McPherson submitted a 252 page report to Congress which addressed those exact criteria, the condition of the community itself and an exhaustive review—his words—of the history of the tribe. That is process.

Mr. McPherson concluded in his report to Congress that these are indeed Indian people descended from the Cheraw and related coastal tribes from North Carolina, that they exhibited a strong interconnected community, and he saw clear evidence of political leadership from their ability to mobilize thousands of members at the drop of a hat for the request of a beating.

Those are the criteria that establish an Indian tribe. Those criteria were examined in 1912, and they were found to exist. However, once again, largely because of the cost of services, the Department opposed the bill. That is only one example. It was done time and time again.

One other example that I will cite briefly was a 1934 statement by the Department of the Interior to Congress itself in response again to one of the bills to recognize the tribe.

The Department reviewed the history of its own studies, of its own experts I remind you, and concluded that these folks, these Indian people in Robeson County, again descended for the Cheraw and related Siouan speaking tribes, clearly existed as a community and clearly showed evidence of leadership, but again opposed recognition.

That goes to the process issue. The tribe has been processed since 1888, and it is very frustrating to be told that now there is a new process and it should be processed once again.

The second point that we think is important for consideration on this bill goes to the final Act that Congress did pass with regard to the Lumbee, and that was the 1956 Act of Congress. Finally, in response to this long series of Acts, the Congress did act in 1956.

However, as you well know, Mr. Chairman and Mr. Vice Chairman, that was the height of the termination era of Federal Indian policy.

The Congress was getting out of Indian business at the time, not looking for more tribes to bring under Federal jurisdiction. So even though the bill that was introduced verbatim again to the most recent state bill to recognize the tribe, intended to recognize the tribe, it was amended before enactment to include classic termination language. So Congress did a very odd thing in 1956. It recognized on the one hand and simultaneously terminated on the other.

The third important point with regard to the need for special legislation here is that Congress has done this to only two other tribes in the history of Federal Indian policy; that is, recognize and terminate at exactly the same point in time.

The closest analogy is Ysleta del Sur Pueblo of Texas. In 1968, Congress passed an Act which, according to its legislative history, was modeled on the 1956 Lumbee Act. It did the same thing for the Tiwas, as they were called at the time, that the Congress had done to the Lumbees. They were a long-time state recognize tribe. The Congress acknowledged them as Indians and at the same time terminated them.

The Department concluded that because of the 1968 Tiwa Act they were not eligible for the process, and the Department in 1987 expressed no opposition to recognition of that tribe by legislation, and indeed that year Congress did recognize that tribe.

So what Mr. McIntyre proposes in his bill is not a new model. It is not a new mold. It is following through on Congress' own precedent for dealing with this very small group of tribes in this very peculiar situation. The Lumbee Tribe is the last of those.

So by passing Mr. McIntyre's bill you bring to close and finally repudiate all vestiges of the termination policy. You do not open the floodgate that other tribes can walk through because there are none others left.

Finally, if I may very briefly comment on a couple of the proposed amendments that were suggested by the Department of the Interior? It is correct that Mr. McIntyre's bill, the language with regard to the land in the trust provision was written before the Supreme Court's recent decision last month in the Carcieri case that the Department witnesses referred to.

We have examined that language. We think that the language probably is sufficient for purposes of Carcieri, and here is why. The language of the bill, H.R. 31, specifically does provide that fee land located in Robeson County for which the tribe may submit applications under Part 151 will be treated as on-reservation applications for that purpose.

If you look at the language of Part 151 of the regulation, those regulations specifically cite the Indian Reorganization Act, § 465, as the authority for those regulations, so by that relation back in effect the Congress is saying that the Department has authority under § 465 to process applications for the Lumbee Tribe, and that is the precise issue that was raised in Carcieri.

We would agree, though, that it needs to be perfectly clear, perhaps through a combination of legislative history language and

maybe even some minor amendment to the language itself. We could make sure that there is no question in that regard.

Finally with respect to the point of the verification of the tribal role. Last Congress, the Committee had before it H.R. 65. H.R. 65 provided in its recognition of the tribe a provision that authorized the Secretary to verify the roll and provided a 12-month period for that verification to take place.

In its testimony then, last Congress on the bill, the Department again raised the question of what does verification mean and is 12 months sufficient time. In response to that testimony from the Administration, this Committee at its markup on the bill did make changes in the bill to accommodate those concerns.

It expanded the period from 12 months to 24 months, and it included language in the bill which specifically advised what the purpose of the verification was, and that language says that the Secretary's verification shall be limited to confirming compliance with the membership criteria set out in the tribe's own constitution.

That language is in the bill now. That language is in H.R. 31 because H.R. 31 is identical to the bill that was reported out of Committee last Congress, so we believe that those concerns by the Administration have been addressed.

Thank you, Mr. Chairman, and again we appreciate your support and your leadership and also our dear friend, Congressman McIntyre. We look forward to the movement of the bill.

[The prepared statement of Ms. Locklear follows:]

**Statement of Arlinda F. Locklear, Esquire, Attorney  
for the Lumbee Tribe of North Carolina, on H.R. 31**

It is my privilege to make this statement as counsel for the Lumbee Tribe of North Carolina in support of H.R.31, a bill to extend full federal recognition to the Tribe. I am special counsel to the Tribe on the recognition effort. 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.

