H.R. 898, TO PROVIDE FOR RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA.

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 898, TO PROVIDE FOR THE RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA, AND FOR OTHER PURPOSES.

Thursday, April 1, 2004
U.S. House of Representatives
Committee on Resources
Washington, D.C.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 1324, Longworth House Office Building, Hon. Richard Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo [The Chairman], Jones, Gibbons, Walden, Hayworth, Osborne, Cole, Bishop, Rahall, Kildee, Faleomavaega, Abercrombie, Pallone, Inslee, Tom Udall, and Carson.

The CHAIRMAN. The Committee on Resources will come to order.

The Committee is meeting this morning to hear testimony on H.R. 898, to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

The CHAIRMAN. Normally, any oral opening statements at the hearings are limited to the Chairman and the Ranking Minority Member, but I wanted to recognize Mr. Jones for an opening statement, and I would also like to recognize other Members who care to make an opening statement.

I would stress that, in the interest of time, Members might choose to include their written statements in the hearing record under unanimous consent. This will allow us to hear from our witnesses sooner and help other Members keep to their schedules.

STATEMENT OF HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The purpose of the hearing today is to examine H.R. 898, which provides recognition to the Lumbee Tribe of North Carolina. Deciding whether or not to extend recognition to a tribe through an Act of Congress is a solemn duty and must not be taken lightly. It has ramifications beyond just the affected tribe. It should not be based on emotion or what feels right, but rather, on factual evidence that has been carefully collected, analyzed and judged.

Yesterday this Committee held an oversight hearing into the Federal acknowledgment and recognition process at the Bureau of

Indian Affairs. This process is generally the preferred route for most groups to pursue because Congress does not always have the time and resources to efficiently evaluate the several hundred petitions filed by Indian groups. At the same time, Congress has plenary authority under the Constitution to recognize a tribe. If Congress believes a tribe's petition has merit, or if Congress, for whatever reason, decides it wants to have a government-to-government relationship with that group, it can formally recognize the tribe through enactment of a bill.

Such a bill is before us today. The sponsor of the bill, the gentleman from North Carolina, Mr. McIntyre, has been able to secure more than 230 cosponsors. This is an impressive feat by any standard, and it shows that the tribe has much sympathy in the House. At the same time, the bill has passionate opponents that we will hear from today.

I have chosen to make this a balanced hearing, with witnesses on both sides of the issue. It is hoped that the testimony from both sides will be based on fact and reason.

I think that the Committee hopes to learn two things from this hearing. The first is to what extent the factual evidence supports or fails to support the extension of recognition to the Lumbee. Second is whether or not it's appropriate to recognize the tribe through legislation. Several of our colleagues on this Committee are on either side of this issue. I want this to be a hearing that is a learning experience for the Members and the public, and I look forward to hearing from my colleagues and from our witnesses today.

At this time I would like to recognize the Ranking Member of the Committee, Mr. Rahall.

[The prepared statement of Mr. Pombo follows:]

Statement of The Honorable Richard W. Pombo, Chairman, Committee on Resources

The purpose of today's hearing is to examine H.R. 898, which provides recognition to the Lumbee Tribe of North Carolina.

Deciding whether or not to extend recognition to a tribe through an Act of Congress is a solemn duty and must not be taken lightly. It has ramifications beyond just the affected tribe. It should not be based on emotion or on what "feels right," but rather on factual evidence that has been carefully collected, analyzed, and judged.

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the tribe through legislation. Several of our colleagues on this Committee are either side of this issue.

I want this to be a learning experience for the Members and the public, and I look forward to hearing from my colleagues, and from the witnesses.

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

Mr. RAHALL. Thank you, Mr. Chairman.

You know, Mr. Chairman, I am embarrassed, really, to be here this morning to face the good people of the Lumbee Tribe of North Carolina yet again. When 240 of us voted for Federal recognition during the 102nd Congress, that should have resolved the question of the Lumbee status. When we voted again in favor of similar legislation in the 103rd Congress, that certainly should have meant that the United States had finally taken a stand and done the right thing by acknowledging the trust relationship with the Lumbee Tribe.

But it was not to be. Every time this Indian tribe gets close to its goal of recognition by the Federal Government, there is always one powerful person or a small, self-interest group, ready to knock them down.

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

Before this one is over, we will no doubt have those who say the Lumbee should go through the Federal administrative acknowledgment process. You know what that is. That is the never ending regulatory maze, filled with distorted mirrors, rubber rooms, and trick doors that we took testimony on yesterday.

This, unfortunately, is nothing new to the Lumbee people. They have endured this rejection for over 100 years. Each time it happens, they pick themselves back up, dust themselves off, and start putting one foot in front of the other, working slowly and methodically climbing back up Capitol Hill to educate the next batch of young legislative aides and their Congressmen on the century of injustice that they have endured.

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

It would probably be a lot easier on the Lumbee if they were to disband, move to a more prosperous part of the country, and assimilate into the non-Indian population. But this will not happen, because the Lumbee will not abandon their ancestral lands, nor will they deny their heritage. Instead, they will keep coming back to this Committee, making their eloquent case, and with shoulders squared and dignity intact, they ask once again that the United States acknowledge their existence. We cannot fail the Lumbee Tribe again.

I certainly commend our colleague and my dear friend, Mike McIntyre, for his strong leadership on this issue, for picking up the mantle for the Lumbee people. Mr. McIntyre's bill has 235 cosponsors, including 29 members of the Resources Committee.

Mr. Chairman, the irony of inviting the Lumbee Tribe to come before us and trust us on April Fool's Day was not lost on them. I ask all our colleagues to read the record and learn the history of the Lumbee Tribe. If we do not take this opportunity to end the suffering of the Lumbee people, then we will indeed be the fools.

Thank you, Mr. Chairman.

[Applause.]

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II,
Ranking Democratic Member, Committee on Resources

Mr. Chairman. I am embarrassed to be here this morning and face the good people of the Lumbee Tribe of North Carolina yet again.

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Instead, they keep coming back to this Committee, making their eloquent case, and with shoulders squared and dignity intact, they ask once again that the United States acknowledge their existence. We cannot fail the Lumbee Tribe again.

I want to commend our colleague, Mr. McIntyre for picking up the mantle for the Lumbee people. Mr. McIntyre's bill has 235 cosponsors including 29 Members of the Resources Committee.

Mr. Chairman, the irony of inviting the Lumbee Tribe to come before us and trust us on April Fools Day was not lost on them. I ask all our colleagues to read the record and learn the history of the Lumbee Tribe. If we do not take this opportunity to end the suffering of the Lumbee people, then we will indeed be the fools.

The CHAIRMAN. Thank you.

I would like at this time to recognize my colleague, Mr. Jones.

Mr. JONES. Mr. Chairman, I would first like to ask unanimous consent, since Mr. Rahall made reference to the history of the Lumbee Indians, to have a fact sheet handed out to the members of the Committee.

The CHAIRMAN. Without objection, so ordered.

[The fact sheet submitted for the record by Mr. Jones follows:]

HISTORIC TRIBES AND THE LANGUAGES SPOKEN

CROATANS SPOKE ALGONQUIAN
CHEROKEES SPEAK IROQUOIAN
CHERAWS SPOKE SIOUAN

WHAT IS SIOUAN?

Siouan is the generic language category for many Native American languages, including:

OSAGE
ASSINIBOINE
DAKOTA
LAKOTA
CATAWBA
HIDATSA
CROW
MANDAN
OMAHA-PONCA
BILOXI
QUAPAW
HOCAK

HISTORY OF LUMBEE IN SEEKING FEDERAL LEGISLATION AS DIFFERENT TRIBES AND LINGUISTIC GROUPS

1899	Seek Services as Croatan Tribe (Algonquin)
1910	Seek Name Change to "Cherokee Indians" (Iroquoian)
1911	Seek Funding as "Indians of Robeson County"
1913	Seek Name Change to "Cherokee Indians of Robeson County"
1924	Seek Recognition as "Cherokee Indians of Robeson County"
1933	Seek Recognition as "Cheraw Indians" (Siouan)
1934	Seek Recognition as "Siouan Indians of Lumber River"
1955	Seek Name Change to "Lumbee Indians of North Carolina"
1956	"Lumbee Indians of North Carolina" Act -- No Association with Historical Tribe
1988	Seek Recognition as "Lumbee Tribe of North Carolina"
1989	Seek Recognition as "Lumbee Tribe of North Carolina"
1991	Seek Recognition as "Lumbee Tribe of North Carolina"
1993	Seek Recognition as "Lumbee Tribe of North Carolina"
1995	Seek Recognition as "Lumbee Tribe of North Carolina"
2004	Seek Recognition as "Lumbee Tribe of North Carolina"

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

Mr. JONES. Mr. Chairman, I am opposed to this legislation, H.R. 898. I want to give three reasons, and then I would like to read into the record a statement from Congressman Charles Taylor.

First of all, as Mr. Rahall said, there is a process, and I believe that the process is extremely important because the process helps to identify and clarify the identity of a tribe. We have over 237

groups right now that are waiting to be approved by the Bureau of Indian Affairs. The point is, whether it's the Lumbees or any other tribe, quite frankly, if we start passing private bills to recognize them, then I think we are creating a problem that is going to be uncontrollable, because how can you say yes to one and no to 237?

There is another issue that will be discussed later, and that is the concern of many people in North Carolina about the possibility of having casinos established and set up in and around I-95. That is an issue that will be discussed, I am sure, by one or two of the panelists that will come before us later.

Let me now read a brief letter for the record, a statement from Congressman Charles Taylor. As you know, Congressman Charles Taylor represents the 11th Congressional District. He is holding a hearing as a chairman, like you, Mr. Chairman, today in another committee. This is a very brief statement and I would like to read the letter and then I will conclude my remarks.

"Chairman Pombo: I sincerely appreciate the opportunity to submit a statement to the committee today on H.R. 898. I want to extend a welcome of my own to Chief Hicks of the Eastern Band of Cherokee Indians, and Chairman Jimmy Goins of the Lumbees, who have come to Washington today to testify and to express their views on this legislation. These are distinguished North Carolinians and I appreciate their presence and the input they provide."

"Mr. Chairman, since I served in the Legislature of the State of North Carolina, I have dealt with issues related to acknowledgment of the Lumbees as an Indian tribe. Based on many years of experience, I oppose H.R. 898, legislation that would circumvent the established Federal acknowledgment process at the Department of Interior and congressionally acknowledge the Lumbees as an Indian tribe. I strongly believe that the only equitable way to deal with this issue is to pass legislation that would give the Lumbees a fair shot at Federal acknowledgment through Interior's Office of Federal Acknowledgment."

"That is why I have introduced H.R. 1408, legislation that would clear the way for the Lumbee to do just that. Directly recognizing the Lumbee through congressional action would severely undercut the government-to-government relationship we have with existing federally recognized tribes."

"The issue of Federal acknowledgment of groups seeking to be recognized as Indian tribes often gets caught up in emotion and politics. I believe that Federal acknowledgment decisions should be based upon the merit of each group's claim of tribal identity and nothing else. However well-intended we may be, Congress does not have the tools to make such merit-based determinations of tribal identity. If the administrative process needs fixing, let's fix it, but let's not throw the baby out with the bath water."

"I am concerned that there exists too many serious questions about the tribal identity of the Lumbee, including their ties to the Cheraw Tribe and the generalization Indian Consensus List from which their current membership descends."

"For Congress to directly acknowledge them, as Interior Appropriations Chairman, I am also concerned about the enormous cost

of this legislation that would harm the level of program dollars to existing Federal recognized tribes."

"Mr. Chairman, let's do what's fair to everyone, including federally recognized tribes and other groups seeking Federal recognition and take the politics out of this decision."

With that, Mr. Chairman, I would like to submit this on behalf of Congressman Charles Taylor, and I will yield back the balance of my time.

The CHAIRMAN. Without objection, it will be included in the record.

[The prepared statement of Hon. Charles Taylor follows:]

Statement submitted for the record by The Honorable Charles Taylor, a Representative in Congress from the State of North Carolina

Chairman Pombo, I sincerely appreciate the opportunity to submit a statement to the Committee today on H.R. 898.

I want to extend a welcome of my own to Chief Hicks of the Eastern Band of Cherokee Indians and Chairman Jimmy Goins of the Lumbee who have come to Washington today to testify and to express their views on this legislation. These are distinguished North Carolinians, and I appreciate their presence and the input they provide.

Mr. Chairman, since I served in the Legislature of the State of North Carolina, I have dealt with issues related to acknowledgment of the Lumbee as an Indian tribe. Based on many years of experience, I oppose H.R. 898, legislation that would circumvent the established federal acknowledgment process at the Department of the Interior and Congressionally acknowledge the Lumbee as an Indian tribe. I strongly believe that the only equitable way to deal with this issue is to pass legislation that would give the Lumbee a fair shot at federal acknowledgment through Interior's Office of Federal Acknowledgment. That is why I have introduced H.R. 1408, legislation that would clear the way for the Lumbee to do just that. Directly recognizing the Lumbee through Congressional action would severely undercut the government-to-government relationship we have with existing federally recognized tribes.

The issue of federal acknowledgment of groups seeking to be recognized as Indian tribes often gets caught up in emotion and politics. I believe that federal acknowledgment decisions should be based upon the merit of each group's claim of tribal identity, and nothing else. However well-intentioned we may be, Congress does not have the tools to make such merit-based determinations of tribal identity. If the administrative process needs fixing, let's fix it, but let's not throw the baby out with the bathwater.

I am concerned that there exist too many serious questions about the tribal identity of the Lumbee—including their ties to the Cheraw Tribe and the generalized "Indian" census lists from which their current membership descends—for Congress to directly acknowledge them. As Interior Appropriations Chairman, I am also concerned about the enormous cost of this legislation that would harm the level of program dollars to existing federally recognized tribes.

Mr. Chairman, let's do what's fair to everyone, including federally recognized tribes and other groups seeking federal recognition, and take the politics out of these decisions.

The CHAIRMAN. Any further comments? Mr. Kildee.

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

Mr. KILDEE. Thank you, Mr. Chairman.

First I want to thank you for holding this hearing today. This issue has been around for a very long time, longer than my 28 years here in Congress.

I first want to welcome my friends who have traveled from North Carolina to be with us here today. I want to welcome Chairman Goins and my Lumbee friends, and Chief Hicks and the tribal

members from the Eastern Band of Cherokee, whom I hold in the highest regard.

Chief Hicks, I want to once again congratulate you on the job you did to get the Ravensport tract back into the hands of the Eastern Band. That was a truly bipartisan effort on the part of this Congress.

In my 40 years now of involvement in Indian affairs, I have come to learn that few issues generate such passion and convictions that Federal recognition does. I am sure today will be no different.

Mr. Chairman, about 10 years ago I introduced legislation to restore the Federal recognition of the sovereignty of three tribes in Michigan. One of the most joyful days I experienced was over at the White House in the Oval Office when the President signed that bill. It wasn't granting sovereignty to those three tribes; it was recognizing their retained sovereignty. That's what we are asked to do today.

Today things are more difficult. The question of gaming has come in, and other political considerations have come in. But I started working on this bill when Charlie Rose represented the Lumbees in the Congress of the United States. Now I'm working with Mike McIntyre, who has worked assiduously to gather about 240 signatures on this bill.

What we're trying to do today is bring fairness to a group of Indian people who are seeking Federal recognition for their people. I hope that today's hearing is a meaningful step in accomplishing that very important goal.

I look forward to hearing the testimony, Mr. Chairman.

The CHAIRMAN. Any further comments?

Mr. Faleomavaega.

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Mr. Chairman, first I would like to associate myself with our Senior Ranking Member for his comments and his statement this morning concerning this legislation that is now before us.

As much as I have the highest respect and regard for my good friend from North Carolina—and we don't often disagree on issues before our Committee—but I have to respectfully disagree with the gentleman's view on this, and I hope to elaborate on that very issue.

Mr. Chairman, I would also like to offer my commendation to you and our Ranking Member for your initiative and your leadership in accepting our good friend from North Carolina's efforts. We hold this hearing concerning this very important legislation now before our committee, and I would be remiss if I did not offer my personal welcome to the gentlelady and the Senator from North Carolina who is with us this morning, Senator Dole, and especially my good friend, Mr. McIntyre as the chief sponsor of this legislation.

Mr. Chairman, from the outset I believe it's important to note that the policy of the United States has been terribly inconsistent with regard to the original inhabitants of this great Nation. Our first policy was to do battle with them. General Philip Henry

Sheridan epitomized the prevailing opinion at the time in 1869 when he said, "The only good Indians I ever saw were dead."

Our next policy was that of assimilation. During this period, the United States attempted to make Indians a part of the American mainstream, forcing the Indians to relinquish ties to their culture and their ways of life. Since the 1950s, this country has adopted a policy of termination, then reinstatement, and the current policy of administrative recognition.

Throughout this entire period, the Lumbee have sought Federal recognition. Since at least the mid-18th century, the Lumbee Tribe has resided in North Carolina. The Lumbee Tribe is the largest tribe in North Carolina, the largest tribe east of the Mississippi River, and the ninth largest tribe in our Nation.

In response to congressional requests, the Department of Interior has repeatedly investigated the Lumbee history—in 1912, 1914, and 1933—and concluded that the Lumbees are, in fact, Indians. In addition, in previous Congresses, we have heard testimony from ethnologists who have testified that the Lumbee Tribe descends primarily from the Cheraw Tribe, a tribe whose ancestors encountered Europeans and dates back to 1524.

Mr. Chairman, the State of North Carolina recognized the Lumbees as a tribe since 1885, at which time a separate educational system was created for the Lumbee children. Three years later, the Lumbees continued their fight and petitioned Congress for Federal recognition. Since 1888, Mr. Chairman, unsuccessful in their first attempt, the Lumbees continued their efforts in Congress, petitioning 14 separate times for the following 97 years. Here we sit today for the 15th time. I believe we can all agree that this has gone on long enough.

My good friend and former colleague of our Committee, Mr. Charlie Rose of North Carolina, who at the time represented the area in which most Lumbees live, introduced H.R. 1426 in the 102nd Congress, which passed the House on September 26, 1991. I was an original cosponsor of 1426. It saddens me that we are still fighting to provide the Lumbee Tribe with Federal recognition.