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 Catawbas 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 ante-



cedent.] 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.<sup>1</sup>

#### **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 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."<sup>2</sup>

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

<sup>1</sup>In 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 well known 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, this effort also failed ultimately.

<sup>2</sup>The 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.

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).<sup>3</sup>

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 federally recognized. This is not the case; they are recognized. The termination act simply dissolved the special relationship between the Siletz Indians and the Federal Government 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. As the Siletz legislative history shows, a tribe can be recognized but yet have no trust relationship with the United States or eligibility for federal services. Construed thusly, the 1956 Lumbee Act 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

<sup>3</sup>Because 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.

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. At a minimum, then, Congress took the first step toward recognizing the Lumbee Tribe in 1956.

Whatever its ambiguity otherwise, the 1956 Lumbee Act indisputably makes the Lumbee Tribe ineligible for the administrative acknowledgment process. See 25 C.F.R. Part 83. Under the acknowledgment regulations, the Secretary of the Interior cannot acknowledge tribes that are subject to legislation terminating or forbidding the federal relationship. *Id.*, §83.3(g). 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 acknowledgment.

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 101th 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 recently, the 110th Congress considered similar bills, H.R. 65 and S. 660, to recognize the Lumbee Tribe. H.R. 65 passed the House of Representatives by 256 voting for and 128 voting against passage. The House-passed bill was also reported out of the Senate Committee on Indian Affairs favorably but failed on the Senate floor.

H.R.31 is identical to H.R.65, reported out favorably by this committee and passed by the House of Representatives last Congress.

#### **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.<sup>4</sup> 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 acknowledgment, 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

<sup>4</sup>There 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 acknowledgment 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 acknowledgment 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.

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 acknowledgment 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 acknowledgment 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 consideration 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 acknowledgment 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.

Fourth, 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.

Finally, because of a recent development in the law, the administrative process could not possibly extend equal treatment to the Lumbee Tribe as a federally recognized tribe. On February 24, 2009, the Supreme Court announced its decision in *Carcieri v. Salazar*, Sl. Op. (No. 07-526). The Supreme Court held that the Secretary of the Interior lacked authority under the Indian Reorganization Act to take land into trust for tribes that were not, as of 1934, a "recognized tribe now under Federal jurisdiction." In other words, if the Lumbee Tribe were relegated to the administrative process and even if the Tribe were ultimately successful there, the Secretary would not have authority to place land into trust for the Tribe. Once again, the Tribe would be treated as a second class tribe, without access to trust land and all the consequences and opportunities that flow from that status.

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.31**

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 acknowledgment of the Tribe, including the application to the Tribe of all laws of the United States of general applicability to Indians and Indian tribes;
- 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;
- the direction that applications for trust status for fee lands located in Robeson County shall be treated as an on-reservation application, thereby solving the Carcieri problem;
- the prohibition of gaming activity under the Indian Gaming Regulatory Act or otherwise; 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 provisions address all aspects of a government-to-government relationship between the United States and the Lumbee Tribe. Enactment of H.R.31 would accomplish what the Lumbee Tribe has sought for one hundred and twenty years—full federal recognition.

**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.31.

The CHAIRMAN. Ms. Rountree?

**STATEMENT OF DR. HELEN C. ROUNTREE, PH.D., PROFESSOR EMERITA OF ANTHROPOLOGY, OLD DOMINION UNIVERSITY, HAMPTON, VIRGINIA**

Ms. ROUNTREE. Mr. Chairman, Members of the Committee and guests, it is my honor to speak on behalf of these Virginia Indian people with whom I have been working intensively since 1969.

I am Dr. Helen C. Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. Having that university day job, so to speak, I have been able to do my research entirely as a volunteer. I am not a hired gun for the Indians I am testifying about today, and so far I have produced seven University Press books on them.

The ancestors of the six tribes were native to Virginia when Jamestown was founded. All were signatories in 1677 to a treaty between the Virginia tribe and the King of England. However, subsequent records about them were limited for nearly two centuries. They became landless as non-Indian settlers poured in, and by Virginia custom, not law, landless Indian communities were consid-

ered to be outside the scope of the treaty. That eliminated colonial level loss records being made from them.

The treaty itself was with the King of England and is now legally considered to be with the Commonwealth of Virginia, not the United States, and Virginia, remember, is not interested in landless tribes. These tribes therefore remained state Indians in a state that ignored them. They were considered citizens of their counties, but five of the six tribes lived in counties whose courthouses burned, mainly during the Civil War.

When much more detailed U.S. Census records began to be made in 1850, these people appear as enclaves and, in some U.S. Censuses, specifically Indian ones. They are traceable as the ancestors of the six Virginia tribes before you today.

The Office of Federal Acknowledgment just last year issued changes to try to speed up the Federal recognition process, but those changes do very little for the tribes of whom I speak. Most of the changes are for tribes with a treaty and/or IRA relationship with the Federal government, which these six tribes do not have for the reasons already given.

The remaining change, moving up the starting date to 1789, does not do much for them either. Aside from the problems already mentioned with pre-Civil War records, there are additional problems with state and local records that make these Indian communities hard for a researcher like me to track. It is as if the ever-growing legend of Pocahontas, contrasted with the reality of 19th and 20th century Indian people, made my fellow Anglo-Virginians ever less tolerant of anything other than the legend.