Some of my colleagues have argued that Congress is not the proper venue for the Lumbee Tribe to seek recognition, and that the Bureau of Indian Affairs administrative process, created in 1978, is the proper mechanism by which the Lumbees should petition for recognition. On the contrary, Mr. Chairman, Lumbee Indians have historically been recognized by treaties and by Congress, and only recently by administrative process.

Furthermore, the Lumbee Act of 1956 created a unique circumstance—and this is really what kills me, Mr. Chairman. The Congress passed an Act in 1956 to recognize the Lumbee Indians as a federally recognized tribe, but with a proviso saying, "Oh, but you cannot receive Federal entitlements." But they were fully recognized as an Indian tribe. The only difference here, they were not allowed to be given Federal allotments as to other tribes simply because the excuse was we didn't have enough funds to provide for this tribe.

Congressional recognition in such unusual circumstances is not unprecedented, Mr. Chairman. According to the 2001 GAO report, there are currently 562 federally recognized tribes. Of those, 92

percent of them were recognized in an effort to recognize tribal governments in the 1930s, where part of a group of Alaska tribes was determined to have existing government-to-government relations with the United States.

Mr. Chairman, 47 tribes have been individually recognized since 1960, 16 by Congress and 31 by the Department of Interior. Of the 31 recognized by the Department of Interior, only 14 have been recognized through the BIA regulatory process, the recognition process that was created in 1978. BIA currently has 10 petitions ready to be adjudicated, six of which have been waiting for the last 5 years. Clearly, the BIA administrative process is not only underfunded but undermanned, resulting in cumbersome and unreasonably long waits.

Mr. Chairman, the Supreme Court decision in U.S. versus Sandervol ruled that the only practical limitations on Congress' ability to recognize a tribe are that a group has some ancestors who lived in what is now the United States before discovery by Europeans, and the group can be a people distinct from others. The BIA is clearly not the only way tribes can receive Federal recognition, Mr. Chairman.

I want to emphasize this again, Mr. Chairman. Enough is enough. This tribe has been petitioning this body, this Committee, and this House has twice passed legislation to give this tribe recognition. Today in this Committee we have the opportunity to correct this terrible mistake made since the 1956 Lumbee Act. In recognizing the Lumbees as a tribe, we will acknowledge the tribe as a sovereign entity, establish a government-to-government relationship, and enable the Lumbee to be eligible for Federal Indian programs. And why shouldn't they be? They should be given that.

Mr. Chairman, these people are not asking for handouts. They are not begging for anything. Only to want fairness and equity in this process. I urge my colleagues to pass this legislation.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Faleomavaega follows:]

Statement of The Honorable Eni F.H. Faleomavaega, a Delegate in Congress from American Samoa

Mr. Chairman, Ranking Member:

I want to thank you for allowing me to testify today in support of H.R. 898, a bill to provide for the recognition of the Lumbee tribe of North Carolina.

From the outset, I believe it is important to note that the policy of the United States has been terribly inconsistent with regard to the original inhabitants of this land. Our first policy was to do battle with them. Gen. Phillip Henry Sheridan epitomized the prevailing opinion at the time in 1869 when he said: "The only good Indians I ever saw were dead."

Our next policy was that of assimilation. During this period the United States attempted to make Indians part of mainstream America, forcing the Indians to relinquish ties to their cultures and ways of life. Since the 1950's, this country has adopted the policies of termination, then reinstatement and the current policy of administrative recognition. Throughout this entire period, the Lumbee have sought federal recognition.

Since at least the mid-eighteenth century, the Lumbee tribe has resided in North Carolina. The Lumbee tribe is the largest in North Carolina, the largest tribe east of the Mississippi River and the ninth largest tribe in the nation.

In response to Congressional requests, the Department of Interior has repeatedly investigated the Lumbee history and in 1912, 1914, and 1933 concluded that the Lumbees are, in fact, Indians. In addition, in previous Congresses we have heard testimony from ethnologists who have testified that the Lumbee tribe descends pri-

marily from the Cheraw Tribe, a tribe whose encounters with Europeans dates back to 1524.

The State of North Carolina recognized the Lumbee as a tribe in 1885, at which time a separate education system was created for the Lumbee children. Three years later, the Lumbees continued their fight and petitioned Congress for federal recognition in 1888. Unsuccessful in their first attempt, the Lumbee continued their efforts in Congress, petitioning fourteen separate times over the following 97 years. Here we sit today for the fifteenth time and I believe we can all agree that this has gone on long enough.

My good friend and colleague, Mr. Rose of North Carolina, who at the time represented the area in which most Lumbee live, introduced H.R. 1426 in the 102nd Congress which passed the House on September 26, 1991. I was an original cosponsor of H.R. 1426 and it saddens me that we are still fighting to provide the Lumbee Tribe with federal recognition.

Some of my colleagues have argued that Congress is not the proper venue for the Lumbee tribe to seek recognition and that the BIA administrative process created in 1978 is the proper mechanism by which the Lumbee should petition for recognition. On the contrary, Mr. Chairman, Indian tribes have historically been recognized by treaties and by Congress, and only recently, by administrative process.

Furthermore, the Lumbee Act of 1956 created a unique circumstance resulting in the Lumbee now being prevented from pursuing the administrative process established 32 years later. I believe Congress should bear the responsibility of righting this wrong and should do so in a timely manner by supporting Congressionally enacted recognition.

Congressional recognition in such unusual circumstances is not unprecedented. According to a 2001 GAO report, there are currently 562 federally recognized tribes. Of those, 92 percent of them were recognized in an effort to reorganize tribal governments in the 1930s, or were part of a group of Alaska tribes determined to have existing government to government relations with the United States.

Forty-seven tribes have been individually recognized since 1960, 16 by Congress and 31 by the Department of Interior. Of the 31 recognized by the Department of Interior, only 14 have been recognized through the BIA regulatory process created in 1978. BIA currently has 10 petitions ready to be adjudicated, six of which have been waiting at least 5 years. Clearly, the BIA administrative process is under-funded and under-manned, resulting in a cumbersome and unreasonably long waits.

In addition, in U.S. v. Sandoval, 23 U.S. 28 (1913),the Supreme Court ruled that the only practical limitations on Congress' ability to recognize a tribe are that (1) the group have some ancestors who lived in what is now the United States before discovery by Europeans and (2) the group be a "people distinct from others." The BIA is clearly not the only way tribes can receive federal recognition.

In the Lumbee Act of 1956, the Lumbee were recognized as Indian and simultaneously were prohibited from receiving any benefits or services from the federal government. In a memorandum from the Associate Solicitor dated October 23, 1989, it was determined that the Lumbee Act of 1956 "is legislation terminating or forbidding the Federal relationship" and, as a result, BIA is precluded from considering the Lumbee application for recognition. As the BIA administrative process has not been available to the Lumbee, Congressional recognition is not only a reasonable way, but also the most just way to expeditiously give to the Lumbee tribe the recognition they deserve.

Today, in this committee, we have the opportunity to correct the terrible mistake made in the 1956 Lumbee Act. In recognizing the Lumbee as a tribe we will acknowledge the tribe as a sovereign entity, establish a government to government relationship, and enable the Lumbee to be eligible for federal Indian programs which will provide needed funding in areas such as education, health, and housing. Ultimately our goal has been and should continue to be to support the self determination and self reliance of all native peoples in the United States, and the Lumbee have waited long enough.

I urge my colleagues to support this bill and again I thank the Chairman and Ranking Member for holding a hearing on H.R. 898, a bill to provide for the recognition of the Lumbee tribe of North Carolina.

The CHAIRMAN. Any further comments?

Mr. Pallone.

STATEMENT OF HON. FRANK PALLONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. I will be brief.

In fact, I voted for the similar legislation I guess when it passed back about 10 years ago or so. But I did not cosponsor Congressman McIntyre's bill, only because I did want to see, to have a hearing and basically hear from both sides about this issue. So I don't have any preconceived notion about whether we should pass the bill or not. I would really like to hear from all the testimony today.

I also wanted to mention that I think the issue does relate directly to the hearing that we had yesterday in terms of the Federal recognition process. Normally, I would expect tribes to go through the BIA process, and as I mentioned yesterday, Mr. Chairman, I think we have to do everything to make that process fairer, particularly by providing funding to the tribes when they go through the process.

However, I think we also have to recognize that there are times when that process has to be bypassed and legislation has to be used, primarily because of the actions of the Federal Government. I remember when some of the Virginia tribes testified last year that the Federal Government and the States have purposely tried to make it difficult for them to prove their continued existence, so sometimes we don't have clean hands, so we can't expect tribes to meet the BIA test because of actions that have been taken by the Federal or State government.

I am particularly concerned today because of this legislation that was mentioned by the previous speaker, Mr. Faleomavaega, that makes it impossible for the Lumbees to go through the BIA process. I understand there is other legislation that would remove or repeal that earlier legislation that was passed, and then make it possible for them to go through the BIA process once again.

But I would like to know from the Lumbee representatives today how they feel about that route. In other words, whether or not they feel that, if the previous legislation was repealed and they could go through the BIA process, what that would mean, whether that would be fair, given that it's so many years now that they haven't been able to.

I think this is a difficult question, but I think we have to acknowledge that sometimes the Federal Government makes a mistake and does things wrongly. If the tribe can show that they have basically been denied the possibility of recognition because of Federal actions, then that is certainly something that should be considered in our decision on whether to move this legislation.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Udall.

STATEMENT OF HON. TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. TOM UDALL. Thank you, Mr. Chairman. I see we have a full hall, so I am also going to be very brief.

I think my colleagues up here on the Democratic side have clearly made a very strong case for congressional recognition, and I look forward to hearing today from our colleagues, Congressman McIn-

tyre and Congressman Burr, and also Senator Dole. So thank you, Mr. Chairman.

The CHAIRMAN. Any further comments. Seeing none, I would like to welcome our first panel, the sponsor of the legislation, Congressman McIntyre, and also we have a guest from the other body, Senator Elizabeth Dole of North Carolina, if you could join us at the witness table.

Mr. RAHALL. Mr. Chairman, while they are taking their seats, may I take a quick moment to commend the gentlelady from North Carolina, Senator Dole, for her efforts on behalf of our coal miners.

We had a hearing at the beginning of this week, and the Commission you established while Secretary of Labor under President Reagan was mentioned quite often. They appreciate very much the Federal commitment you have continued to help shore up the solvency of their Combined Benefit Fund, which delivers health and retirement benefits to their retirees. So on their behalf, I say thank you.

I would like to also mention another former colleague of ours, Mr. Chairman, who is in the audience, a former member of this Committee, Dawson Mathis from Georgia. He represented south Georgia between 1971 and 1981, and I'm sure he voted for the Lumbee recognition bills during his tenure as well. Thank you.

The CHAIRMAN. I would like at this time to remind all of today's witnesses that, under committee rules, oral testimony is limited to 5 minutes, but your entire written testimony will appear in the record as submitted.

Senator Dole, I understand that you are under a time constraint and that you and Congressman McIntyre have worked this out, so I guess we're going to begin with you.

Welcome to the Committee.

STATEMENT OF HON. ELIZABETH DOLE, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator DOLE. Thank you very much, Mr. Chairman, for holding this important hearing today. I sincerely want to thank both you and the Committee for allowing me to testify.

There are many here in this room who are champions for the Lumbee. Ranking Member Congressman Rahall, you are among them, and I thank you. Congressman Faleomavaega, you testified on the Senate side and it's good to be with you again, and Congressman Kildee. Also, I want to recognize the other two members of this panel, of course, my good friend, Congressman McIntyre, who came over to the Senate and testified with me earlier, and has worked tirelessly on Lumbee recognition for many years. And Congressman Burr, who will testify later, shows a real commitment to serving all the people of North Carolina.

Most importantly, I want to recognize and publicly thank the members of the Lumbee Tribe who traveled here from North Carolina. Once again, I am in awe of their steadfast determination and commitment to recognition. And it's contagious. It is my privilege to join them in their passionate pursuit for fair acknowledgment from the Federal Government.

A terrible injustice has been done to the Lumbee Indians. Full Federal recognition for this tribe has been unfairly denied for over

a century. Given that this was the subject of the first legislation that I submitted as a Senator, I am committed to achieving the goal of recognition. I have great respect for the Lumbee people, a tribe of great pride even after decades of disappointments. Spending time with them on so many different occasions has invigorated me in my effort to end this injustice.

Formally recognized by the State of North Carolina in 1885, the tribe began a quest for Federal recognition just 3 years later. Mr. Chairman, this means they have been looking for Federal recognition for over 116 years—full recognition. Time and time again, in 1913, 1914, and 1933, studies at the U.S. Department of Interior have determined that the Lumbee are, indeed, an Indian tribe, descended from the historic Cheraw Indians.

After years of stalled legislation, finally in 1956 Congress passed the Lumbee bill, which recognized the tribe. Unfortunately, there was a caveat, as we have heard, and the tribe belatedly learned they were denied the benefits and privileges that every other federally recognized tribe enjoys.

Mr. Chairman, that caveat is what brings us here today. This discrimination must end. The Lumbees deserve full recognition for their tribe, not a partial nod that ignores the history and the efforts of so many ancestors.

I introduced S. 420 as my first bill in the U.S. Senate, with one word in mind: fairness. Final passage of this legislation will allow the tribe to receive long overdue assistance in areas like education, health care, and economic development funding.

I know there are those who have argued, and will do so again today, that the Lumbees should go through the BIA for Federal recognition, but that process is reserved for tribes whose legitimacy must be established. There is no need for that in the case of the Lumbee. Time and again, the legitimacy of the tribe has been established.

Yesterday this Committee heard testimony about the BIA recognition process, a process which appears to be fundamentally flawed. Both this Committee and your counterparts in the Senate have been seeking a better way. To force the Lumbee into that system would not only be unfair, but, in my view, unconscionable.

According to a 2001 GAO report, it can take up to 15 years to resolve completed petitions for recognition—15 years. The Lumbees have already waited far too long. It's wrong to impose yet another lengthy delay on this tribe. It's been 116 years, Mr. Chairman. Let's not make them wait another 15.

Let us do the fair thing, the right thing, to resolve this injustice. The Lumbee Tribe, with 53,000 members, is the largest tribe east of the Mississippi, and the largest nonfederally recognized tribe in America. The Lumbees have contributed so much, not just to North Carolina's heritage, but to our entire Nation. There is no better way to say it: They deserve full recognition, and they deserve it now.

Mr. Chairman and members of the Committee, I appreciate your attention to this critical issue for North Carolina and the Lumbee people. I pray this is the year when we will truly see a resolution of this very important matter.

Mr. Chairman, as you know, I must ask to be excused now to attend a hearing on the Senate side. But I very much appreciate the privilege of expressing my passion for this cause, and I thank you for the opportunity.

[The prepared statement of Senator Dole follows:]

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

Thank you, Mr. Chairman, for holding this important hearing today. I sincerely want to thank both you and the Committee for allowing me to testify.

There are many here in this room who are champions for the Lumbee—Ranking Member Congressman Rahall—you are among them—and I thank you.

Also, I want to recognize the other two members of this panel. Congressman McIntyre has worked tirelessly on Lumbee Recognition. And Congressman Burr, who will testify later, continues to show a real commitment to serving all the people of North Carolina.

Most importantly, I want to recognize and publicly thank the members of the Lumbee Tribe, who traveled here from North Carolina. Once again, I am in awe of their steadfast determination and commitment to recognition. And it's contagious! It is my privilege to join you in your passionate pursuit for fair acknowledgment from the Federal Government.

A terrible injustice that has been done to the Lumbee Indians-full federal recognition for this Tribe has been unfairly denied for over a century.

Given that this was the subject of the first legislation I submitted as a Senator, I am committed to achieving the goal of recognition. I have great respect for the Lumbee people, a tribe of great pride even after decades of disappointments. Spending time with them—on so many different occasions—has invigorated me in my effort to end this injustice.

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Time and time again—in 1913, 1914 and yet again in 1933—studies at the U.S. Department of Interior have determined that the Lumbee are indeed an Indian Tribe, descended from the historic Cheraw Indians.

After years of stalled legislation, finally, in 1956, Congress passed the Lumbee Bill which recognized the Tribe.

Unfortunately—there was a caveat—and the Tribe belatedly learned they were denied the benefits and privileges that every other federally recognized Tribe enjoys. Mr. Chairman, that caveat is what brings us here today.

This discrimination must end. The Lumbees deserve full recognition for their Tribe—not a partial nod that ignores the history and the efforts of so many ancestors.

I introduced S. 420 as my first bill in the United States Senate with one word in mind: fairness. Final passage of this legislation will allow the Tribe to receive long overdue assistance in areas like education, health care and economic development funding.

I know there are those who have argued—and will do so again today—that the Lumbees should go through the Bureau of Indian Affairs for federal recognition. But that process is reserved for Tribes whose legitimacy must be established. There is no need for that in the case of the Lumbee. Time and again, the legitimacy of the Tribe has been established.

Yesterday this Committee heard testimony about the BIA recognition process, a process which appears to be fundamentally flawed. Both this committee and your counterparts in the Senate have been seeking a better way. To force the Lumbee into that system would not only be unfair but unconscionable!

According to a 2001 GAO report, it can take up to 15 years to resolve completed petitions for recognition. 15 years! The Lumbees have already waited far too long. It is wrong to impose yet another lengthy delay on this Tribe. It's been 116 years, Mr. Chairman—let's not make them wait another 15!

Let us do the fair thing, the right thing, to resolve this injustice. The Lumbee Tribe, with 53,000 members, is the largest Tribe east of the Mississippi and the largest non-federally recognized Tribe in America. And the Lumbees have contributed so much, not just to North Carolina's heritage, but to our entire nation.

There is no better way to say it: They deserve full recognition... and they deserve it now!

Mr. Chairman, I appreciate your attention to this critical issue for North Carolina and the Lumbee people. I pray this is the year when we will truly see a resolution of this very important matter. Mr. Chairman, as you know, I must asked to be excused now to attend a Senate hearing, but I thank you again for the privilege of expressing my passion for this cause.

The CHAIRMAN. I want to thank you, Senator. It was nice to have you with us today.

Congressman McIntyre.

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

Mr. MCINTYRE. Thank you, Mr. Chairman. As Senator Dole is departing, I do want to thank her again for her time to come over to this side of the Hill and be with us on this extremely important issue, and for all of her work.

Mr. Chairman and Members and the Committee, thank you for the opportunity to testify before you today regarding Federal recognition for the Lumbee Indians. A special thanks to Chairman Pombo for his patience and willingness to work with me on this issue, and to Mr. Rahall, Mr. Kildee and Mr. Faleomavaega for their comments this morning and their long-standing commitment and support over the years for the Lumbee Indians.

In the late 1500s, when English ships landed on the shores of Roanoke Island on the North Carolina coast, the Englishmen discovered Native Americans in North Carolina. Included among these 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 to gain 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, 115 of the last 227 years, the Lumbee Indians have been seeking the respect they deserve in their efforts of recognition. As the largest tribe east of the Mississippi and the largest nonrecognized tribe in America, it is unfathomable that this tribe of 53,000 people has never been fully recognized by our Government. Indeed, the time for Lumbee recognition has come.

Mr. Chairman and Committee Members, I was born and reared and live in Robeson County, N.C., the primary home of the Lumbee people. I go home almost every weekend and have the high honor of representing approximately 40,000 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.

With the Chairman's permission, since many of them got up in the middle of the night to travel up here, and many in the overflow room and many in the hall standing this morning, I would like them to stand, just to be recognized for their distance and commitment to travel here.

Would you please stand, if you're with the Lumbee Tribe. Thank you very much. I appreciate your being here. My applause to you.

[Applause.]

The Lumbees are important to the success of everyday life in southeastern North Carolina. Their contributions to our society are

endless. From medicine and law, to business and banking, from the farms and factories to the schools and churches, from government, military and community service, entertainment and athletic accomplishments, the Lumbees have made tremendous contributions to our county, our State, and yes, our Nation.

In fact, in my home county, the sheriff, the clerk of court, the registrar of deeds, the chairman of the county commissioners and other county commissioners, the representative in the State Legislature of the area where I live, who is with us today, Representative Ron Sutton, 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 House through their support of H.R. 898, the legislation before you today. I am pleased to report to the Resources Committee that with the 234 Members of the U.S. House who have cosponsored this Lumbee recognition bill, including 29 of the 52 members of the Resources Committee, we feel that, indeed, time for recognition has come. Their contributions have been recognized in both the public and private sector.

I would just say to my colleagues, when the idea of going through the standard process, so to speak, comes up, we are in a unique situation that Congress created and Congress needs to correct. It was the Congressional Act of 1956 concerning the Lumbees that recognized them as Indians in name only. It gave them no other Federal benefits. A similar situation happened to the Tiwa Tribe in Texas in 1968. They were not allowed any benefits. Congress recognized there was a problem and Congress corrected the problem in 1978.

The Solicitor General of the United States, in 1989, has given an advisory opinion that the Lumbees are ineligible for the process, so there is no way they can go through the process without congressional action. As far as the argument about the process goes, indeed, as was pointed out by one of my colleagues earlier, the process has not always been the way to recognize tribes. In fact, only 16 out of the 561 tribes in America were recognized by this process. In fact, since the current process was implemented in 1978, 16 were recognized by the process, and 20 by special legislation in Congress. In other words, a majority have been recognized by special legislation. So this is not something new or something that would set an unusual precedent. In fact, we have a precedent with the Tiwas of Texas and the Solicitor General's opinion, that the only way to correct this is through congressional legislation to recognize this tribe.

In conclusion, Mr. Chairman, let me say that it's time for the U.S. Congress not to delay any more. Justice delayed is justice denied. For too many years, there have been too many delays. As you will hear from the third panel in just a few moments, which will include their tribal attorney, the chairman of the tribe, and also a noted anthropologist, you will see that the evidence is clear, cogent, and convincing. It is time to say yes to dignity and decency, to fundamental fairness, to respect, to honor. Indeed, it's time to say yes to Federal recognition. It is, indeed, time for discrimination to end and recognition to begin.

I thank you for this opportunity to testify. I look forward to working with the Committee and this time for long overdue rec-

ognition. I pray, may God grant that justice will finally be done. With your help, I am confident it will.

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

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify before you today regarding federal recognition for the Lumbee Indians. A special thanks to Chairman Pombo for his patience and willingness to work with me on this critical issue, and to Mr. Rahall for his long-standing commitment and support to the Lumbee Indians.

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, 115 of the 227 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. Mr. Chairman, the time for Lumbee recognition has come!

I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home there every weekend, and I have the high honor of representing approximately 40,000 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 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 sheriff, the clerk of court, the register of deeds, the county commissioners chairman, 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. 898, legislation that I have introduced to grant the Lumbees federal recognition. I am pleased to report to the Resources Committee, that 234 members of the U.S. House have co-sponsored Lumbee recognition including 29 out of the 52 Members of the Resources Committee!

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! 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!

The CHAIRMAN. Are there any questions of Mr. McIntyre? Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I just want to commend the gentleman from North Carolina for his most eloquent statement. It was cogent, right to the point, and the facts of the issues relevant to the proposed legislation. I sincerely hope that our colleagues on

the Committee will give him his due. I think he's made a very, very cogent argument as far as giving recognition to this tribe.

Thank you, Mr. Chairman.

Mr. MCINTYRE. Thank you, sir.

The CHAIRMAN. Mr. Kildee.

Mr. KILDEE. Just briefly. The 1956 Act is rather bizarre.

Mr. MCINTYRE. It is.

Mr. KILDEE. It would seem that on the one hand they were patting the Lumbees on the back and at the same time kicking them in the shins.

Mr. MCINTYRE. Yes, sir.

Mr. KILDEE. How did such a monstrosity come about?

Mr. MCINTYRE. Well, in fact, I appreciate your pointing that out. There were celebrations in the street in the town of Pembrooke, where many of the Lumbees reside, after that 1956 Act, only to learn later that, indeed, the wool had been pulled over their eyes, as we say. It was only a recognition in name, which is probably the ultimate insult, because we say yes, we'll pat you on the back, and then we will, as you say, kick you in the shins.

Congress realized that once that had happened to another tribe, as I said the Tiwas of Texas, there was no way to correct it except by congressional legislation. What Congress did, Congress needed to undo. Or in this situation, what Congress did we need to correct and redo. Just as that was done for the Tiwas, the Lumbees are the only tribe in America, ladies and gentlemen, that are in this situation. The only tribe that now exists that is under an Act of Congress, that was recognized in name only, and has not been given the chance to receive the full recognition of being recognized by the Federal Government. This is simply the time to correct that.

Mr. KILDEE. Thank you.

Thank you, Mr. Chairman.

Mr. MCINTYRE. Thank you, Mr. Kildee.

The CHAIRMAN. Mr. Jones.

Mr. JONES. Yes, sir.

Congressman McIntyre, even though I might be in opposition to your bill, I do want to give you credit, and those that you represent in Robeson County need to fully understand how hard you have worked to get to this point.

Mr. MCINTYRE. Thank you, sir.

Mr. JONES. Also to those from Robeson County, many times Members of Congress work two, three and 4 years to even get a hearing. A hearing is a great step and Mr. McIntyre deserves a lot of credit for that.

Mr. McIntyre, my concern truthfully is bypassing the process. You have made some excellent points. You have done your research and you have done your study. You know exactly what you're saying. Let me ask you a couple of questions.

First, if the process was such that after all the information, the seven requirements, were turned in to the BIA, and in 18 months a decision was made, would that somewhat help this issue, in your opinion? If there could be a resolution in 18 months.

Mr. MCINTYRE. Thank you for your comments and your words, Congressman Jones.

Certainly, with all due respect, they have waited since 1888. I would hate to put a time limit short or long, because I believe the time is now. I would like to see the Congress act this year.

With the 234 cosponsors we have, and with this being the last year of a 2-year session, as you know, I see no reason why we delay them further. They've waited since 1888. They have gone through the BIA and have been delayed and avoided. Then the Solicitor General, as I said, has given an opinion that they can't correct this situation without congressional action. Being the only tribe in America in this situation, it could and it should—Congress ought to correct what it did in 1956.

Mr. JONES. Let me ask you, if this recognition should take place, would you want to see casinos in and around Robeson County?

Mr. MCINTYRE. That decision is entirely a separate decision that would be up to the Tribal Council and the tribe to decide, even if they get recognition. I believe that that issue, which is entirely separate, would be a separate issue that would have to go through, as you may know, or as some of you may not know, a four step process that would require the tribe to fulfill before it would even consider that:

First, according to its Tribal Constitution; second, the Secretary of Interior would have to have a determination that it was in the best interests of the tribe; third, the Secretary of Interior would have to determine it's in the best interests of the community, the surrounding community; and fourth, then the Governor would have to consent.

According to current law involving gaming, the Indian Gaming Regulatory Act, or IGRA, as some call it by its acronym, 12 tribes have attempted to do that and only three have succeeded in going through that entire process. So this is not any kind of rubber stamp about gambling or any of that. This is about recognition of the tribe. That is a completely separate issue, a fourfold process that they would have to deal with, if it were to come up.

I can tell you—and I will let the Lumbees speak for themselves, and their attorney who will be able to talk with you further about the legal aspects—but within the Lumbee community, they would have to accept this and vote on this pursuant to a referendum under their own Constitution. There is not a decision that's been made on that. Their desire is for the human dignity of recognition.

Mr. JONES. Just to pursue that a little bit further—and then I will close, Mr. Chairman—if they pursued that process to be allowed to have gaming, would you, as their Congressman, rather for them not to pursue it if this recognition comes forward?

Mr. MCINTYRE. I believe in the sovereignty of the tribe and that the red man is tired of the white man telling him what he can do.

Mr. JONES. All right.

Mr. MCINTYRE. And I believe that our country has an unfortunate history in that regard. I believe and I respect our Indian elders, many of whom are here today, and the Indian church leaders, many of whom are very concerned about that issue and who I know will be involved in that debate. In fact, some of the most active Indian leaders in our State are Lumbee Indians. In fact, for two terms in a row of the State Baptist Convention, the Reverend Mike Cummings from our area of North Carolina, a Lumbee Indian, was

the leader, both in his own denomination and including other races. So there will be a healthy discussion on that issue.

But let me say something, Congressman. Under this process, if that issue were to be considered, which is not part of this bill at all, but if it were at a later time, I have already described the one avenue would be the four-step process.

If we go through the process that you have outlined in Representative Taylor's bill today, there would be three avenues to try to obtain gambling, because under the BIA, there are three different ways to go about getting it. So there are actually more opportunities for that under Representative Taylor's bill than under what you've brought up today.

The Lumbees have voluntarily limited themselves to only one avenue, and it's a fourfold process. It's an entirely separate issue.

Let me say this. The issue of casino gambling was not an issue in 1888, and it wasn't an issue during the prior over 100 years. That issue did not even come up until very, very recent history involving any Indian tribes. So to use that as an excuse not to give this tribe recognition today is to stop them from what they've long been overdue with regard to human dignity.

Mr. JONES. Well, let me close on this, Mr. Chairman.

Again, I am saying that I believe sincerely that the process can be improved and the process should work, for a number of reasons. Mr. McIntyre, I do have great respect for you and I do hope you are correct that if recognition should move forward, this would not be an issue. But I believe and hope it would not, for the simple reason that the Lumbees, who deserve this recognition, but I think, though, it should go through the process. The process should be fixed.

But I will tell you that, 10 years down the road, if there should be an effort to have approval for some type of gambling on I-95, it would create a problem in our State that I think would be almost uncontrollable.

Thank you.

Mr. MCINTYRE. If I may respond, Mr. Chairman, I just want to clarify that this bill, H.R. 898, says absolutely nothing about gaming in and of itself. It does not allow gaming.

Mr. JONES. I understand that.

Mr. MCINTYRE. That is an entirely separate process.

Mr. JONES. I understand that.

Mr. MCINTYRE. And there is a four-step process, as I described earlier.

The CHAIRMAN. Mr. Pallone.

Mr. PALLONE. I wanted to ask a question, but let me just say that I don't think the issue of gambling should play any role in the decision on whether there's recognition, nor should I—

Mr. MCINTYRE. Thank you.

Mr. PALLONE.—nor should I think the other issue that has come up, which is the fact that this is a large tribe that would inevitably result in major Federal funding for services be an issue. That should not in any way be the basis for recognition.

I wanted to ask you one question that goes back to what Mr. Jones said. If you were to follow this process where they repealed, I guess, the '56 law, and there was the possibility of going through

the BIA recognition route, do you oppose that simply because you don't think it's fair in the sense that they've been waiting so long, and they haven't been allowed to do that in the past, or is it just a question of fairness that you oppose that, or is there some legal reason?

In other words, in my opening I made the point that I think it's sometimes necessary for us to pass legislation recognizing a tribe if the Federal Government has made it difficult or somehow intentionally made the traditional process impossible. Would there be any hindrance if they had to go through the BIA and they were allowed to by the Taylor legislation, or is it just a question of the fairness of it that would make you oppose that?

Mr. MCINTYRE. It is both. First of all, it's fundamentally unfair to treat this tribe differently than any other tribe in America, when it has already been treated differently by being put in this unique situation, as earlier explained. But second, legally, there is no precedent to do that, to say all right, now we're going to make you eligible by Congressional Act, and now go back through the process, which is again putting the double whammy on the tribe. Congress in all other cases has gone on and owned up to its decision to say yes, we will recognize you, or a tribe may have gone separately through a process.

This tribe is ineligible to go separately through the process, as I have already explained by the Solicitor General's opinion of 1989. There is a precedent of how that was dealt with, with the Tiwa Indians that I described earlier. Congress has no precedent and has never made a tribe go back to the process when deciding on the issue of Federal recognition.

As mentioned earlier, only 16 tribes out of 561 have had to go through that process that's currently in effect. Even the majority of tribes that have been recognized since that process was put into place have been done by congressional recognition. So why would we, once again, put the Lumbees in another unique legal situation that no tribe has ever been put in before, rather than straight-up dealing with recognition, saying OK, we're going to now pass legislation and now we're going to make you go back through yet another process again.

We need to own up to our responsibility. They have already been put in a unique situation, and there is legal precedent to properly deal with the situation, as was done with the Tiwas of Texas.

Mr. FALEOMAVAEGA. Would the gentleman yield?

Mr. PALLONE. I yield to you, certainly.

Mr. FALEOMAVAEGA. I'm sorry that our good friend from North Carolina is not here, but I just wanted to share with him my own personal experience. We have held hearings years ago on this very issue.

On the question of recognition, I think we also need to recognize to the members of the Committee that this is not a congressionally mandated process. It was a process that was created by the bureaucracy in the Department of Interior. In fact, we even had the gentleman who wrote the regulations on the seven points that the tribe needs to be recognized on, and even the gentleman confessed that if he was to go through the process, even he wouldn't ever be

able to be recognized as a tribe. So this is how terrible the process has been.

We have had to put the poor tribes under a tremendous financial burden. They have had to hire anthropologists, archaeologists. We had even a member of the Lumbee Tribe testify as to the most inhumane way to figure out the kind of teeth that he had to determine whether or not he was an American Indian. It's so incredulous. But this is the kind of process that these tribes have been subjected to all these years.

I would say to the gentleman that the process, in layman's terms, sucks. It just simply is so inhumane and impractical and it does not really give fairness. The Lumbee Tribe has tried the process.

Now, if you're a tribe and you don't have $500,000 in your pocket to pay for these so-called experts, you're out of it. You can't even begin the process of recognition, if you're financially unable to provide for all these experts.

Then the question comes to mind, where do you get these experts? The Department of Interior chooses these so-called experts, the anthropologists and archaeologists. I will say, Mr. Chairman, if I catch another anthropologist coming to my islands, I'm going to shoot him, because they give contradictory statements even among themselves as to who the real experts are when determining what an Indian is.

So I say to my good friend from New Jersey, yes, the process is there, but it simply is impractical and does not work.

Thank you.

Mr. MCINTYRE. If I may respond, Mr. Chairman, just briefly, the studies have been done. They have gone through everything they need to do to prove they're a tribe. To send them back through another process, to spend time, money and resources that would involve Federal Government time, money and resources, as well as travel time and resources, is patently unfair. It has never been done by Congress to any other tribe, and I think it would be a terrible new precedent to make this tribe go back through a process that you'll hear testimony today regarding them being a tribe—and Congress acknowledged they were a tribe of Indians in '56; it was just a question of the name—that now we come to this point today.

With that, I believe you will be impressed by the testimony of the third panel, which will explain that. I appreciate your asking the question, Mr. Pallone, and your response, too, Mr. Faleomavaega.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. MCINTYRE. I believe I have been joined by my colleague who was to testify.

The CHAIRMAN. I don't know if I'm going to let him testify.

[Laughter.]

Mr. RAHALL. Mr. Chairman, before you make that decision, may I ask that you see that both of our colleagues, Mr. McIntyre and Mr. Burr, as I believe they desire to do, be allowed to sit on this panel following their testimony for the remainder of today's hearing.

The CHAIRMAN. Do I hear any objection? Anybody? Without objection.

Mr. MCINTYRE. Thank you very much.

Mr. CARSON. Chairman Pombo, if I could also ask unanimous consent to submit my statement for the record. I was sadly not here during the time for opening statements and I would like to enter one for the record that expresses my concern about the legitimacy of the process, as well as recognizing the legitimate aspirations of the Lumbee Tribe. So if I could have unanimous consent to do that, I would appreciate it.

The CHAIRMAN. Without objection.

[NOTE: Mr. Carson's prepared statement was not available.]

The CHAIRMAN. Well, Congressman Burr. Welcome.

STATEMENT OF HON. RICHARD BURR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BURR. Mr. Chairman, thank you. I thank the Ranking Member as well, not only for the courtesy of allowing me to come to testify, but the unanimous consent to let us sit on the panel. Given what I have just flown through to get here in this storm, I'm glad to be on the ground and I'll sit anywhere I can find right now.

[Laughter.]

Mr. Chairman, it is indeed an honor to be allowed to come in here. I want to take this opportunity to first highlight the work of Senator Dole and of Congressman McIntyre.

Upon taking office last January, Senator Dole made it her first legislative priority, that the issue of Lumbee recognition be resolved. Her determination and hard work have paid off as her companion bill has been reported out of the Indian Affairs Committee and now awaits consideration by the U.S. Senate.