Beginning after the Civil War and culminating with Virginia's racial integrity law of 1924, Virginia became a state committed to the proposition that there were only two races, white and colored, leaving no room for Indians. Under the 1924 law, anyone insisting on an Indian identity on an official document could be sent to prison for a year. Several people—members of these six tribes—were in fact imprisoned for such insistence.

The campaign to eliminate Indians from the state was headed by the state's Vital Statistics Bureau, which went so far as to issue a circular with suspicious families' names listed county by county with the demand that they be labeled colored. The families were referred to, and I quote, as "these mongrels."

The circular was sent to all officials in charge of county records. This is in 1943, by the way, not 1924. All officials in charge of county records, all school superintendents and all state-licensed health personnel who signed off on birth and death certificates.

It is no wonder that these Indian communities became much harder for researchers to find. Some of their members left the state, keeping up their ties to home, but returning only during the civil rights era when they no longer had to be, as one old-timer said to me, scared like a rabbit.

But the communities hung together and hung on, as the attached quick-reference chart will show. They still exist, and they still say, as they have said all along, that they are Indians, yet even now so thorough was the public relations campaign against them for decades that they meet skepticism on a daily basis.

The tribes I speak for today consulted a BIA representative over a decade ago and were told that even if they submitted a petition forthwith, they would not see a decision “in your lifetime,” and this was said to people then in their forties.

The six tribes are not merely being impatient in wanting to move faster than that. Their primary motive—this is my opinion here. Their primary motive for seeking Federal recognition is getting better access to health programs, which are badly needed by their elders now.

Little schooling within Virginia was available to those people when they were young, if, that is, they wanted to remain Indians in the state. See the quick-reference chart which tells you when schools for Indians were finally set up. Therefore, their income level has suffered ever since, and in their old age they are hurting badly.

The six tribes are not interested in remedying that fact through gaming. In fact, they have waived their rights to gaming if they are recognized. Instead, they hope to provide better conditions for their people through Federal Indian programs after recognition by the U.S. Congress.

I have been able to document that these people are Indian tribes and that they have endured over three centuries of injustice, some of the worst of it and by far the most public of it being in the recent past. Without Federal recognition and the aid springing from it, the injustice is ongoing.

I hope that you will accede to their request for acknowledgment. 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: It is my honor to speak on behalf of these Virginia Indian people, with whom I have been working intensively since 1969. I am Dr. Helen C. Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. Having that university “day job,” so to speak, I have been able to do my research entirely as a volunteer; I am not a “hired gun” for the Indians I am testifying about today. And so far I have produced seven university press books on them.

The ancestors of the six tribes were native to Virginia when Jamestown was founded; all were signatories in 1677 to a treaty between the Virginia tribes and the King of England. However, the subsequent records about them were limited for nearly two centuries. They became landless as non-Indian settlers poured in, and by Virginia custom (not law) landless Indian communities were considered to be outside the scope of the treaty. The treaty itself was with the King of England and is now legally considered to be with the Commonwealth of Virginia, not the United States. These tribes therefore remained “state” Indians in a state that ignored them. They were considered citizens of their counties, but five of the six tribes lived in counties whose courthouses burned, mainly during the Civil War. When much more detailed U.S. Census records began to be made in 1850, these people appear as enclaves and, in some U.S. Censuses, specifically Indian ones. They are traceable as the ancestors of the six Virginia tribes before you today.

The Office of Federal Acknowledgment just last year issued changes to try to speed up the federal recognition process, but those changes do very little for the tribes of whom I speak. Most of the changes are for tribes with a treaty and/or IRA relationship with the federal government, which these six tribes do not have for the reasons already given. The remaining change, moving up the starting date to 1789, does not do much for them, either. Aside from the problems already mentioned with pre-Civil War records, there are additional problems with state and local records that make these Indian communities hard for a researcher like me to track. It is as if the ever-growing legend of Pocahontas, contrasted with the reality of 19th and

20th century Indian people, made my fellow Anglo-Virginians ever less tolerant of anything other than the legend.

Beginning after the Civil War and culminating with Virginia's Racial Integrity Law of 1924, Virginia became a state committed to the proposition that there were only two races, "white" and "colored," leaving no room for Indians. Under the 1924 law, anyone insisting on an Indian identity on an official document could be sent to prison for a year. Several people—members of these six tribes—were, in fact, imprisoned for such insistence. The campaign to eliminate Indians from the state was headed by the state's Vital Statistics Bureau, which went so far as to issue a circular with "suspicious" families' names listed county by county, with the demand that they be labeled "colored." The families were referred to (and I quote) as "these mongrels." The circular was sent to all officials in charge of county records, all school superintendents, and all state-licensed health personnel (who signed off on birth and death certificates). It is no wonder that these Indian communities became much harder for researchers to find. Some of their members left the state, keeping up their ties to home but returning only during the Civil Rights era when they no longer had to be, as one old-timer said to me, "scared like a rabbit." But the communities hung together and hung on, as the attached quick-reference chart will show. They still exist, and they still say, as they've said all along, that they're Indians. Yet even now, so thorough was the public relations campaign against them for decades, they meet skepticism on a daily basis.