I don't think this issue, though, would have been receiving the attention that it currently is today if it were not for the work of the guy to my right, Mike McIntyre. Robeson County is his home county. Mike's work behind the scenes, both in North Carolina and here in Washington, his passion for the issue, have been crucial in the momentum this bill gained in the House of Representatives. I can say that it has been a pleasure to work with both of them and to be here with them today in support of this important issue.

Mr. Chairman, the Lumbees have been part of eastern North Carolina history for centuries. They have served their community as farmers, doctors, lawyers, small business owners and bankers. They have served their county as sheriffs and clerk of courts. They have served as State legislators and judges. Some have protected all of us in their service to our national armed forces.

It is long past time that the Lumbee Tribe receive the recognition they deserve. The Lumbees have been seeking this recognition since the 1880s. The issue has been studied by the Interior Department since 1913. It has been debated in Congress since at least 1956, if not earlier.

As a cosponsor of both pieces of legislation that would move the Lumbees toward full recognition, I feel that the question is not so much whether they should be recognized but how the Federal Government goes about granting this recognition. This is a decision that this Committee, and upon the recommendation of this Committee, the full House will, in fact, make.

There are those who will argue today that the tribe should go through the Bureau of Indian Affairs process for Federal recogni-

tion. The tribe is currently prohibited from utilizing the petition process. Our colleague from Asheville, Charles Taylor, has introduced legislation that would remove this barrier and allow the Lumbees to submit a petition to the Bureau of Indian Affairs.

While that argument does have merit, let me point out two things that I hope you will keep in mind during this hearing today.

One, the Bureau's process is reserved for tribes for whom legitimacy must be established. The legitimacy of the Lumbees dates back to the late 1800s and has been reaffirmed many times over in the 100-plus years since by our State government, the Federal Government, and by leaders in the field of anthropology who have studied Native American tribes.

The Bureau's process itself is flawed. You will hear a lot today about a 2001 GAO report on the recognition process. Let me sum up for you what I found to be the most glaring problem identified by that report.

According to the GAO, the length of time to resolve the completed petition process may take up to 15 years, assuming that the Lumbee petition would be moved to the front of the line. Is it fair to make a tribe, whose legitimacy has already been established, wait the better part of two more decades to be granted recognition it has sought for over 100 years?

The McIntyre and Dole bills would grant the Lumbees full Federal recognition. Some will argue that a legislative approach will circumvent the BIA process and that the Lumbees would be receiving an unprecedented legislative remedy that no other tribe has ever received. The Congress has, however, in various legislative vehicles, granted tribes full Federal recognition through the legislative process. In fact, since 1980, at least four eastern tribes that received full recognition from the Federal Government received that designation as a result of an Act of Congress.

Mr. Chairman, our State motto is "Esse Quam Videri", and translated from Latin, it means "to be, rather than to seem." I don't think it could better describe that which the Lumbees seek: to be a tribe, rather than to seem to be a tribe.

The Lumbees pursuit of this recognition has now touched three centuries. By whatever method the committee—and let me stress this—by whatever method the committee chooses to bless this recognition, I will support wholeheartedly.

Again, Mr. Chairman, Ranking Member, I appreciate the courtesy that this committee has shown. I know the makeup of this committee will, in fact, review this issue with the seriousness that I think it deserves, because of the length of time that it has remained dormant.

With that, Mr. Chairman, I have concluded my statement and yield back my time.

[The prepared statement of Mr. Burr follows:]

Statement of The Honorable Richard Burr, a Representative in Congress from the State of North Carolina

Chairman Pombo, Ranking Member Rahall, my friend Mr. Jones from North Carolina, Members of the Resources Committee: Thank you for giving me the opportunity to come before you today to testify about H.R. 898, a bill that will grant full federal recognition to the Lumbee Tribe of North Carolina.

I want to take this opportunity to first highlight the work of two of my North Carolina colleagues, Senator Elizabeth Dole and Representative Mike McIntyre.

Upon taking office last January, Senator Dole made it her first legislative priority that the issue of Lumbee recognition be resolved. Her determination and hard work have paid off as her companion bill has been reported out of the Indian Affairs Committee and now awaits consideration by the full Senate.

But I don't think this issue would be receiving the attention it is today if it were not for the work of my colleague from Robeson County, Mike McIntyre. Mike's work behind the scenes both in North Carolina and here in Washington—his passion for this issue—have been crucial to the momentum this bill has gained in the House.

It is a pleasure to join both of them here today in support of Lumbee recognition.

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

It is long past time that the Lumbee Tribe receives the full recognition they deserve. The Lumbees have been seeking this recognition since the 1880's. The issue has been studied by the Interior Department since 1913 and debated in Congress since at least 1956, if not earlier.

As a cosponsor of both pieces of legislation that would move the Lumbees towards full federal recognition, I feel that the question is not so much whether they should be recognized, but how the federal government goes about granting this recognition. That is a decision this Committee and, upon the recommendation of this Committee, the full House, will make.

There are those who will argue today that the Tribe should go through the Bureau of Indian Affairs process for federal recognition. The Tribe is currently prohibited from utilizing the petition process. Our colleague from Asheville, Chairman Taylor, has introduced legislation that would remove this barrier and allow the Lumbees to submit a petition to the Bureau of Indian Affairs.

While that argument does have merit, let me point out two things that I hope you will keep in mind during this hearing today:

- The Bureau's process is reserved for Tribes for whom legitimacy must be established. The legitimacy of the Lumbees dates back to the late 1800s and has been reaffirmed many times over in the 100-plus years since—by our state government, the federal government and by leaders in the field of anthropology who have studied Native American Tribes; and
- The Bureau's process itself is flawed. You will hear a lot today about a 2001 GAO Report on the recognition process. Let me sum up for you what I find to be the most glaring problem identified by the report. According to GAO, the length of time to resolve a completed petition process may take up to 15 years—assuming that the Lumbee petition would be moved to the front of the line. Is it fair to make a tribe, whose legitimacy has already been established, wait the better part of two more decades to be granted recognition it has sought for over one hundred years?

The McIntyre and Dole bills would grant the Lumbees full federal recognition. Some will argue that a legislative approach will circumvent the BIA process and that the Lumbees would be receiving an unprecedented legislative remedy that no other Tribe has ever received. The Congress has, however—in various legislative vehicles—granted tribes full federal recognition through the legislative process. In fact, since 1980, at least four Eastern Tribes that received full recognition from the federal government, received that designation as the result of an Act of Congress.

Mr. Chairman, the state motto of North Carolina is "Esse Quam Videri," and translated from Latin it means: "To be, rather than to seem." I don't think it could better describe that which the Lumbees seek—to be a tribe, rather than seem to be a tribe.

The Lumbees pursuit of this recognition has now touched three centuries. By whatever method the Committee chooses to bless this recognition, I will support wholeheartedly. Again, I appreciate the opportunity to testify before this Committee and look forward to working with all of you on this matter.

The CHAIRMAN. Thank you.

I would like to invite our two colleagues to join us on the dais and take the opportunity to call up our second panel. We have had a great deal of discussion already this morning and I would like to move to our second panel.

The Administration witness and former employee of this committee, Mike Olsen, is the Counselor to the Assistant Secretary for Indian Affairs of the Interior Department. He is accompanied by Lee Fleming, Director of the Office of Federal Acknowledgment.

Also on the panel is Principal Chief Michell Hicks of the Eastern Band of Cherokee Indians, a federally recognized tribe in North Carolina.

Before you get too settled in, if I could have you stand and raise your right hand.

[Witnesses sworn.]

Thank you. Let the record show they all answered in the affirmative.

Welcome to the Committee. It's nice to have you with us here this morning. We look forward to your testimony.

Mr. Olsen, it's nice to have you back, good to see you again, and when you're ready, you may begin.

STATEMENT OF MICHAEL D. OLSEN, COUNSELOR TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, BUREAU OF INDIAN AFFAIRS

Mr. OLSEN. Thank you. I appreciate that. Mr. Pombo and Ranking Member Rahall, it's a pleasure to be here again.

As you said, my name is Mike Olsen. I am a counselor to the Assistant Secretary for Indian Affairs at the Department of the Interior. I am here today to provide the Administration's position on H.R. 898, the Lumbee Recognition Act.

While Congress clearly possesses the power to recognize Indian tribes, the Department has traditionally opposed congressional attempts to recognize tribal groups, largely because the criteria and process the Department has established provide for thorough analysis and deliberation and consistency in decisionmaking. However, the Department recognizes that certain legislation in this case is needed, given the unique status of the Lumbee Indians.

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment of an Indian tribe establishes a government-to-government relationship between the United States and the tribe, and carries with it certain immunities and privileges for the tribe. It also creates responsibilities for the Federal Government with respect to that tribe.

Under the Department's regulations, in order to receive Federal recognition, a petitioning group must demonstrate that it meets each of seven mandatory criteria. The petitioner must demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900.

The petitioner must also show that a predominant portion of the group comprises a distinct community and has existed as a community from historical times until the present.

In addition, the petitioner must demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

The petitioner must provide a copy of the group's present governing document, including its membership criteria.

The petitioner must also demonstrate that its membership consists of individuals who descend from a historical Indian tribe or tribes that combined and functioned as a single autonomous political entity and provide a current membership list.

The petitioner must show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.

Finally, the petitioner must demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Unfortunately, the Act of June 7th, 1956, as has been mentioned before, which bars the Lumbee Indians from participation in the Federal programs designed to serve Indians, makes it impossible for the Lumbees to avail themselves of the Department's acknowledgment process. The Act, while clearly identifying the Lumbee as Indian persons, specifically prohibited them from accessing services and statutes available to Indians because of their status as Indians. The Department therefore recognizes that legislation is needed to at least give the Lumbee the opportunity to participate in the acknowledgment process.

If Congress elects to recognize the Lumbee legislatively, the Department believes that several issues should be addressed. A couple of those are the following:

First, the Department, as you are aware, is devoting a great deal of time to trust reform efforts. Both the Department and the courts are attempting to define the trust relationship and the specific duties and responsibilities that the United States has to Indian tribes. Much of the confusion of the role of the United States as trustees stems from the lack of clear guidance as to what the exact roles and responsibilities of both the trustee and the beneficiary are.

The Department, therefore, recommends that Congress set out the details of this relationship when it is created, either through legislation or through some other trust instrument.

The Department is also concerned with the provision requiring the Secretary in the legislation, within 1 year, to verify tribal membership. In our experience, this is a time-consuming and work intensive process that has taken several years to complete with much smaller groups. Typically, it requires a review of every individual's genealogical history, traced from the present back to a person who was a member of the historical tribe from which the person has descended.

In the 1980s, the Department received a document identifying the membership of the Lumbee at over 27,000 persons. Current estimates place the membership anywhere from a range of 30-40 and upwards of 40,000 members. BIA's Office of Federal Acknowledgment estimates, based on its current staff levels, that verification of Lumbee membership will take several years at best.

The Department is willing to work with the committee to resolve these issues and others that we point out in our written testimony. But at a minimum, we support an amendment to the 1956 Act to

authorize the Lumbee to participate in the Department's acknowledgment process.

This concludes my prepared statement, and I would be happy to answer any questions.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Counselor to the Assistant Secretary for Indian Affairs, U.S. Department of the Interior

Good morning, Mr. Chairman and Members of the Committee. My name is Michael Olsen, Counselor to the Assistant Secretary for Indian Affairs. I am here today to provide the Administration's testimony on H.R. 898, the "Lumbee Recognition Act."

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables tribes to participate in federal programs and establishes a government-to-government relationship between the United States and the tribe. Acknowledgment carries with it certain immunities and privileges, including exemptions from state and local jurisdiction and the ability to undertake casino gaming. The Department believes that the Federal acknowledgment process set forth in 25 C.F.R. Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship.

Before the development of these regulations, the federal government and the Department made determinations as to which groups were tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately there was a backlog in the number of petitions from groups throughout the United States requesting that the Secretary officially acknowledge them as Indian tribes. Treaty rights litigation in the West and land claims litigation in the East highlighted the importance of these tribal status decisions. Thus, the Department in 1978 recognized the need to end ad hoc decision-making and to adopt uniform regulations for federal acknowledgment.

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

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
(2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
(4) provide a copy of the group's present governing document including its membership criteria;
(5) demonstrate that its membership consists of individuals who descend from a 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.

Under the Indian Commerce Clause, Congress has the authority to recognize a "distinctly Indian community" as a tribe. Because of its support for the deliberative regulatory acknowledgment process, however, the Department has traditionally opposed legislative recognition. Notwithstanding that preference, the Department recognizes that some legislation is needed given the unique status of certain Indians in North Carolina.

In 1956, Congress designated these certain Indians then "residing in Robeson and adjoining counties of North Carolina" as "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 or 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 25 C.F.R. Part 83, and that Lumbee Indians were therefore precluded from consideration for federal acknowledgment under the administrative process. Because of the 1956 Act, we acknowledge that legislation is necessary if Lumbee Indians are to be afforded the opportunity to petition the Department under 25 C.F.R. Part 83. The Department would welcome the opportunity to assist the Congress in drafting such legislation.

If Congress elects to bypass the regulatory acknowledgment process in favor of congressional recognition, it may only recognize Lumbee Indians as a tribe pursuant to its Commerce Clause authority if a court could decide that Congress had not acted arbitrarily in implicitly or explicitly finding that Lumbee Indians constitute a distinct Indian community. Among other factors, Congress would have to identify or be relying upon the historical continuity of a unified community under one leadership or government. If Congress made the proper express findings (or implicitly relied on sufficient evidence) and then granted Lumbee Indians federally recognized status, the Department believes that Congress should be cognizant of several important issues that federal recognition raises. As currently drafted, H.R. 898 leaves many questions to these issues unanswered.

Under the provisions of this bill, Lumbee Indians would be afforded all benefits, privileges and immunities of a federally recognized tribe. Thus, the "Lumbee Tribe of North Carolina," as styled in H.R. 898, would be authorized to conduct gaming activities pursuant to the Indian Gaming Regulatory Act (IGRA). Prior to conducting Class III gaming, the Lumbee Tribe of North Carolina would need to negotiate a gaming compact with the State of North Carolina. In addition, the Lumbee Tribe of North Carolina must have lands taken into trust. Generally, if a tribe wants to game on land taken into trust after the passage of IGRA, it must go through the two-part determination described in 25 U.S.C. § 2719(b)(1)(A). This process requires the Secretary to determine, after consultation with the tribe and the local community, that gaming is in the best interest of the tribe and its members and not detrimental to the local community. If the Secretary makes that determination in favor of allowing gaming, then the gaming still cannot occur without the Governor's concurrence. The bill as drafted does not prohibit gaming.

The Department has devoted a great deal of time to trust reform discussions. The nature of the trust relationship is now often the subject of litigation. Both the Executive Branch and the Judicial Branch are faced with the question of what exactly did Congress intend when it established a trust relationship with individual tribes, and put land into trust status. What specific duties are required of the Secretary, administering the trust on behalf of the United States, with respect to trust lands? Tribes and individual Indians frequently argue that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust default principles and a trust instrument that defines the scope of the trust responsibility. Congress, when it establishes a trust relationship, should provide the guideposts for defining what that relationship means.

Much of the current controversy over trust stems from the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. In this case, given that we would be taking land into trust in an area in which there has not previously been federal trust land, such issues as land use, zoning, and the scope of the Secretary's trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts. Therefore, we recommend the Committee set forth in the bill the specific trust duties it wishes the United States to assume with respect to Lumbee Indians of North Carolina. Alternatively, the Committee should require a trust instrument before any land is taken into trust. This trust instrument would ideally be contained in regulations drafted after consultation with the tribe and local community, consistent with parameters set forth by Congress in this legislation. The benefits of either approach are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided to tribal members.

Another issue we have identified is requiring the Secretary to determine who would be eligible for services and benefits. Section 3 requires the Secretary to determine all Lumbee members eligible for all services and benefits provided to Indians because of their status as a member of a federally recognized tribe. However, each program has different criteria for eligibility and the Secretary cannot determine eligibility for such things as health care.

In addition, section 3 may raise a constitutional problem by purporting to require the President to submit annually to the Congress as part of his annual budget submission a budget that is recommended by the head of an executive department for programs, services and benefits to the Lumbee. Under the Recommendations Clause of the United States Constitution, the President submits for the consideration of Congress such measures as the President judges necessary and expedient.

We are also concerned with the provision requiring the Secretary, within one year, to verify tribal membership. In our experience this is an extremely involved process that has taken several years with much smaller tribes. Although, the bill states that, "The Secretary's verification shall be limited to confirming compliance with the membership criteria set out in the tribe's constitution adopted on November 11, 2000." We do not currently have access to the necessary tribal rolls and have no idea how expansive this verification process might be.

Should Congress choose not to enact H.R. 898, the Department feels that at a minimum, Congress should amend the 1956 Act to afford Lumbee Indians of North Carolina and other groups of "Robeson and adjoining counties" the opportunity to petition for Federal acknowledgment as an Indian tribe under the Department's Administrative process at 25 C.F.R. Part 83.

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

[The Department of the Interior's response to questions submitted for the record follows:]

Response to questions submitted for the record by the U.S. Department of the Interior

QUESTION 1: Please provide the CBO cost estimate regarding Federal recognition of the Lumbee Indian Tribe of North Carolina, which you referred to in your testimony before the Committee and that supports your testimony.

ANSWER: By letter dated November 21, 2003, the Congressional Budget Office transmitted the cost estimate for S. 420, the companion bill to H.R. 898, the "Lumbee Recognition Act." Specifically, pages seven through nine of Senate Report 108-213, states, "Providing for the Acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes" presents CBO's cost estimate of "about $430 million over the 2004-2008 period, assuming that the tribe receives services and benefits at a level similar to other currently recognized tribes and that the necessary funds are appropriated."

QUESTION 2: Please identify any constitutional provision, judicial opinion or other authority imposing a limitation on the power of Congress to extend "recognition" to Indian tribes that supports the statement that "Among other factors, Congress would have to identify or be relying upon the historical continuity of a unified community under one leadership or government."