The tribes I speak for today consulted a B.I.A. representative over a decade ago and were told that even if they submitted a petition forthwith, they would not see a decision "in your lifetime" (this was said to people then in their 40s). The six tribes are not merely being impatient, in wanting to move faster than that. Their primary motive for seeking federal recognition is getting better access to health programs, which are badly needed by their elders now. Little schooling within Virginia was available to those people when they were young—if, that is, they wanted to remain "Indians" in the state (see the quick-reference chart). Therefore their income level has suffered ever since, and in their old age they are hurting badly. The six tribes are not interested in remedying that fact through gaming—in fact, they have waived their rights to gaming, if they are recognized. Instead they hope to provide better conditions for their people through federal Indian programs, after recognition by the United States Congress.

I have been able to document that these people are Indian tribes and that they have endured over three centuries of injustice, some of the worst of it and by far the most public of it being in the recent past. Without federal recognition and the aid springing from it, the injustice is ongoing. I hope that you will accede to their request for acknowledgment.



INFORMATION CHART ON SIX INDIAN TRIBES IN VIRGINIA  
Helen C. Rountree, Ph.D.  
Professor Emerita of Anthropology  
Old Dominion University

Information supplied by HCR's fieldwork or else info. provided for federal recognition effort, 2002-2009  
NOTE: distinct early 20<sup>th</sup> C ethnic groups lived in clusters, organized formally, created own schools and churches, and in-married; ONLY FORMAL ORGANIZATIONS & PUBLIC ACTIVITIES ARE SHOWN HERE.

<u>Name of group</u>	<u>Formally incorporated in</u>	<u>State recognition in</u>	<u>Tribal Church organized in</u>	<u>County support for tribal school received in</u>	<u>Fed. Gvt. asked to help</u>
Chickahominy	1901	1983	1901 (Baptist)	1922 High school added thru. 1950s	1934, 1946
E. Chickahominy	1924	1983	1922 (Baptist)	[w/ Chickahominy]	1946
Monacan	1989	1989	1908 (Episcopal)	1890s-1908, 1946-63 Grade school only	
Nansemond	1984	1985	1850 (Methodist)	1890s, 1922 Grade school only	
Rappahannock	1921	1983	1964 (Baptist)	1962 (bused to Up. Mattaponis' school, 1964-65)	
Upper Mattaponi	1923	1983	1942 (Baptist)	1892, 1917 Grade school only	1892, 1946

NOTE: the help asked of federal government was for EDUCATION in the instances listed. Another instance, in 1943-44, concerned Virginia's hard-line racial policy. Still another, in 1934, asked for inclusion in the Indian Reorganization Act, a request that went nowhere for "state" Indians.

SOCIAL SCIENTISTS WORKING WITH THE SIX TRIBES:

James Mooney, Bureau of American Ethnology, Smithsonian Institution [anthropologist]  
1899-1901 – visited Chickahominy, Nansemond  
Frank G. Speck, Dept. of Anthropology, University of Pennsylvania  
1919-50 – worked with Upper Mattaponi, Rappahannock, both Chickahominies, Nansemond  
Bertha Pfister Wailes, M.A. student in Sociology Dept., University of Virginia  
Early 1920s until her death in 1970s – worked with Monacan  
Theodore Stern, Dept. of Anthropology, University of Pennsylvania  
1940-48 – worked with Chickahominies  
Katherine Seaman, Dept. of Sociology & Anthropology, Sweet Briar College [anthropologist]  
Late 1960s-early 1970s – worked with Monacan  
Helen C. Rountree, Dept. of Sociology & Criminal Justice, Old Dominion University [anthropologist]  
1969 to present – working with Chickahominies, Nansemond, Rappahannock, Upper Mattaponi  
1973 to present – occasional visits with Monacan  
Sam Cook, Center for Interdisciplinary Studies, Virginia Polytechnic University [anthropologist]  
1995 to present – working with Monacan

The CHAIRMAN. Mr. Cook?

**STATEMENT OF MICHAEL COOK, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, INC., NASHVILLE, TENNESSEE**

Mr. COOK. Sekoh. By way of further introduction, I want to introduce myself as a member from the Mohawk community of Akwesasne. I am the Executive Director of the United South and Eastern Tribes, and I have the privilege of representing the leadership of our 25 member tribes located from Maine to Florida to Texas within the confines of 12 states.

On behalf of the leadership, I want to express our appreciation, Mr. Chair, for the acceptance of our words that will be used in consideration of this debate. Also, I want to on behalf of our leadership

acknowledge the work of you and this Committee for the betterment of Indian Country as a whole. Awah.

Also, I would like to briefly express to my fellow panelists that my words today are not in any way intended to disrespect your quests for the betterment of your communities, but to offer another way.

USET opposes H.R. 31 legislation that would congressionally acknowledge the Lumbees as an Indian tribe without going through the administrative process. USET supports H.R. 839 legislation that would allow all Indian groups under the 1956 Lumbee Act to complete the Federal administrative process for acknowledgement.

We strongly support the administrative process for Indian groups to seek Federal recognition through the Office of Federal Acknowledgment where the question can be examined in detail by experts and according to standards that were originally crafted after extensive review and consultation with tribes by the American Indian Policy Review Commission.

Providing acknowledgement through the legislative process could lead to unfair results. Federal legislative acknowledgment of a group potentially gives unfair preferential treatment to that group over all other groups who are in the OFA process and waiting for a determination. H.R. 31 would congressionally acknowledge the Lumbees as a tribe, but would require all other similarly situated groups to go through the OFA process.

Providing Federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of determining Federal recognition as a tribe will inevitably be based on emotion and politics. The OFA should determine whether a group should be Federally recognized.

Why? Our position is that the procedures were a result of a two-year study of the congressionally established American Policy Review Commission and the input of tribes across the country calling for standardized criteria in determining the future relationships of tribes of the United States.

The OFA, not Congress, is staffed with experts such as historians, anthropologists and genealogists whose jobs are to determine the merits of the groups' claims that it is an Indian tribe that has existed since historical times as a distinct political entity. It is not headlines that there is opposition. There is controversy around H.R. 31 and the Lumbees' quest for the betterment of their communities. The OFA would dissipate that cloud.

USET does not take a position on whether any particular Indian group deserves Federal recognition. We have testified many times in support of Indian groups going through the OFA process while consistently opposing those same groups going through the legislative process.

Keller George, an Oneida Indian Nation member and former USET president of 12 years, testified in 2003, "USET does not believe that the Lumbee should get preferential treatment and circumvent the administrative process within the Department of the Interior. USET supports, however, legislation that would clear the way for the Lumbee to get a shot at recognition through the administrative process."

The OFA 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. It is because Federal recognition is so important that it must be handled with unusual care.

Federal recognition is a formal act, creating a perpetual government-to-government relationship between a tribe and the United States in which the United States acknowledges the sovereign status of a tribe. Federal recognition creates a trustee relationship and fiduciary responsibilities on the part of the United States. It enables tribes to gain access to vital services needed to break the yoke of unemployment, low education levels, substandard housing and poverty, which have historically plagued our people.

Furthermore, Federally recognized tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction and civil jurisdiction within their territory.

H.R. 839, would clear the way for the Lumbee to complete the OFA process and have the merits of the Lumbee petition for acknowledgement considered. A 1989 Interior solicitor's opinion stopped that review process of the Lumbee petition.

If Congress believes that the OFA process is in need of repair, then legislation should be developed to review and strengthen the OFA procedures. In those circumstances where an Indian entity cannot go through the legislative process, such as with the Lumbees, Congress should enact legislation that would allow them to go through the OFA process, not legislation that would circumvent that process.

To the extent the OFA process needs to become more efficient, Congress should ensure the OFA is appropriated the dollars it needs to do its job more efficiently. It is perpetually understaffed and underfunded. Also, Secretary Salazar has publicly commented that he will ensure that the process is reviewed and it works as well as possible.

The relationship that all Federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded Federal acknowledgement without serious technical review. Thus, Congress should take the politics out of Federal acknowledgement and allow the expert agency to do its job.

The USET board of directors urges the House Resources Committee and Congress as a whole to reject H.R. 31.

Niáwen.

[The prepared statement of Mr. Cook follows:]

**Statement of Michael Cook, Executive Director,  
The United South and Eastern Tribes (USET), on H.R. 31**

**USET SUPPORTS H.R. 839, LEGISLATION THAT WOULD ALLOW ALL  
INDIAN GROUPS UNDER THE 1956 LUMBEE ACT TO COMPLETE THE  
FEDERAL ADMINISTRATIVE PROCESS FOR ACKNOWLEDGMENT**

On behalf of the United South and Eastern Tribes, an inter-Tribal organization comprised of 25 federally recognized Tribes located in 12 states from Maine to Texas, we submit this testimony in support of H.R. 839, legislation that would allow all Indian groups that fall under the 1956 Lumbee Act to complete the administrative process at the Office of Federal Acknowledgment (OFA) within the Department of the Interior.

USET opposes the H.R. 31, legislation that would congressionally acknowledge the Lumbees as an Indian tribe without going through the administrative process.

USET strongly supports the administrative process for Indian groups to seek Federal recognition through the Office of Federal Acknowledgment. Due to the complexity of determining whether an entity is deserving of Federal recognition, although Congress has the legislative authority to recognize a tribe, it has appropriately shifted that responsibility to the agency level, where the question can be examined in detail by experts and according to standards that were originally crafted after extensive review and consultation with Tribes by the American Indian Policy Review Commission.

To the extent that the OFA process needs to become more efficient, Congress should ensure the OFA is appropriated the dollars it needs to do its job more efficiently. It is perpetually understaffed and underfunded. Also, Secretary Ken Salazar has committed to reviewing the OFA process to ensure it works as well as possible, so the agency with the expertise on these issues is reviewing the agency for inefficiencies.

**Providing Acknowledgement through the Legislative Process Will Lead to Unfair Results.** Federal legislative acknowledgment of a group gives unfair preferential treatment to that group over all other groups who are in the OFA process and waiting for a determination. In fact, H.R. 31 would congressionally acknowledge the Lumbees as a tribe but would require all other similarly situated groups to go through the OFA process. Moreover, providing federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of determining federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgement without serious technical review. Thus, Congress should take the politics out of federal acknowledgement and allow the expert agency to do its job.