ANSWER: Many court decisions and judicial opinions pertain to tribal existence. At least two Supreme Court decisions and one Court of Appeals decision support or are related to the statement that "Among other factors, Congress would have to identify or be relying upon the historical continuity of a unified community under one leadership or government." These three decisions are: (1) United States v. Sandoval, 231 U.S. 28 (1913) (limits on Congress's authority), (2) Montoya v. United States, 180 U.S. 261 (1901) (community under one leadership), and (3) United States v. Washington, 641 F. 2d. 1368 (9th Cir. 1981), cert. denied, 454 U.S. 1143 (1982) (historical continuity).

QUESTION 3: Since enactment of the Indian Gaming Regulatory Act (IGRA), please provide to the Committee the number of Indian tribes that have sought to have lands taken into trust for gaming, pursuant to 25 U.S.C. § 2719(b)(1)(A).

ANSWER: Section 20(b)(1)(A) of IGRA, 25 U.S.C. 2719(b)(1)(A), does not authorize the Secretary of the Interior to take land into trust for gaming purposes. Instead, it is an exception to the prohibition on gaming on lands taken into trust after October 17, 1988, contained in Section 20(a) of IGRA, and provides that gaming on lands taken into trust after October 17, 1988, can only occur if the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the interest of the tribe and its members, and would not be detrimental to the surrounding community, but only if the governor

of the State in which the gaming activity is to be conducted concurs in the Secretary's determination. There are seventeen tribes who have applied for this two-part Secretarial determination under Section 20(b)(1)(A) since the enactment of IGRA. Of these, only three (3) tribes have received a gubernatorial concurrence to a positive Secretarial two-part determination. The general statutory authority for the Secretary to take land into trust for Indian tribes is Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465.

QUESTION 4: Please provide to the Committee the number of Federally recognized Indian tribes that were recognized by statute and how many tribes were recognized by the Department of the Interior.

ANSWER: The following tribes have been recognized or restored by statute since 1978, the year the Federal Acknowledgment Regulations became effective:

1. Modoc Tribe of Oklahoma—Public Law 95-281
2. Pascua Yaqui Tribe of Arizona—Public Law 95-375
3. Cedar City Band of Paiute Indians of Utah—Public Law 96-227.
4. Houlton Band of Maliseet Indians of Maine—Public Law 96-420
5. Cow Creek Band of Umpqua—Public Law 97-391
6. Kickapoo Traditional Tribe of Texas—Public Law 97-429
7. Mashantucket Pequot Tribe of Connecticut—Public Law 98-134
8. Ysleta Del Sur Pueblo of Texas—Public Law 100-89
9. Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan—Public Law 100-420
10. Coquille Tribe of Oregon—Public Law 101-42
11. Aroostook Band of Micmac Indians of Maine—Public Law 102-171
12. Pokagon Band of Potawatomi Indians of Michigan—Public Law 103-324
13. Little River Band of Ottawa Indians of Michigan—Public Law 103-324
14. Little Traverse Bay Bands of Odawa Indians of Michigan—Public Law 103-324
15. Central Council of the Tlingit & Haida Indian Tribes, Alaska—Public Law 103-454
16. Loyal Shawnee Tribe, Oklahoma—Public Law 106-568

In addition, the following list includes the names of the tribes acknowledged to have a relationship with the Federal government by actions of the Department of the Interior, as noted:

1. Karuk Tribe of California, Decision by Assistant Secretary—Indian Affairs (AS-IA), 1/15/1979
2. Grand Traverse Band of Ottawa & Chippewa Indians of Michigan, Administrative recognition under 25 C.F.R. Part 83 (AR), 5/27/1980
3. Jamestown S'Klallam Tribe of Washington, AR, 2/10/1981
4. Jamul Indian Village of California, Deputy AS-IA designation as half-blood community, 7/7/1981
5. Tunica-Biloxi Indian Tribe of Louisiana, AR, 9/25/1981
6. Death Valley Timbi-Sha Shoshone Band of California, AR, 1/3/1983
7. Narragansett Indian Tribe of Rhode Island, AR, 4/11/1983
8. Poarch Band of Creek Indians of Alabama, AR, 8/10/1984
9. Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, AR, 4/11/1987
10. San Juan Southern Paiute Tribe of Arizona, AR, 3/28/1990
11. Ione Band of Miwok Indians of California, Decision of AS-IA, 3/22/1994
12. Mohegan Indian Tribe of Connecticut, AR, 5/14/1994
13. Jena Band of Choctaw Indians, Louisiana, AR, 8/29/1995
14. Huron Potawatomi, Inc., Michigan, AR, 5/17/1996
15. Samish Indian Tribe, Washington, AR, 4/26/1996
16. Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan, AR, 8/23/1999
17. Snoqualmie Tribe, Washington, AR, 10/6/1999
18. Lower Lake Rancheria, California, Decision by AS-IA, reaffirmation of recognition, 12/29/2000
19. King Salmon Tribe, Alaska, Decision of AS-IA, reaffirmation of recognition, 12/29/2000
20. Shoonaq' Tribe of Kodiak, Alaska, Decision of AS-IA, reaffirmation of recognition, 12/29/2000
21. Cowlitz Tribe of Indians, Washington, AR, 1/4/2002

The CHAIRMAN. Thank you, Mr. Olsen.

Mr. Fleming, I understand you have joined us again today just to help with answering technical questions and are available for questions of the membership.

Mr. FLEMING. That's correct.

The CHAIRMAN. We thank you, and welcome back to the Committee.

Mr. Hicks.

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

Mr. HICKS. Hello. Chairman Pombo, Ranking Member Rahall, and members of the Resources Committee, I thank you for the opportunity to testify before you today. We appreciate all that you do for Indian Country.

I also want to thank the Principal Chief, Chad Smith, of the Western Band, a Cherokee who has traveled from Oklahoma here today. In addition, I would like to thank the Tribal Council of the Eastern Band, along with several elders that have traveled with me from Cherokee.

Mr. Chairman, we stand united on this issue in opposing this bill. Our people and tribes across this country feel strongly about this issue, for several reasons. First, the integrity of our long government-to-government relationships with the United States is undermined when politics and emotions take over, rather than facts about the tribal identity. And folks, this is all about identity.

Second, the Office of Federal Acknowledgment at the Interior Department, not the Congress, has the experts to make determinations on the merits about tribal identity and recognition.

Third, this bill, based on the Lumbees' own population estimates, would cost this government more than $682 million over a 4-year period, especially at a time when Federal Indian funding is shrinking, and it's definitely not growing.

Mr. Chairman, the Eastern Band of Cherokee is a federally recognized tribe, with 13,000 proud members. We and our Western Cherokee brothers have a long history of treaties with the United States, a very long history of treaties with this United States. In the 1830s, when the U.S. Army rounded up all the eastern tribes and forcibly removed us to the West, thousands of our Cherokee people died, both young and old. We call that event the Trail Where They Cried.

The Eastern Band's ancestors were the Cherokees who resisted that Trail of Tears, who eventually found a way back home to that Great Smokey Mountains in western North Carolina. For centuries, the Cherokee people have fiercely protected our identity—and this is all about protecting our identity. Many of our members are fluent in the Cherokee language. We have a unique culture that makes us different from any other group in this world. And we still are here today, both proud and strong.

This long-defended identity, as you see here on the board, is threatened by several groups, not just this group, but several groups, who claim or have claimed to be Cherokee and whose legitimacy is doubtful at best.

Mr. Chairman, there are several facts—and I've heard several testimonies this morning, but I want to tell you what the facts are.

The fact is that the Lumbee group has pursued this legislation at least 13 times over the last 100 years. And Congress has rejected every attempt.

The fact is that they have sought recognition as four different tribes. I want to refer you to this board over here, where they have identified themselves as Croatans, the Siouan, the Cheraw, and, folks, the Cherokees. For 40 years, from 1913 to 1953, these folks wanted to recognize themselves as the Cherokees.

The fact is the experts say those claims don't make sense. But those tribes represent three completely different linguistic groups, as you see here on the board. And the claimed ties to the historic Cheraw tribe are tenuous at best.

The facts are—and this Committee has recognized in a published report—that the Lumbee have never had treaty relations with this U.S. Government. They have never had a reservation. They have never made a claim to the Indian Claims Commission. They do not speak an Indian language. They had no formal political organization until very recently. They possess no traditional Indian customs, such as dances, songs, or tribal religion. This is based on their expert's opinion.

Mr. Chairman, there is an established administrative process to review these issues and make a fact-based decision. Eleven years ago, this committee's report stated—and I quote—"This committee must decide if it will continue to support an equitable and standardized method of determining which Indian groups should be recognized by this Federal Government."

"Bypassing this administrative process can only serve to undermine the recognition process. To encourage other groups such as this group to circumvent that process and to place recognition in an arena where emotion, as you have seen this morning, influential sponsors, and the partisan nature of Congress replacing merit and, most importantly, fact. For these reasons, we strongly oppose the passage of this Lumbee recognition bill." I end quote.

Mr. Chairman, I cannot have said it any better than what this committee has already decided in the past many times. For the same reasons, we strongly oppose the passage of H.R. 898 and we urge you to consider H.R. 1408, which would give the Lumbee a fair chance to meet this established criteria at the Office of Federal Acknowledgment.

If they can meet those standards, then they will be recognized as a tribe and we will welcome them as a tribe, and they will have all the benefits of that Federal recognition, as many of our Federal tribes have today. If they cannot, then this Congress has no business bypassing this administrative process. I urge you to protect the integrity of Indian tribes across this country and oppose this legislation.

Mr. Chairman, I thank you for the opportunity to be here, and the opportunity to speak.

[The prepared statement of Mr. Hicks follows:]

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

Chairman Pombo, Ranking Member Rahall, members of the House Resources Committee, I am honored to be here to testify today before this Committee to provide the views of the Eastern Band of Cherokee Indians. Mr. Chairman, I want to

thank you for your leadership in the area of Indian affairs. Your advocacy for Indian people is well-known in Indian Country and we appreciate the priority you have made of addressing our needs.

The Eastern Band of Cherokee Indians, the Cherokee people, and tribes across the United States feel strongly that Congress should not enact this legislation. There are several reasons for this:

First, the 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 where politics and emotion, rather than facts about tribal identity, dictate outcomes regarding federal recognition. Consistent with the views of Eastern Cherokee leaders since at least 1910, there are very serious questions about the tribal identity of the Lumbees.

Second, the Department of the Interior's Office of Federal Acknowledgment (OFA), while imperfect, is the only federal entity equipped to make an informed, merits-based determination of Lumbee tribal identity and recognition. Congress is not equipped to make these decisions.

Third, Congress should be absolutely certain that the Lumbee group meets the objective criteria at Interior before it enacts a bill that could cost more than $682 million of taxpayer dollars over four years and further decrease the funds existing tribes and Indians receive. Congress cannot be confident in the merits of this bill. In fact, the Lumbee group would have a difficult time meeting the established federal acknowledgment criteria in a nonpolitical setting.

For these reasons, which I will explain in more detail, the Eastern Band strongly opposes this bill.

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.

SERIOUS PROBLEMS WITH CLAIMED LUMBEE TRIBAL IDENTITY

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 54,000 members to a historic tribe.

The Lumbee Have Self-Identified As Four Different Tribes

The Lumbee group seeking Congress's acknowledgment today has been before the Congress on numerous occasions in the past, including 1899, 1910, 1911, 1913, 1924, 1932, 1933, 1955, 1988, 1989, 1991, 1993, and now 2004. The tribal identity of the Lumbees, who have over the course of history self-identified themselves as four dif-

ferent 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. Over the years, the Congress has heard from this same group many times seeking federal acknowledgment. The Lumbee have self-identified themselves as any number of vastly different linguistic groups in these efforts.

Lumbee's Self-Identification as "Croatan" Indians

For example, as the Lumbee's own hired expert Dr. Jack Campisi stated in his testimony before the Senate Indian Affairs Committee on September 17, 2003, the Lumbee sought federal services from the Congress as Croatan Indians in the 1880's and early 1900's. [1]

In 1993, this Committee's House Report contained the following relating to the history of the Lumbee group, including its "Croatan" origins:

> The story of how the progenitors of the Lumbee came to live in this area of North Carolina is a multifarious one. In fact, there are almost as many theories as there are theorists. Up until the 1920's, the most persistent tradition among the Indians in Robeson County was that they were descended primarily from an Iroquoian group called the Croatans. This theory, though highly conjectural, is as follows. In 1585, Sir Walter Raleigh established an English colony under Gov. John White on Roanoke Island in what later became North Carolina. In August of that year, White departed for England for supplies, but was prevented from returning to Roanoke for 2 years by a variety of circumstances. When he finally arrived at the colony, however, he found the settlement deserted; no physical trace of the colonists was found.
>
> The only clue to their whereabouts were the letters "C.R.O." and the word "Croatoan" carved in a tree. From this it was surmised that the colonists fled Roanoke for some reason, and removed to the nearby island of Croatoan which was inhabited by a friendly Indian tribe. There, according to the theory, they intermarried with the Indians, and the tribe eventually migrated to the southwest to the area of present-day Robeson County. The theory is lent some credence by reports of early 18th century settlers in the area of the Lumber River who noted finding a large group of Indians—some with marked Caucasian features such as grey-blue eyes "speaking English, tilling the soil, "and practicing the arts of civilized life." In addition, many of the surnames of Indians resident in the county match those of Roanoke colonists. [2]

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.

As the Lumbee's expert Dr. Campisi stated, after World War I, this Lumbee group sought 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. Dr. Campisi went on to state that the Lumbee group renewed their efforts in 1932 and had a bill introduced in the Senate that would have recognized them as "the Cherokee Indians,"

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

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

but this effort failed also.[3] The Eastern Band has, since the early 1900's when the Lumbee group sought formal recognition as Cherokee, consistently and strongly opposed these efforts of the Lumbees to be recognized as a tribe.

Lumbee's Self-Identification as "Siouan" Indians

According to the Lumbee, they sought federal recognition as "Siouan" Indians in 1924. Further, in the 1930's, for purposes of the Indian Reorganization Act, the Lumbees self-designated themselves as the "Siouan Indian Community of Lumber River."[4] 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.[5]

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."[6] The regulations define "historical" in this context as "dating from first sustained contact with non-Indians."[7] 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.

Congress in the 1956 Lumbee Act went far to avoid a historical tribal designation of the "Lumbee" Indians, reiterating the "claim" of the Lumbee to unnamed tribes. The 1956 Lumbee Act states, "The Indians now residing in Robeson and adjoining counties of North Carolina...and claiming joint descent from remnants from early American colonists and certain tribes of Indians originally inhabiting the coastal region of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina...." 70 Stat. 254, 255 (June 7, 1956).

The Lumbee have often repeated the mantra that the Lumbee Act "recognized" them as a tribe on one hand and "terminated" them on the other. The language of the statute itself, court interpretation,[8] and the American Law Division of the Library of Congress belie this claim.[9] The Lumbee Act only recognizes individual Indians, not a tribe. Congress certainly knew how to expressly recognize an Indian tribe and avoided doing so here.[10] Also, in 1956, Congress terminated four tribes: the Lower Lake Rancheria, Wiandotte, Peoria, and Ottawa. So, Congress knew also how to expressly terminate tribes at the time.

Experts at the Bureau of Indian Affairs have testified that the Lumbee ties to the Cheraw Tribe are tenuous. On August 1, 1991, Director of the Office of Tribal Services Ronal Eden testified on behalf of the Administration regarding federal legislation that would Congressionally acknowledge the Lumbee. Regarding the Lumbee petition for federal recognition before the agency, the Director testified to a "major

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[3] Id. Ms. Arlinda Locklear, in her testimony before the Senate Indian Affairs Committee last year, noted that the Lumbee group claimed that they were Cherokee and sought federal legislation to be recognized as Cherokees. "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.

[4] Id. at 9.

[5] Id. at 9-10.

[6] 25 C.F.R. § 83.7(e).

[7] Id. at 83.1.

[8] In Maynor v. Morton, the United States Court of Appeals for the District of Columbia stated that, "the limited purpose of the legislation appears to be to designate this group of Indians as "Lumbee Indians." The court also noted that the Act was "a simple statute granting the name "Lumbee Indian" to a group of Indians, which hitherto had not had such designation legally." Maynor v. Morton, 510 F.2d 1255 (D.C. Cir. 1975).

[9] In a 1988 opinion, the Library of Congress concluded "that the 1956 statute does not provide recognition of the Lumbee Indians as a political entity."

[10] The Lumbee also argue that they are similarly situated to the Ysleta de Sur Pueblo, also know as the Tiwa Tribe, a tribe whose government-to-government relationship was terminated by Congress, then later restored. The Lumbee group, by contrast, has never had a government-to-government relationship with the United States. The language of the Tiwa Act, furthermore, specifically refers to the Tiwa as a tribe. The Act of Dec. 12, 1968, 82 Stat. 93.

deficiency" that "the Lumbee have not documented their descent from a historic tribe." [11]

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. [12]

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." [13] 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.

Counsel to the Lumbee Arlinda Locklear in her testimony before the Senate Indian Affairs Committee admits 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." [14]

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 acknowledgment criteria. The Lumbee claim 54,000 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."

Mr. Chairman, members of this Committee have recognized the weaknesses and complexities in the Lumbee group's claim to tribal recognition in the past:

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

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[11] 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.

[12] Id.

[13] Campisi Testimony at 21.

[14] "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.

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

These characteristics ... point out that this is a case replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand fully. Needless to say, if those [Members of Congress] charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or even knowledge—in this area, how will the balance of our Members appropriately exercise those judgments as they will be called upon to do when this legislation reaches the floor? [15]

INTERIOR'S OFFICE OF FEDERAL ACKNOWLEDGMENT IS THE PROPER FORUM FOR DECIDING WHETHER THE LUMBEE SHOULD BE FEDERALLY RECOGNIZED

The Department of the Interior through the Office of Federal Acknowledgment (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 unequipped to make. While the OFA is not perfect and needs additional funds to do the job it is supposed to do, it should not be abandoned, but fixed. To allow the Lumbees to circumvent that process would be to abandon the merits, which again we believe the Lumbees have significant problems with, in favor of old-fashioned politics.