**The OFA, not Congress, Should Determine Whether a Group Should be Federally Acknowledged.** Established in 1978, the OFA has a procedure and framework as well as the expertise for making federal acknowledgement determinations. The OFA process should be used in determining whether the Lumbee or any other group should be federally acknowledged as an Indian tribe. The OFA procedures were the result of a two-year study of the Congressionally-established American Indian Policy Review Commission and the requests of tribes across the country calling for standardized criteria in determining the future relationships of tribes with the United States. The OFA, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it is an Indian tribe that has existed since historical times as a distinct political entity.

**Other Tribes Oppose Congressional Acknowledgment.** USET supports legislation that would allow the Lumbees to complete the administrative process but oppose congressional acknowledgement. In their efforts to achieve federal acknowledgement, the Lumbees have self-identified themselves over time as "the Cherokee Indians of North Carolina," and as "Siouan," "Croatan," and now "Cheraw" Indians. Finally, groups within the Lumbee have opposed this legislation, claiming that the history the Lumbee use to support its federal recognition efforts does not belong to the Lumbee.

USET does not take a position on whether any particular Indian group deserves Federal recognition. However, USET has testified many times in support of Indian groups going through the OFA process, while consistently opposing those same groups going through the legislative process. Keller George, former USET President, testified in '03, "USET does not believe that the Lumbee should get preferential treatment and circumvent the administrative process within the Department of the Interior"; "USET supports, however, legislation that would clear the way for the Lumbee to get a shot at recognition through the administration process."

The OFA 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 assures that the Federal government, through the use of experts in genealogy, history, and anthropology, can reach a determination in a manner that is fully supportable by a well-developed and evaluated record. This is an evaluation that agencies are well-positioned to undertake, but for which the Congress is not equipped.

It is because Federal recognition is so important that it must be handled with unusual care. Federal recognition is a formal act, creating a perpetual government-to-government relationship between a Tribe and the United States, in which the United States acknowledges the sovereign status of a Tribe. Federal recognition also

creates a trustee relationship and fiduciary responsibilities on the part of the United States. Federal recognition enables Tribes to gain access to vital resources needed to break the yoke of unemployment, low education levels, substandard housing, and poverty, which have historically plagued our people. Federal recognition also shields Tribes from undue federal and state encroachments. Furthermore, Federally recognized Tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction and civil jurisdiction within their territory.

H.R. 839, would clear the way for the Lumbee to complete the OFA process and have the merits of the Lumbee petition for acknowledgement considered. A 1989 Interior solicitor's opinion stopped the review process of the Lumbee petition.

If Congress believes that the OFA process is in need of repair, then legislation should be developed to review and strengthen the OFA procedures. In those circumstances where an Indian entity cannot go through the legislative process, such as with the Lumbees, Congress should enact legislation that would allow them to go through the OFA process, not legislation that would circumvent that process.

The USET Board of Directors urges the House Resources Committee and the Congress as a whole to reject HR.31.

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The CHAIRMAN. Thank you.

My first questions are for Chief Adkins and Ms. Rountree. Much has been said here today about documents of Virginia Indians either designating them as Indians or as colored.

Would you please explain this situation where some documents the Department of the Interior has lists tribal members as Indian?

Mr. ADKINS. Mr. Chairman, within all the tribes you can find vital records that show Indian. It is probably easy to find 16 in any given tribe, but there may be 150 or 200 that have the wrong documentation.

Those of us who were fortunate enough to have our records correct lived under a cloud that the vital records gestapo would come at any time and take us to jail, so even though we were able to persevere and have those correct documents, we lived under a cloud.

So, yes, it is true that there are some records that are correct, and I would like to defer to Ms. Locklear because there is a double-edged sword even if you produce that documentation.

Ms. LOCKLEAR. If I may, Mr. Chairman, I think there is a problem that goes beyond just the genealogical issue that the Administration witnesses spoke about earlier.

Even if you can make the link to a historic Indian community for purposes of what they call their Criterion E by birth and death records, the suppression of Indian identity is very problematic for other mandatory criteria in the process.

For example, Criterion A requires that there be since 1900 continuous identification of an Indian entity. The way OFA has interpreted that provision, it requires an outside observer to state every 10 years that there is an Indian entity with regard to that petitioner, and the suppression of evidence that we have heard described today would suggest a serious problem in that regard because of the Plecker effort.

The CHAIRMAN. Dr. Rountree, do you wish to comment?

Ms. ROUNTREE. I just have one little thing. The records cited by the BIA people today all date from 1924 or before. Plecker was only getting cranked up then.

After 1924 it became a blanket situation, and you see throughout Virginia records nothing about Indians, partially because whole

tribes were going elsewhere to get married. They wouldn't get married at home at all.

Mr. ADKINS. Mr. Chairman, when my daughter was born in 1976 at Dunganon, Virginia, my wife and I obviously were there for the admission records. I was leaving the office, and I had been designated white. Now, I looked the same as I do today.

But what folks had said was we have to either designate white or colored, so I guess I was supposed to feel relieved that I was designated white, but I felt badly because I wasn't designated the tribe that really I was. So even in 1976, nine years after 1967, this still occurred.

The CHAIRMAN. Mr. Cook, several tribes who are members of USET have either been restored or recognized by Congress. For instance, Congress restored the Alabama Coushatta and Catawba and recognized the Pequot Eastern Band of Cherokee and the Micmac Indians, to name a few.

But in your testimony you state that Congress is "not equipped" to make these determinations. Was Congress not equipped to restore or recognize those USET member tribes?