Mr. Chairman, 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. [16]

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. [17]

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 this same basic legislation came up 11 years ago, 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. [18]

HARM TO EXISTING TRIBES AND WASTE OF TAXPAYER MONEY

The impact on appropriations to other Indian tribes would be unprecedented in the history of federal acknowledgment. The Congressional Budget Office has determined that, based on an estimate of 34,000 Lumbees, that the cost of this legislation would be $430 million over four years. Yet the Lumbees claim approximately 54,000 members. Based upon the Congressional Budget Office's estimate and the 54,000 members claimed by Lumbee, the real cost of this bill would be over $682 million.

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[15] H.R. Rep. No. 103-290, 103rd Cong., 1st Sess. at 186-87 (1993).
[16] Id. at 202.
[17] Id. at 202-03.
[18] Id. at 206.

Furthermore, the Bureau of Indian Affairs announced only a few days ago that the budget for Indian programs would take another cut of 2.7% ($70 million).

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 at the Office of Federal Acknowledgment.

CONCLUSION

If this Committee and the Congress chose 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 acknowledgment 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.

Chairman Pombo, Ranking Member Rahall, and other distinguished members of the Committee, 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.

In 1993, Mr. Chairman, members of this Committee said:

> This Committee must decide if it will continue to support the utilization of an equitable and standardized method of determining which Indian groups should be recognized by the federal government, or if it will return us to the pre-1978 days of piecemeal and arbitrary recognition through individual bills such as [the Lumbee recognition bill under consideration in 1993.] ... [Such an arbitrary approach] can only serve to undermine further an already beleaguered recognition process, to encourage other groups to circumvent that process, and to place recognition in an arena where emotional arguments, influential sponsors, and the partisan nature of Congress replace merit and fact. For these reasons we strongly oppose passage of [the Lumbee recognition bill].[19]

For those same reasons, we strongly oppose the passage of H.R. 898. If you determine that any legislation is needed, we urge you to consider H.R. 1408, which would give the Lumbee a fair opportunity to meet the equitable and standardized requirements established in the administrative process.

The CHAIRMAN. Thank you.

[Applause.]

The CHAIRMAN. I have to ask the members of the audience that it is against House rules for you to show favor or displeasure of any of the testimony that is given this morning. This is a congressional hearing and we have to try to maintain decorum in the room. So thank you.

Mr. Olsen, we have heard about the 1956 Act. In going back and reviewing that, in my mind it's confusing at best as to what exactly Congress was doing. At one point it appears to recognize but also terminate the Lumbee Tribe.

What is your interpretation of it? How do you handle that?

Mr. OLSEN. Well, I'm not—I think there are a couple of ways to look at it. I'm guessing you'll probably hear more about it from

[19] Id. at 207.

folks who know a lot more about it than I. But I think there are at least a couple of ways to look at it.

One of those is to look at the '56 Act as a law that recognized and then terminated the Lumbee in one fell swoop, as we've heard. I think another way to look at it is a law that did nothing more than recognize or name a group of individual people as Lumbee Indians. I think that's a debate that I have heard.

I am not prepared at this point to give any, you know, what the Administration's position is on that particular Act. But I know that those are two competing arguments.

The CHAIRMAN. For the benefit of the Committee, could you provide for the record an outline of what the Administration's position is on that Act and what it means?

Mr. OLSEN. Certainly.

The CHAIRMAN. I think as we move forward in deliberations on this legislation, I think it's important for us to understand, from an historical perspective, what Congress attempted to do.

Mr. OLSEN. If I may, I can tell you it has been interpreted as, you know—first of all, it certainly has been interpreted—I mean, it clearly says that the Lumbee are not entitled to the laws, statutes, programs, et cetera, that federally recognized tribes would be entitled to, and that has been interpreted to mean that the tribe, that the Lumbee are not able to go through the acknowledgment process that, I think, there was reference made to a Solicitor's opinion which sets that forth.

But in terms of, you know, more specific sort of whether we view it as termination versus just a recognition of a group of people, we can—we will certainly go to work and put something together.

The CHAIRMAN. I would appreciate it as we move forward.

The CHAIRMAN. Has the Department estimated what the cost of this legislation would be?

Mr. OLSEN. I don't—let me first say that the cost of recognition is not something that we look at as one of the criteria for acknowledging a group.

The CHAIRMAN. Nor should you. I'm just wondering if there is a cost estimate.

Mr. OLSEN. But I know that there is an estimate that was put together by the Congressional Budget Office, and I can tell you what that is. Based on, I think, a membership of 36,000, the cost was projected, I think, at something along the lines of $430 million over the course of 4 years.

The CHAIRMAN. Has there ever been a determination by the BIA on whether the Lumbees meet that criteria, the seven criteria in the Federal acknowledgment process?

Mr. OLSEN. One of the issues surrounding the '56 Act is also not only that the Lumbee are not allowed to—have been precluded basically from going through the acknowledgment process, but there have been partial submissions, I guess, going toward the seven criteria, but the Department has been, through interpretation of the '56 Act, precluded from considering those, basically considering the petitions.

Lee may have some more specific information on, you know, the technical—

Mr. FLEMING. My understanding is that there were submissions, and as the professional staff began the technical assistance reviews, that the genealogy and the history were reviewed for that technical assistance review, but then the Solicitor's opinion in the late 1980s was issued, stating that we were precluded from going any further. That's my understanding.

The CHAIRMAN. So the BIA has never actually done a complete determination on it?

Mr. OLSEN. That is correct.

The CHAIRMAN. Thank you.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

I have a question for Chief Hicks. I just hope you will help me understand this. It appears from your testimony that one of your concerns over Federal recognition for the Lumbees is that their membership has descended from several different tribes; is that correct?

Mr. HICKS. That is correct. They are self-identified.

Mr. RAHALL. I'm trying to understand why this is so far out and so different, considering the federally recognized tribes where already precedent has been set. I could go through a whole list here, where there's been different memberships of federally recognized tribes in the past.

Why would you base your opposition on the Lumbees being recognized because they were comprised of different tribes, when there have been many other such Federal recognitions?

Mr. HICKS. Sir, as I pointed out in my testimony, the issue is about identity. Our tribe has traditionally over several years followed the issue of identity.

As I point out here on this board again, these folks have come through trying to identify themselves as several different tribes, including the Cherokees, for 40 years. Sir, that's the issue. It's an identity issue. It's fundamentals.

Mr. RAHALL. And it's different from other Federal recognitions?

Mr. HICKS. Sir, I'm not sure in regard to—If you want to give me details of your question, I would love to give you an answer.

Mr. RAHALL. Sure. I will go through the list. Here are federally recognized tribes such as the Grand Traverse Band of Ottawa and Chippewa, the Salish and Kootenai Tribes of the Flathead Reservation, the Shoshone and Bannock Tribes of Fort Hall Reservation, the Washoe and Pauite Indians of the Reno-Sparks Colony of Nevada, and two USET tribes, the Tunica-Biloxi Tribe and the Alabama Coushatta Tribe.

Mr. HICKS. Sir, to my understanding, this is the first time of the issue with the Lumbees. This issue has not been done for other tribes. If you take a look at the recognition process, I think the majority of the other tribes—all the other tribes, excuse me—were land-based. There were land issues. You are looking at a distinctly separate issue here.

Again, I would love to do the research on those tribes that you just gave me.

Mr. RAHALL. Let me ask you, according to the Encyclopedia of North American Indians, the Eastern Band of Cherokee were recognized by the State of North Carolina in the late 19th century,

much like the Lumbees. I also understand that the Eastern Band of Cherokee also obtained Federal recognition pursuant to a Federal statute. Is that correct?

Mr. HICKS. Sir, we've had treaties with the United States for several hundred years. There is no question about the identity of the Cherokee Indians.

Mr. RAHALL. But was it legislation that recognized the Eastern Band of Cherokee?

Mr. HICKS. There was legislation, I believe, in 1868 to separate the Eastern and Western Band of Cherokee Indians.

Mr. RAHALL. So the answer to my question is yes?

Mr. HICKS. Due to the Western Band were in Oklahoma. It is simply geographic, sir.

Mr. RAHALL. So the answer to my question is yes, that you were recognized pursuant to Federal statute?

Mr. HICKS. Yes, sir.

Mr. RAHALL. Mr. Olsen, you testified that Congress may only recognize Lumbee Indians as a tribe pursuant to its Commerce Clause authority "if a court could decide that Congress had not acted arbitrarily in implicitly or explicitly finding that Lumbee Indians constitute a distinct Indian community."

Is it the Administration's position that a decision by Congress to recognize the group as an Indian tribe is subject to judicial review based on compliance with some constitutional standard?

Mr. OLSEN. The statement there was made, basically that Congress should not and certainly would not act in a manner that would be arbitrary and capricious. I think that Congress would do its homework and look at the evidence that would be presented before it on the history and genealogy of the Lumbee Tribe.

I mean, we say that Congress has the authority over or to regulate Indian affairs. Congress has the authority to do that from a subject matter position and certainly cannot and would not do anything to limit, say, equal protection, for example, of any Indian group. And so the statement in the testimony there was intended to basically reiterate the fact that Congress presumably would do its homework and wouldn't and shouldn't recognize a group that is not—has not provided some evidence for recognition.

Mr. RAHALL. There is no case law in support of that?

Mr. OLSEN. I am not aware of any case law, no. I mean, certainly not.

Mr. RAHALL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much.

First I would like to ask Chief Hicks to repeat your testimony as it relates to the language of the tribe, yours versus the Lumbee's.

Mr. HICKS. Well, the Cherokees have an established language, and based on the testimony of the expert for the Lumbees, I understand they have no language.

Mr. JONES. Mr. Chairman, I did ask unanimous consent to place before the members the poster that the Chief has been pointing to. You have that in a green handout, if you would like to look further at the points he was making.

Mr. Olsen, let me ask you—and you might or might not know this—and if you don't, I would ask you to please submit the infor-

mation for the record, with the permission of the Chairman and Committee.

If we have over 320 tribes who have been recognized by the Federal Government, could you tell me the percentage of the 320 that have applied and went through the process to be permitted to gamble?

Mr. OLSEN. Boy, that's not something I know off the top of my head.

Mr. JONES. If you could, whether they were approved or not, I would like to know, and I would like for the Committee to know, how many have applied, whether they were approved or not approved. If you could get that for the record, I would appreciate it.

Mr. OLSEN. OK. I just want to make sure that I understand. It's tribes who have been federally recognized—

Mr. JONES. Those that have been recognized, since the time of their recognition, have applied through the process to be approved to have gaming, what I call gambling on the reservation.

Mr. OLSEN. OK.

Mr. JONES. Also, Mr. Chairman, I have an article, if I could submit it for the record, that was in the paper in eastern North Carolina last Sunday. The title is, "Casino Conflicts, Growth of Indian Gaming Facilities Escalates Fights over Tribal Membership."

Mr. Chairman, I believe you're the only one on the dais today from California, and this article was written about the tribes in California. Very quickly, it says "Tribes dispute membership. An informal Associated Press survey found that 1,160 people in 14 California tribes are fighting over tribal status. Tribal membership could mean thousands of dollars a year in casino revenues." Here is a list of the major disputed cases, and there must be at least 20 in the State of California.

I mention that because, again, I think the process, as Mr. Taylor is proposing in his legislation—there is a problem with the process, no question about it. The Lumbees have every right to go through the process and expect in a certain length of time to get a yea or nay. I think that's what this Committee should do instead of trying to pass a private bill that—seriously, Mr. Chairman, I don't know who represents most of these tribes, but if this bill should pass, believe me, the Member of Congress from that area is going to be called, saying "You've done it for one, why can't you do it for me?" That's what is going to be forthcoming.

My biggest concern and opposition is, quite frankly, the gambling part of this. If the McIntyre bill said that on this day certain—which I don't think can be done legislatively—there would be no opportunity to have gambling on I-95, then I probably would not have the opposition that I have today. But I would like to submit that for the record, if I could, for the members to have an opportunity to read this article.

The CHAIRMAN. Without objection, it will be included.

[The Daily Reflector Insight article dated March 28, 2004, follows:]

By Gillian Flaccus
The Associated Press

Temecula, Calif.

Hundreds of American Indians are fighting for their place on tribal rolls at a time when membership can mean instant wealth for those who belong to casino-owning tribes.

Nearly one fifth of the 61 tribes that have gambling compacts with California are fractured by membership disputes.

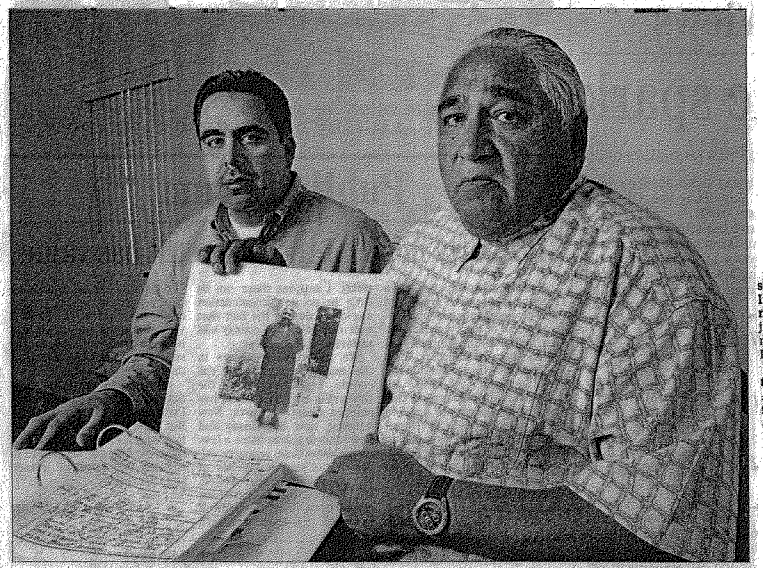
Many of those who have been kicked out of tribes in California say the motive is greed — an attempt by tribal leaders to reduce membership so they can keep more casino profits for themselves and other favored members.

"The perception is the tribes are not acting like Indians. They're acting like sheikdoms and cutting out anyone they don't like," said Patrick Romero Guillory, a tribal attorney representing members who were removed from the rolls of the Santa Rosa Rancheria in Fresno and himself an Opelousa Indian from Louisiana.

Tribes in other states, including Arizona, Nevada, Oklahoma and Minnesota, also have struggled with enrollment disputes.

The common factor is distribution of money.

In Minnesota, for example, the Shakopee Mdewakanton Dakota are fighting over profits from their Mystic Lake casino, which generates payments to individual tribal members of up to $1 million a year.



The Associated Press

JOHN GOMEZ SR., right, and his son, John Gomez Jr., show ancestry documents and a photo of Manuela Miranda, a great-grandmother of Gomez Sr., at their Temecula, Calif., home, in February. They are suing the Pechanga Band pf Mission Indians in a dispute over tribal membership and bloodlines. Hundreds of California Indians are fighting for their place on tribal rolls at a time when membership can mean instant wealth for those who belong to casino-owning tribes.

In Oklahoma, the membership status of black Seminole Indians is at issue. The Seminole tribe won a $56 million judgment to be divided among members for lands it lost in Florida nearly 200 years ago.

But roughly three-quarters of the disputes identified by The Associated Press involve California tribes, the legacy of what experts said were divisive and inconsistent federal policies that disproportionately affected tribes in the Golden State.

■

At least 1,160 people in 14 California tribes are fighting over tribal status, according to an Associated Press review of court documents and interviews with tribal leaders, attorneys and former tribal members.

Gambling has made the stakes for membership higher than ever. California has more gambling tribes than any other state, and the industry brings in an estimated $5 billion a year.

Casino wealth has transformed tribes that, in many cases, were impoverished just a decade ago. Members of many casino-owning tribes receive checks for tens of thousands of dollars annually.

The membership disputes fall into two categories. In some cases, families have been kicked out of tribes by other members who challenged their eligibility. In other cases, people say they were wrongfully excluded from tribal rolls years ago and are being refused when they seek to return.

In at least one case, involving the Cold Springs Rancheria near Fresno, the tribe doesn't have a casino. But ejected members say they lost about $9,000 per person in annual payments made by California's gambling tribes to those without casinos.

■

The enrollment disputes present a particularly sticky situation in California because the state's tribes don't have their own courts, a holdover from a federal policy that targeted California.

As sovereign nations, tribes reserve the right to determine their membership, leaving little

Tribes dispute membership

An informal Associated Press survey found that about 1,160 people in 14 California tribes are fighting over tribal status. Tribal membership could mean thousands of dollars a year in casino revenue. Here's a list of major disputed cases.

Tribe	Location	Dispute/current membership	Status
Redding Rancheria	Redding	76 disenrolled/ 212	In state appeals court
Enterprise Rancheria of Maidu Indians	Oroville	70 disenrolled/ 500	Awaiting response to appeal to Bureau of Indian Affairs
Mooretown Rancheria of Maidu Indians	Oroville	69 claim membership/ 1,200	Pending before federal court
Berry Creek Rancheria of Maidu Indians	Oroville	28 disenrolled/ 450	Nothing pending
Jackson Rancheria of Mi-wuk Indians	Jackson	300 claim membership/ 28	Trying to find attorney
Table Mountain Rancheria	Fresno	64 claim membership/ 74	Nothing pending
Picayune Rancheria of Chukchansi Indians	Fresno	172 disenrolled/ 1,080	Under federal investigation
Santa Rosa Band of Cahuilla Mission Indians	Fresno	32 disenrolled/ 400	In federal court
Cold Springs Rancheria of Mono Indians	Fresno	150 disenrolled/ 116	Nothing pending
Pechanga Band of Luiseno Mission Indians	Temecula	130 disenrolled/ 990	In state court
Rincon Band of Luiseno Mission Indians	Northern San Diego County	70 disenrolled/ 602	In federal court
Santa Ynez Band of Chumash Mission Indians	Santa Ynez	6 claim membership/ 155	Nothing pending

SOURCES: Associated Press; ESRI AP

outside legal recourse for those who feel they've been wronged.

John Gomez Jr. and about 130 members of his extended family are plaintiffs in one of the few disputes in court.

His attorneys are experimenting with a little-used state law that allows tribal members to sue each other as individuals in state court.

The family, which was ejected March 17, makes up about 13 percent of the Pechanga Band of Luiseno Mission Indians in Temecula, where members receive annual casino revenue payments of as much as $120,000 each.

Gomez Jr. doesn't live on the reservation. At a recent family meeting at his spacious house in an upscale Temecula cul-de-sac, Jaguars and high-end SUVs filled the driveway.

The tribe's enrollment committee says Gomez's grandmother moved off the reservation and cut her ties with the tribe in the 1920s.

But Gomez said his grandmother, Manuela Miranda, was forced to leave when she was married off at age 13 but never forgot her Pechanga heritage.

Tribal Chairman Mark Macarro and Councilman Russell "Butch" Murphy declined comment.

In an earlier printed statement, however, Macarro said Gomez's claims were "wholly without merit" and that the tribe had the right to determine its own membership under tribal sovereignty.

"This is an issue to them of money, and for us, it's not about money. This is who we are, this is what we've known," John Gomez Sr., Gomez's father and one of the plaintiffs in his son's lawsuit, said.

"How do you not become Pechanga? How do I tell my grandson that he used to be an Indian, and he's not anymore?" he asked.

A hearing in state court is scheduled for April 19 to challenge the family's ejection.

■

The same law is being used by 76 family members who were kicked out in January by the Redding Rancheria, a tribe of about 200 in California's northern Central Valley between Sacramento and the Oregon border.

Members receive about $3,000 per year in casino revenue, according to those ejected.

The tribe rejected arguments that DNA tests showed more than a 99 percent probability the family was descended from one of the rancheria's original 16 members.

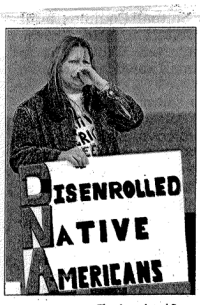
The DNA was examined by an expert hired by the tribe, and both sides were presented to tribal members for a vote.

Family members exhumed the bodies of two ancestors to obtain the DNA, Mark Maslin, the family spokesman, said. The case is before a state appeals court.

"My wife said she feels like quitting, but she said she can't because it's like letting go of her grandmother's hand," Maslin said.

Tribe attorney David Rapport said the rancheria followed tribal policy for removing members.

"I know from dealing with the leadership of the tribe that they were not motivated by casino money at all," Rapport said. "These decisions are decisions the tribes are empowered to make, and outsiders aren't entitled to judge or second-guess them.



The Associated Press

CARLA MASLIN, whose family has been disenrolled from the Redding Rancheria, reacts during a rally held at the Capitol in Sacramento, Calif., in February. The Redding Rancheria has disenrolled Maslin, claiming that her grandmother, Lorena Butler, is not a descendant of Virgina Timmons, one of the 16 other original tribe members.

"They are at the very core of tribal sovereignty."

■

Experts say unfair and inconsistent federal policies focused on California tribes sowed the seeds for the current disputes decades ago.

Thousands of California's original Indians were exterminated during the Gold Rush under a policy perpetuated by powerful mining companies and local politicians, said Carole Goldberg, a law professor and director of the American Indian Studies program at the University of California, Los Angeles.

Between 1850 and 1860, the number of California Indians plummeted from 150,000 to 30,000, she said. The federal government never signed treaties with the surviving Indians, who were left homeless and impoverished.

About the 1920s, the federal government tried to make amends and sent agents to allot land to tribal members, estab-

See DISPUTES, D4

DISPUTES

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lishing reservations for the survivors that were called rancherias. By then, however, most surviving tribal members had scattered.

In some cases, rancherias were deeded to just one or two families at a time, said Howard Dickstein, a tribal attorney based in Sacramento. In other cases, unrelated bands were pushed together on one plot of land.

"You had tribes that were created at that time that didn't have an organic unity, and it was a setup for the kinds of things that are happening now," he said.

The situation got worse after World War II, when the federal government, as part of a movement toward Indian self-determination, ended federal recognition and assistance for 40 tribes in six states. About 90 percent of those tribes were in California, Dickstein said.

When the tribes were reinstated in the 1970s and 1980s through a series of lawsuits and congressional legislation, the government listed those living on the rancherias at the time of termination as the official tribal members.

Many tribes wrote constitutions that counted only those families among their members.

Hundreds of people now claim they are descendants of original members who lived on the rancherias but weren't counted or who moved away before termination because of the poverty.

"It wasn't accidental who was there at the time of termination," Dickstein said. "It was the people who were there through the bad times and stuck with it. Now that there's a rainbow at the end, these other people say, 'Hey, we were here all the time.'"

■

Others have been kicked out of their tribes since the advent of gambling because they can't prove their ancestors' residency on the rancherias or presence on decades-old census lists.

Kathy Steele, 50, was kicked out of the Berry Creek Rancheria in Oroville along with 27 others in 2000 after 19 years as a tribal member. She couldn't find records to prove her membership and said no attorney would take her case because of concerns about tribal sovereignty.

"We all got along, and the tribe was going good until the casino came up, and that was it. Everybody started turning ugly," she said. "It's hard because now we're Indian, but we're not Indian. It's like banishment for something we did wrong, but we didn't do anything wrong."

"I know from dealing with the leadership of the tribe that they were not motivated by casino money at all. These decisions are decisions the tribes are empowered to make, and outsiders aren't entitled to judge or second-guess them. They are at the very core of tribal sovereignty."

David Rapport
tribe attorney

Mr. JONES. Thank you.

Mr. Chairman, the only other comment I would like to make is that I had an opportunity that was very special. I am very strong in my faith, and I had the Cherokees to visit with me long before this issue came about. Let me say this dealt with Congressman Taylor about a land swap that came before this Committee as well.

Let me tell you, I had a prayer said to me in the Cherokee language. It was extremely special, and I will never forget it. So I understand the importance of identification. I think it is extremely important, whether you are from the Eastern Band of Cherokee or the Lumbees, identification is like heritage. You cannot dispute it. It is extremely important.

With that, Mr. Chairman, I yield back my time.

The CHAIRMAN. Thank you.

Further questions? Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

This is not an easy hearing for me. It has much of the aspect of being asked which one of your friends or brothers do you love the most. It is very, very difficult because I have enormous respect for the Eastern Band of Cherokee, and I have been working with the Lumbees for my 28 years in Congress.

Mr. Olsen, you mentioned that the cost should not be a factor in determining the recognition of a tribe, and I certainly am encouraged to hear that. We get various figures on what the cost might be over a 1-year period or a 4-year period. The cost, when we compare other spending around here, is not all that great if we really treated all Indians in this country as they should be treated.

I have been working on Indian matters now for 28 years here in Congress and 12 years in the State Legislature. My dad taught me years ago that the Indians had always been treated unfairly. But the costs, we are so chintzy and so cheap, and so cheating, when it comes to spending money for our first Americans. The figure of $430 million was given.

You know, about three or 4 months ago, we spent about $87 billion, billion, to help rebuild Iraq, to help rebuild the Sunis and the Shiites and the Kurds. It would seem to me that a government that can spend $87 billion over in Iraq to help rebuild that country could find enough money to take care of all the Indians in this country, including some of the Indians in my State who are still waiting, even though they've had their recognition, waiting for some sharing of that trust responsibility with them. So Congress has to set those priorities around here and I am very happy, Mr. Olsen, that you recognize that cost should not be a factor.

Again, as I say, I think everyone in this room knows that I have tried to serve all the Indians in this country, and when I leave this mortal coil, if I have accomplished something to move forward justice for the Indians, I will consider myself a happy and successful person.

Let me ask you this. What benefit accrued to the Lumbees by the 1956 Act of Congress?

Mr. OLSEN. Well, that's a very interesting question. I guess—

Mr. KILDEE. I have thought that for years.

Mr. OLSEN. I guess it depends on how you view the '56 Act. Some would argue that there was absolutely no benefit whatsoever. Others, I guess, would say that a group that was looking for identification with a name was given the identity and given a particular name.

Mr. KILDEE. It seems in the 1956 Act Congress was very good at sending "get well" cards, when very often what the person needs is a Blue Cross card. I think in 1956 we sent the Lumbees a get well card. We paid a quarter for it, sent it, and said, "Have a good day." But I don't think it really did anything for the Lumbees.

Has it affected the BIA relationship with the Lumbees?

Mr. OLSEN. No. Again, they are not eligible for services, so we don't have that relationship.

Mr. KILDEE. So we sent them a nice note, saying, "Have a good day."

Mr. OLSEN. I'm sorry?

Mr. KILDEE. We sent them a nice note, saying. "Have a good day."

Mr. OLSEN. I guess that's one way to characterize it, sure.

Mr. KILDEE. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. HICKS. Mr. Chairman, can I respond to that question, also?

The CHAIRMAN. Absolutely.

Mr. HICKS. Congressman Kildee, I think there's a distinctive difference in what was recognized in the 1956 Act. The Eastern Band of Cherokees are a tribe. These individuals at this point in time are a group. That's the difference in the Act.

Mr. KILDEE. I understand, and I have worked with you and I have worked with your tribe. I have enormous respect for your

tribe. I know, as the chief executive of your tribe, that you have a responsibility to your tribe. I hold you in respect for doing that.

Mr. HICKS. Thank you, sir.

Mr. KILDEE. Thank you.

The CHAIRMAN. Any further questions? Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I express the same sentiments that the gentleman from Michigan has indicated. There is a sense of sadness, a sense of not only frustration but really to see that one Native American describing another Native American as a non-Native American. That really saddens me.

But in the process, I want to ask Mr. Olsen, were you in private practice before you joined the Department of Interior?

Mr. OLSEN. Yes, sir, I was. Actually—well, prior to working for the Resources Committee, for the Chairman, yes, I was in private practice.

Mr. FALEOMAVAEGA. Do you specialize in Indian law?

Mr. OLSEN. No, sir, I don't. I did not at the time, no.

Mr. FALEOMAVAEGA. What is your understanding of the Lumbee Act of 1956? Have you had a chance to review the congressional report?

Mr. OLSEN. I have looked at some legislative history, yes.

Mr. FALEOMAVAEGA. What is your understanding of that Act of 1956?

Mr. OLSEN. Based on the legislative history that I have seen, there was discussion, a series of colloquies, that—again, what I have read seemed to indicate that the Act of 1956 was intended to name the group and not provide any sort of service.

Mr. FALEOMAVAEGA. Wasn't the congressional policy, at least to my understanding in reading the congressional report, was simply because we didn't have enough money to spread around to the different tribes? So we recognized the Lumbees as Indians in 1956, but we put that caveat in there, saying that you're recognized as Indians but we can't give you the Federal assistance programs because—I think at that time there was a limitation on the amount that could be given to other tribes as well.

Wasn't that the reason why we put that caveat in there, that we recognized the Lumbees as Indians but, sorry, we can't give it to you because we don't have enough money to go around? Wasn't that the real reason behind it?

Mr. OLSEN. Yes, and I guess certainly it's important to keep in mind as well that at the time Congress' policy was one of termination. I mean, we were hip deep in the fifties when termination was the way Congress was moving forward.

Mr. FALEOMAVAEGA. Yes, termination, but the fact is that Congress did officially recognize the Lumbee as an Indian tribe, even though we did not give them the full benefits as a recognized tribe.

Mr. OLSEN. I can't say, to be perfectly honest, that the 1956 Act recognized the Lumbee as an Indian tribe. I mean, I think there are a couple of sides to that argument. I am not speaking for the Administration; I'm not in a position, and certainly we can, going back to what Mr. Pombo has asked, we can hopefully provide some analysis on that.

Mr. FALEOMAVAEGA. I wasn't quite clear. What exactly is the Department's position on this proposed bill? I wasn't quite clear from your statement exactly what is the Department's position. What is the Administration's position on this bill?

Mr. OLSEN. The Administration's position on this is that, number one, as you are aware, we have a process. We have respect for the process, and though as some have said, some have called it flawed, it does provide for uniform decisionmaking.

However, we also recognize that the Lumbee are in a unique situation and, at the very least, are entitled to have an opportunity to go through the acknowledgment process. We also recognize that Congress has the authority to enact legislation to recognize, or to grant Federal acknowledgment to a group, to an Indian tribe.

Mr. FALEOMAVAEGA. I appreciate that.

Chief Hicks, how many are in the Eastern Band of Cherokee in North Carolina? What's the population of your tribe?

Mr. HICKS. We're over 13,000.

Mr. FALEOMAVAEGA. Is there also a Western Band of Cherokee in North Carolina?

Mr. HICKS. Yes, sir. There is also the Duwa Band in Oklahoma.

Mr. FALEOMAVAEGA. And they are separate from the Eastern Band?

Mr. HICKS. Yes, sir.

Mr. FALEOMAVAEGA. You mentioned in your testimony that you're opposed to the bill because of the financial costs to the U.S. Government. Am I correct in my reading of this in your statement correctly?

Mr. HICKS. That's part of the argument, yes, sir, identified as the third item.

Mr. FALEOMAVAEGA. Do you find that position somewhat disingenuous? Because of financial costs, is that the only reason? Shouldn't that really be the prerogative of the Congress and the U.S. Government to be in a position to say whether or not we have the financial means to provide for this tribe if it should be recognized as a recognized tribe?

Mr. HICKS. Sir, when you live in the shoes of an Indian, and you understand the funding appropriations—as an example, the Indian Health Service across the Nation is funded at less than 60 percent of the need. That issue is a very serious matter.

Mr. FALEOMAVAEGA. I also recognize the fact that your tribe is doing very well in the gaming operations in North Carolina, which is fine. This is what we're all trying to seek, to be successful entrepreneurs, whether it be in the gaming industry or another industry.

You mentioned that you don't consider the Lumbees as Indians. If they're not Indians, what are they?

Mr. HICKS. Sir, actually I would like to answer your question about the 1956 Act that you asked this gentleman.

Mr. FALEOMAVAEGA. Well, if you could answer my pending question, which is, if you don't recognize Lumbees as Indians, what are they?

Mr. HICKS. As I said before, they're a group, until federally recognized, sir.

Mr. FALEOMAVAEGA. So 53,000 is a group?

Mr. HICKS. Sir, these folks are self-identified.

Mr. FALEOMAVAEGA. You're aware that the administrative process didn't start until 1978.

Mr. HICKS. Yes, sir, I'm aware of that.

Mr. FALEOMAVAEGA. And you're aware also that the administrative process was strictly a regulatory system that was developed by the bureaucracy of the Department of Interior? Congress did not even mandate any of these seven criteria that are now in place. It's an administrative process. Are you aware of that?

Mr. HICKS. I'm aware that it's an administrative process, sir.

Mr. FALEOMAVAEGA. So if the administrative process was not in place until 1978, are you suggesting that all the tribes that were recognized prior to that has no bearing in terms of seeking Federal recognition by the Congress?

Mr. HICKS. Sir, my opinion would be that this process was put in place to determine fact and merit of an Indian tribe, and I support the process. If the process—Of course, sitting through the hearings yesterday, it's not a perfect process. It's evident that possibly additional funds can be put into this process. But it was also identified by these gentlemen sitting to my right that it works.

Mr. FALEOMAVAEGA. Well, sir, I happen to have a very different opinion of the process.

You mentioned also that the Lumbees have no language. I know of several Indian tribes who, thanks to Chief Sequoia, he was the one who developed the language of the Cherokee people. I was wondering, even before that, I suppose the criteria of the language—Does a person have to speak a native language to be considered an Indian?

Mr. HICKS. Sir, as part of their culture, it is very important.

Mr. FALEOMAVAEGA. You mentioned also, Chief Hicks, that Congress has no business bypassing the administrative process. I beg to differ with you on that, sir. Congress has the ultimate prerogative, if it wants, to pass this legislation. There is nothing that prevents the Congress from doing this, if it so wills.

I'm sorry. My time is over, Mr. Chairman. Thank you.

The CHAIRMAN. Any further questions of this panel? Mr. Pallone.

Mr. PALLONE. I just wanted to ask Mr. Olsen, are you saying that you would prefer the Taylor bill? In other words, your Department takes the position that they would prefer we repeal the '56 law and let the Lumbees go through the BIA process?

Mr. OLSEN. I cannot say whether we would prefer the Taylor bill. What I would say is that, at the very least, the Lumbee are entitled to the opportunity to go through the acknowledgment process.

Mr. PALLONE. But you're not necessarily saying that you would prefer that as opposed to just passing the McIntyre bill and having them recognized?

Mr. OLSEN. I'm not here to speak on the Taylor bill. Like I said, I think it's important that the Lumbee have—that there needs to be some sort of legislation in some way. Whether it's an amendment to the '56 Act to allow the Lumbee to go through the administrative process, or whether Congress elects to enact the legislation that we're discussing today, that's entirely up to the Congress.

Mr. PALLONE. It's just the status quo that you don't like then?

Mr. OLSEN. I'm getting a note here.

Whether I like the status quo. Certainly—Well, I think there certainly are people who would argue that the status quo is not fair. The '56 Act would be perceived by some as an unfair law. Yeah, I guess the answer would be yes. The status quo is not right because the status quo keeps the Lumbee from moving forward in any way.

Mr. PALLONE. OK. I understand your position. I understand it perfectly.

Congressman McIntyre, in response to my question about what's wrong with going the Taylor route and repealing the '56 law and then letting the Lumbees go through the BIA recognition process, I asked him two questions. I said are you opposed to doing that because you don't think it's fair, or because you think that somehow it's legally not proper? I think he talked about the Tiwa Tribe and he said, look, if you decide to repeal the '56 Act, it's not fair then to go through the recognition process; you should just recognize the tribe legislatively.

Do you agree with it, or do you want to use the Tiwa situation as an example, or again, it doesn't make any difference to you?

Mr. OLSEN. Well, again, I don't want to seem wishy-washy here, but some would argue that the Tiwa situation is distinguishable—

Mr. PALLONE. That's what I would like to know. It is distinguishable, would you say?

Mr. OLSEN. To be perfectly honest, I am not in a position to comment. I don't feel that I'm up to speed enough to be able to—

Mr. PALLONE. Would anybody else like to comment on that?

Mr. OLSEN. I think you will hear from Panel III on that particular issue.

Mr. PALLONE. If any of the others, Chief Hicks or Mr. Fleming would like to comment on that Tiwa precedent.

Mr. HICKS. I would love to comment.

As we hear before in the prior testimony, the Lumbee argue that they are similarly situated to the Tiwa tribe. The tribe's government-to-government relationship was terminated by Congress, and then later restored in a restoration. The Lumbee group, by contrast, has never had a government-to-government relationship with the United States. The language of the Tiwa Act furthermore specifically refers to Tiwa as a tribe.