Mr. COOK. The intent of the language, Mr. Chair, is not to belittle Congress, but it is intended to put forth a process that is fair and is able to have all sides being aired, to submit their comments and concerns.

The USET board of directors has been consistent in its position of encouraging tribes to go through the Federal process. It is understood that every tribe is different. Every tribe is unique and has special circumstances that at some point the Congress will step in.

The CHAIRMAN. So does USET believe those tribes should have their status rescinded so as to go through the administrative process?

Mr. COOK. Absolutely not.

The CHAIRMAN. Thank you.

Mr. MCINTYRE. I am sorry, Mr. Chairman. I didn't hear his answer. For the record, what was his answer to your question?

The CHAIRMAN. The last question was absolutely not.

Mr. MCINTYRE. OK.

The CHAIRMAN. Let me ask Chairman Goins. Your testimony documents the 120 year effort of the Lumbee people to gain Federal acknowledgement.

Despite the well documented history of the Lumbee, some have questioned the Lumbee as a tribe because of different names the tribe has been known over the years. Can you explain the changes in the tribe's names throughout history?

Mr. GOINS. Mr. Chairman, I am glad you asked me that question because the question we should be asking is why would the State of North Carolina dishonor the Lumbees by imposing these names?

The State of North Carolina forced these names upon our people. It wasn't until the 1953 legislation passed in Raleigh that allowed the Lumbees to vote on their own name. This is where all of these names come from, the Croatan, the Cherokees, these other names. It wasn't the Lumbees. It was the state legislature of Raleigh.

The CHAIRMAN. Thank you. Very interesting.

Chairman Danforth, let me again thank you for the 30 years of service that you have given to our United States.

This, combined with your service as Chairman of the Oneida Tribe of Wisconsin, shows that you have dedicated your life to public service and the good of all Americans, and we do owe you a debt of gratitude.

You state in your testimony that you have known Lumbee Indians and the Lumbee Tribe since 1967. In your involvement and interaction early on and into today, do you see these people as an Indian tribe similar to your own? Are they a distinct community similar to your tribe? Finally, do they have a government that extends political influence over its members similar to your tribe?

Mr. DANFORTH. I think they do in each case you stated there, Mr. Chairman, and I will try to elaborate a little bit on each one. If I could ask you to repeat those just one at a time, please?

The CHAIRMAN. Sure. The first one is in your involvement and interaction early on and continuing to today, do you see these people and Indian tribes similar to your own?

Mr. DANFORTH. Very much so. As I mentioned in my testimony, what I observed there in Robeson County were family plots where this is where the Locklear family lives or this is where the Dials are. They are also separated internal within their community by religion.

You know, as in our case in Oneida our original reservation is set up also in religious sectors where the first Christian party was, the Orchard Party was, and so on and so forth. These are where the families live. You know, you have King Lane and names of families where settlements within our reservation exist. So in that regard it is correct.

Also with regards to the testimony I gave of an observation and how their religious leaders interfaced in other ways within the tribe. Now, in my tribe we have very limited separation between our social, our business and our tribal politics. Even though we try to keep them separate, they are like Gumby. They come right back like in the mix.

I see the same thing occurring in Robeson County. It is not called the same thing perhaps, but it is very similar to what is happening there, and I am probably struggling a bit in my testimony of how to properly describe that.

I made reference to Dr. Deloria's observation that I think was very—you know, I read his whole testimony, but that was a part that really captured my thoughts of how that analogy was.

The CHAIRMAN. Thank you.

The gentleman from Washington, Mr. Hastings?

Mr. HASTINGS. Thank you, Mr. Chairman, and thank all of you for your testimony. As one that has been gone from this Committee for 12 years, I find the testimony and the issue very, very, very, very interesting.

Mr. Goins, I just have one question based on figures of how many members are in the Lumbee Tribe. Can you tell me when and how the tribe's base roll was compiled and how the tribe developed its enrollment criteria?

Mr. GOINS. I am going to try to answer it, and then I would relinquish it to Arlinda.

Our rolls goes back to what we call our base rolls, which is the 1900 Census is what BIA requires and the 1910 Census. We also look at church historical records for our tribal rolls.

Now, the rolls was developed, and I want to say, Arlinda, in the late 1970's?

Ms. LOCKLEAR. Early 1980's.

Mr. GOINS. Early 1980's when we started developing our rolls. We call it the base rolls, but it is the 1900 Census where they actually went in and documented the heads of the households, if they are Indian, whatever. We used that. We used the 1910 Census, and we also used historical church records.

Arlinda?

Mr. HASTINGS. Go ahead.

Ms. LOCKLEAR. That is correct. I would add that there are two membership criteria for the tribe; not only proof of descent from a member on the base roll, but also the maintenance of community relations.

In other words, you need to basically be known by the community. If you have moved away and not maintained community ties, even if you have Lumbee ancestry you are not eligible for membership.

Mr. HASTINGS. OK. Good. Thank you. I yield back.

The CHAIRMAN. The gentlelady from California?

Ms. NAPOLITANO. Thank you, Mr. Chair.

Mr. Cook, what is the oldest case that you know of that has waited as long as the Lumbees or longer?

Mr. COOK. I don't really have an answer for that.

Ms. NAPOLITANO. There may not be one. Is that possible?

Mr. COOK. Certainly.

Ms. NAPOLITANO. That is quite telling. Mr. Goins, there is legislation that would allow the Lumbee Tribe to go through the Federal acknowledgement process, and we know this is time consuming, costly, requires thousands and thousands of pages of documentation.

What would the impact be of this legislation that is going through this acknowledgement process upon the Lumbee people? Who would pay for it?

Mr. GOINS. First of all, we couldn't do it. We just don't have the funds available.

In fact, the money we raised so far has been from plate sales, donations. That is how we come up with money. Basically we couldn't afford it. We just don't have the funds.

Ms. NAPOLITANO. Would that be an impediment then—

Mr. GOINS. Yes, ma'am.

Ms. NAPOLITANO.—for you to be able to go through the process?

Mr. GOINS. Yes. Yes. Yes. In fact, I would like to put on the record our attorney is doing this pro bono. That is nice of her, isn't it? Yes.

But we take a lot of donations. The tribal council, they raise funds. We ask for a lot of volunteers. That would be a big hill for us to climb just to even start the process would be to fund it. You are correct.



Ms. NAPOLITANO. OK. To Mr. Adkins, due to the historical circumstances of the Virginia tribes it would be nearly impossible to meet the criteria of the Federal acknowledgement process.

But do you believe the individual Virginia tribes are currently distinct communities that exert political influence over the tribal members, and can you elaborate on that?

Mr. ADKINS. To answer your question in a word, yes, they are distinct tribal communities. As I have visited each tribe, all these tribes have regular tribal meetings. They have their base rolls established, and they are the governance that permeates the whole community.

When I look at the Chickahominy Tribe, we meet every other month with a full tribal meeting. Our board meets monthly, and we have an annual meeting each year. Our fiscal year ends in June. We have tribal elections every year for four year terms.

That may not represent all the tribes in Virginia, but they have a political structure that is similar, and they do exert governance over their communities.

Ms. NAPOLITANO. When was the last time the Virginia tribes met with the Office of Federal Acknowledgement, and what is the current status of those tribes with FAP?

Mr. ADKINS. I can't recall. It was probably three years ago that I met with Lee Fleming with the Office of Federal Acknowledgement.

I went to talk about our petition process, and a lot of the conversation kept going back to the bill that we had in Congress, which I continually tried to steer back to the petition process because I wanted to equip myself to further that process. So all of us do have petitions in the Office of Federal Acknowledgement that are in varying degrees of completion.

Now, I didn't get the last part of that question.

Ms. NAPOLITANO. Well, what is the current status of those tribes with FAP?

Mr. ADKINS. Then I guess I did answer. They are in various stages of completion.

Ms. NAPOLITANO. OK.

Mr. ADKINS. I think the onerous part of that for us too would be the enormous amount of money that it would take to fund this, which I think is a travesty in itself.

I have often said that were I to work for the Bureau of Indian Affairs and someone walked through the door and said I am here with my first stage of the Federal acknowledgement, I would say that is my career. You know, I will be here 30 years trying to help you out. That is kind of what we see with Bureau of Indian Affairs.

Ms. NAPOLITANO. At the time did they tell you they would handle the actions of Walter Plecker to obliterate the records of Virginia Indians? How did they say it to you, if they did?

Mr. ADKINS. We had several technical review sessions in the basement of our church, and we were advised that there were resources within the Bureau of Indian Affairs to help us do the technical study. I am not sure that those resources are there because I continue to hear that the BIA is strapped for resources to do that kind of work.

I don't know that the Plecker era was specifically addressed. We were advised that there were ways to get around the records that were destroyed in courthouses, but again I don't have a lot of faith in that statement.

Ms. NAPOLITANO. Mr. Chair, it is kind of hard to put a finger on the reasoning why it has been—there are so many reasons on the delay, or at least from what I have read, but thank you for the time, and I thank the witnesses.

The CHAIRMAN. The gentleman from North Carolina, Mr. McIntyre?

Mr. MCINTYRE. Thank you, Mr. Chairman. I am very pleased with the testimony that we have been able to hear and the answers that have been given to the questions and so I want to thank you for allowing me to sit with the panel today and to bring this bill before the Committee.

I want to thank those who have testified for presenting a clear, cogent and convincing case with regard to moving the recognition for the Lumbee Tribe ahead. I know it has been a heart-rending situation to go through these years.

I know indeed that, as I stated earlier in my testimony, that justice delayed is justice denied, and I think the last word, as the Chairman said, that I have said previously is that indeed, Mr. Chairman, it is time for the discrimination to end and the recognition to begin.

God bless you, and thank you for your willingness to do that.

The CHAIRMAN. Thank you, Mike.

Before we conclude, the Chair would just like to note and to highly compliment those members of this panel—and I am not going to mention names; we know who you are—whose tribes may not be rolling in the cash and therefore could not really afford this trip to Washington to testify, yet you took it upon yourselves to raise the money through bake sales, other community fundraising events, and brought yourselves up here that way, as opposed to those you are in opposition to you, but who may have flown their Lear jets into town to speak on the other side. So I just wanted to compliment you for that.

If there are no further questions or comments, the Committee on Natural Resources stands adjourned.

[Whereupon, at 1:40 p.m., the Committee was adjourned.]