Mr. PALLONE. What is this distinction, though, Chief, that you're making between tribe versus group? I'm not sure I understand it completely. You're saying that the '56 Act didn't recognize them as a tribe, but just as individual Indians? Could you explain that a little more?

Mr. HICKS. The Lumbee Act recognized them as individual Indians, not a tribe.

Mr. PALLONE. OK. Well, I think I have already asked enough questions. I understand what everybody's position is.

Thank you.

The CHAIRMAN. Mr. Udall.

Mr. TOM UDALL. Thank you very much, Mr. Chairman. Just a couple of questions here.

Mr. Olsen, your testimony seems to support a legislative change to the 1956 Act in order to require the Lumbee tribe to submit to the Federal acknowledgment process. Perhaps you missed our

hearing yesterday, when tribe after tribe testified how they have been stuck in that process for well over 20 years. Mr. Fleming testified that the Office of Federal Acknowledgment is overburdened with requests for xerox copies of documents, curtailing the Office's productivity.

Are you actually suggesting that putting the Lumbee through that process is the most fair and expeditious action we can take on their behalf?

Mr. OLSEN. I'm not suggesting that it's the most expeditious or fair. I'm suggesting that it is one option and that, at the very least, they ought to be entitled to that.

Mr. TOM UDALL. The Congress has recognized a number of Indian tribes. Could you tell us, out of all the Indian tribes which are federally recognized, how many did Congress recognize and how many did the Department of Interior recognize?

Mr. OLSEN. I don't know off the top of my head, but I think Lee probably could have some of that information.

Mr. FLEMING. I know that when the GAO review took place and the report came out in November of 2001, that was an issue and an area that they analyzed. We can provide that information to you.

Mr. TOM UDALL. Could you give the Committee, in response to this question, a thorough answer in terms of that question, so we know how many are federally recognized by Congress and then how many the Department recognized?

Mr. FLEMING. I know that when the GAO investigators were looking into that very question, you're talking of the 562 federally recognized tribes, and they, too, had difficulty in coming up with definitive statistics on that. But we would be very happy to pursue that and come up with something for you.

Mr. TOM UDALL. Thank you.

Mr. TOM UDALL. Could you give me a rough number on how many have been congressionally recognized?

Mr. FLEMING. I can only give you of the petitioning groups because that would be my area of responsibility. In our summary status report, we have seven petitioning groups that were legislatively recognized—these were petitioning groups before the administrative process—and there were two legislative restorations, for a total of nine.

Mr. TOM UDALL. And there are also others, you believe?

Mr. FLEMING. Yes, that were not a part of the administrative process, yes.

Mr. TOM UDALL. So clearly, there is a precedent here for this committee and the Congress acting to recognize an Indian tribe; is that correct?

Mr. FLEMING. I think Mr. Olsen's testimony was clear on the Department's position, that Congress has the authority.

Mr. TOM UDALL. Thank you.

Mr. FALEOMAVAEGA. Would the gentleman yield?

Mr. TOM UDALL. I yield to my distinguished colleague from American Samoa, yes.

Mr. FALEOMAVAEGA. I do want to share with my friend that, since 1960, Congress approved 16 tribes recognized, and 31 by the Department of Interior. Of the 31 recognized by the Department of

the Interior, only 14 have been recognized through the BIA regulatory process that was created since 1978.

The BIA currently has ten petitions ready to be adjudicated, six of which have been waiting for at least 5 years. So, in my humble opinion, we do have some very serious problems with the current administrative process.

I wanted to ask Mr. Fleming, if he corrects me on this, the administrative process is strictly an administrative process, created by the Department of the Interior. Congress, in any way, did not mandate it by statute. You just created a process that was part of the Commission efforts that were made during the 1970s, I believe.

Mr. FLEMING. You're correct.

Mr. FALEOMAVAEGA. Thank you.

Mr. TOM UDALL. I yield back. Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Mr. McIntyre.

Mr. MCINTYRE. Yes, Mr. Chairman, just for purposes of clarification, if I could allow the Committee to take notice of certain factual matters, or I can state it in the form of as question, whichever the Chairman prefers.

The CHAIRMAN. Say that again?

[Laughter.]

Mr. MCINTYRE. I'll ask it as a question.

The CHAIRMAN. All right.

Mr. MCINTYRE. Mr. Olsen, you referred to the amount of money that would be spent for the tribe in terms of Federal recognition. Were you aware that, according to the Congressional Budget Office, for the first year of recognition it would be $77 million?

Mr. OLSEN. I was not.

Mr. MCINTYRE. And were you aware that that is only 1.67 percent, only one-and-two-thirds percent, of the combined BIA and Indian Health Service budget?

Mr. OLSEN. No, sir.

Mr. MCINTYRE. The recognition of this tribe, therefore, if those figures are correct, would be one-and-two-thirds percent of the entire BIA/Indian Health Service budget for the Lumbee Tribe.

Did you realize, Mr. Olsen, that the testimony given today by Chief Hicks, when he referred to several pieces of legislation he has shown on a chart that says different Indian names, that these were names imposed by the State of North Carolina upon this tribe?

Mr. OLSEN. I can't see the sign, but no, I was not aware of that.

Mr. MCINTYRE. Did you know that when the tribe chose the name on its own accord, not one imposed by government, it through referendum chose the name "Lumbee"?

Mr. OLSEN. I was aware of that, yes.

Mr. MCINTYRE. Were you aware of a 1914 report by Special Indian Agent O.M. McPherson, ordered by the U.S. Senate, to investigate tribal rights of the Lumbee people—and I'm quoting—"confirmed the Lumbee Indians had tribal characteristics"?

Mr. OLSEN. I was not aware of the report.

Mr. MCINTYRE. And are you aware of a 1934 report, done by Mr. John Swanton, expert on southeastern Indians, employed by the Smithsonian Institution, where the findings concluded that the Lumbee tribe is located in precisely the same area as the Cheraw Tribe was from whom it claims its direct ancestry?

Mr. OLSEN. Yes, sir.

Mr. MCINTYRE. Thank you. No further questions.

The CHAIRMAN. If there are no further questions, I want to thank our witnesses on this panel, Mr. Olsen, Chief Hicks and Mr. Fleming for being with us. If there are further questions that members have—I know that Mr. Jones had a list of questions that he wanted to submit, and I'm sure other members do, as well—they will be submitted to you in writing, and if you could answer those in writing for the committee so they can be included in the record, we would appreciate it.

Thank you for being here.

Mr. OLSEN. Thank you.

Mr. HICKS. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to call up our third panel, consisting of three witnesses testifying in favor of H.R. 898. They are Chairman Jimmy Goins of the Lumbee Tribe of North Carolina, Dr. Jack Campisi, a researcher for the Lumbee Tribe, and Arlinda Locklear, attorney for the Lumbee Tribe.

If I could have you stand and raise your right hands.

[Witnesses sworn.]

Thank you. Let the record show they answered in the affirmative.

Welcome to the hearing today. Mr. Goins, we will begin with you.

STATEMENT OF JAMES ERNEST GOINS, CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA

Mr. GOINS. Thank you, sir. I am Jimmy Goins, Chairman of the Lumbee Tribe, and I proudly appear before you today on behalf of the Lumbee Indians in their efforts for full Federal recognition. It is an honor to speak before you today for your consideration of the Lumbee Recognition Act, H.R. 898, as proposed by the honorable Congressman Mike McIntyre. I am nervous.

I also would like to thank Chairman Pombo, Ranking Member Congressman Rahall, Senator Dole, Congressman Richard Burr, and our own representative, Mr. Mike McIntyre.

At this time I would like to enter my written statement into the record.

My tribe lives in communities that are predominantly Lumbee. We know each other through community and kinship ties. Both my parents are Lumbees, my wife is a Lumbee, and both her parents are Lumbee Indians, also. I have two married daughters and their husbands are also Lumbee Indians.

For all of my life, I have attended a Lumbee church, I attended an all-Lumbee school, from the first grade to the twelfth grade. All my neighbors are Lumbee Indians, and all the land in my community is owned by Lumbee Indians. Our connection to the land we call home, and to each other, are typical of Indian peoples. We draw our strength from home known to others as Robeson County. Regardless of where a Lumbee may reside, home is always Robeson County.

When two Lumbees meet for the first time, the first question they ask is, "Who are your people?" All Lumbees know their family history three generations back, and with little discussion, any two Lumbees can connect themselves either by direct kinship or mar-

riage. 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.

My first personal experience outside my Lumbee community came when I enlisted in the U.S. Army in 1968. On my Army application it stated white, colored, and other. Knowing I was none of these, I wrote in "Lumbee Indian". Even though I was an E-5 buck sergeant, and a squad leader, when I went to Vietnam I had to walk point or scout because I was a Lumbee Indian.

I was seriously wounded while I was walking point in Vietnam. I received some 2,300 stitches, and I sit before you today a 100 percent disabled American veteran. I proudly wear the Bronze Star, the Purple Heart, and the Air Medal. I served my country honorable and exhibited the qualities that were instilled in me by my Indian ancestors.

I am an American Indian, as are my parents and their parents before them. I fought for this country as an American Indian, as did many of our Lumbee people. Lumbee people are serving today in Iraq and Afghanistan, fighting for the freedom of all Americans. Yet the United States does not recognize my tribe.

When I was 8 years old, the United States passed a law that recognized my tribe, but this law included language that said, although we were Indian, we would not be treated like other Indian tribes. We have been treated like second-class citizens. Now is the time to correct the injustice my people have endured.

On behalf of the 53,000 Lumbee Indians that I represent, I humbly ask that this injustice end today. My voice is their voice, a united, strong, and clear voice.

I would like to thank you for you time and consideration of H.R. 898.

[The prepared statement of Mr. Goins follows:]

Statement of James Ernest Goins, Chairman, Lumbee Tribe of North Carolina

My name is James Ernest Goins and I am Chairman of the Lumbee Tribe. Today I proudly appear before you on behalf of our People, the Lumbee Tribe of North Carolina. As our ancestors of years past, we gather here today with the same common vision of receiving full federal recognition.

The Lumbee desire for federal recognition

I am a direct lineal descendant of tribal leaders who first petitioned the United States in 1888 for federal recognition. This petition to Congress was a request for federal recognition and financial support for the education of Lumbee children. This petition to Congress was a request for federal recognition and financial support for the education of Lumbee children. At the time, the State had approved two years' funding for the teachers at our school and 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 school open with so little support from the State. The United States was quick to respond:

> While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.
>
> This was the beginning of a theme that we were to hear time and again from the federal government—you may be an Indian tribe and you may need our help, but we have too little funds to help you.

Our grandparents heard that theme often. 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 Indian, but each time the Department recommended against the bill, mostly for fiscal reasons.

During the 1930s when my people were attempting to reorganize under the Howard Wheeler Act, my wife's grandfather helped raised money to send our people to Washington. Their pleas met with some results. Dr. Swanton from the Bureau of Ethnology was sent to investigate our origins and history. He concluded the Lumbee people to be descendants of the Cheraw. Nevertheless, that effort failed as well.

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 feelings,—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. Most tribal members refused to submit to these tests. Only 209 agreed to do so, out of which 22 were eventually certified as half-bloods. Thus, this effort failed.

In the early 1950's, 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. In 1956, Congress did pass the Lumbee Act, designating the Indians in Robeson and adjoining counties as Lumbees. 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 began about eight years ago after the Department of the Interior 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 added to the 1956 Lumbee Act at the request of the Department.

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 this question: What will the Department of Interior learn that its experts haven't already told them? Every time a bill was introduced to recognize us, the Department was asked to investigate our history and community. Each time the Department acknowledged the existence of an Indian 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 Inte-

rior have to investigate 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. 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, the oldest documented Lumbee Community located in the historic Cheraw Settlement. My wife is Diane Locklear Goins, 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 also a Lumbee educator at a predominantly Lumbee school. My youngest daughter, Jamie, currently serves as an Ambassador with the Americans for Indian Opportunity's American Indian Ambassador Program; she recently returned from New Zealand as one of several American Indian Ambassadors. All my sons-in-law are Lumbee Indians and grew up in Lumbee communities here in Robeson County.

I am the great, great, great grandson of Clarissa Sweat/Lowry Chavis. The Department of Interior's investigations in the 1930's show that Clarissa was one of the last speakers of our language. She often served as an interpreter between the white traders and her father. She died in 1897 and is buried along the banks of Drowning Creek, in the Harper Ferry's Lumbee community—located about five miles from where I grew up and presently live. This is the same river that is known as the Lumbee River to our People, and the Lumber River to others.

My family, like other Lumbee families, takes pride in our community and maintaining a strong sense of tribalism. Because our communities are composed of large extended families, our children continue to be 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 have attended all Indian churches. Growing up in the Prospect community, I attended Prospect United Methodist Church, located immediately across from Prospect School. You may be interested in knowing that 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 Lumbee people in 1900. This religious conference is solely composed 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 of North Carolina in 1885. Only a rural country road separated 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 for purpose of deciding who attended Indian schools, and who would be allowed to teach in these schools. Teachers were selected based not only qualification, but also their moral character. As religious and school leaders, these tribal leaders not only shaped our schools, our churches, and our 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 awarded me the job of walking point through the jungles and rice paddies of Vietnam. 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 country

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.

When we gather at the Pembroke VFW (all Lumbee, with exception of one member), where I am a lifetime member, I look at my friends and I am grateful that we, who have every reason not to bear arms for this country, have fought along the sons and daughters of this great country when called to do so. No greater honor could be conferred upon those Lumbee men who gave their lives for this country and those who returned from its wars than passage of H.R. 898.

Our connection to the land we call home and to each other are typical of Indian peoples. 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. In November 2001, by special referendum conducted among enrolled Lumbees, a tribal constitution was adopted by the Lumbee people. It creates 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 arising under tribal law among 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. A copy of the Tribe's constitution is attached to my statement.

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 called blood committees) had authority to determine a child's eligibility to enroll. These committees produced partial membership lists.

A few lists of tribal members also can 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. This collection of documents was used to compile a base roll for the Lumbee Tribe for 1900 and 1910. They are excellent records and, because Indian households are listed by order of visitation, you have a record of the families comprising our communities, e.g. Prospect, Pembroke, Union Chapel, Saddletree, and Fairgrove. The same families are there today.

The Tribe has since the early 1980's (when work on the acknowledgment petition began) used a formal enrollment process. As part of the preparation of the acknowledgment petition done in 1987, the Tribe for the first time reduced its membership criteria to writing and prepared a complete list of its members. The written membership criteria are essentially the same used by the Lumbee people informally for generations for things such as school attendance. There are two criteria: first, the person must prove descent from an ancestor on the base roll, which consists of partial lists of tribal members found in school and church records; second, the person must maintain contact with the Lumbee community. 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 to date nearly 53,000 members.

H.R. 898

The bill before the committee would give the Lumbee people what we have long sought—treatment equal to other Indian tribes in the United States. It is respectful of the Lumbee Tribe's historical independence—it does not create an Indian reserva-

tion and yet would provide the same protections of federal law enjoyed by other Indian tribes. It is also respectful of the Tribe's long-standing relationship with the State of North Carolina—it authorizes the continuation of the State's present jurisdiction over the Tribe and its members.

As for the same treatment as that given other tribes, let me say that, even though Indian tribes can conduct high stakes gaming under certain circumstances under federal law, gaming has nothing to do with the Lumbee Tribe's desire for federal recognition. History shows that the Lumbee Tribe first sought federal recognition in 1888—a full one hundred years before the passage of the Indian Gaming Regulatory Act. The Tribe has no plans to set up a casino and has no economic development backer for that purpose. And there are several barriers to doing so in the future, even if the Tribe wanted to—first, our constitution requires that a chairman conduct a special referendum among our people to authorize him/her to negotiate for a casino; second, H.R. 898 insures that any acquisition of land for gaming purposes would require the Governor's concurrence. In other words, the Governor of North Carolina could veto any gaming by the Lumbee Tribe, even if the Tribe decided in the future that it wanted to do such an enterprise. But the important point for our people is that, finally and once and for all, the Lumbee Tribe is treated just like every other federally recognized tribe in the country. Congress should not pick an choose among federal Indian statutes for the Lumbee—after all we've endured we are entitled to the same privileges as all other federally recognized tribes, whether we exercise those privileges or not.

As for State jurisdiction, we always remind our Indian friends outside Lumbee territory that our situation is unique. Because of the size of the Tribe and the Tribe's political engagement, the Lumbee Tribe controls or influences many of the reins of local authority. Three out of eight Robeson County Commissioners are Lumbee, the County Sheriff is Lumbee, several elected judges in the County are Lumbee, four out of eleven members of the County School Board is Lumbee, and the Mayor and Town Council of Pembroke are all Lumbee. We also have a Lumbee in the North Carolina General Assembly. So leaving jurisdiction in the hands of local organs of government means leaving jurisdiction in the hands of Lumbees.

Congressman McIntyre's bill would finish what Congress began in 1956 and is the right thing to do. The Lumbee people have been patient and persistent in their quest for federal recognition, but I can tell you our people yearn for federal recognition. It is important to us that the federal government formally acknowledge what we have paid such a high price to maintain—tribal existence. 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 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.898.

[A letter submitted for the record by Mr. Goins follows:]

Lumbee Tribe of North Carolina

Jimmy Goins
Tribal Chairman

April 20, 2004

Honorable Richard W. Pombo
Chairman, Resources Committee
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515-6201

Re: Magnotta letter on H.R.898

Dear Chairman Pombo:

On April 1, 2004, the Committee on Resources held a hearing on H.R.898, a bill to provide for the recognition of the Lumbee Tribe of North Carolina. On April 14 (beyond the period permitted by the committee rules for the filing of supplemental testimony), you received a letter in opposition to the bill from Katherine Magnotta, who styled herself the "Representative of the Original Twenty-two Siouan Indians of North Carolina." The purpose of this letter is to respond to the allegations made in that letter, in the event the committee accepts the letter as a supplement to the record on H.R.898.

Aside from the personal attacks and threatened lawsuit, there is no new material in the letter. To the contrary, the letter simply reflects the effort of a small number of individuals who are clearly members of the broader Lumbee community to disassociate themselves from the Tribe. As such, this is an internal matter that does not disprove either the Tribe's existence as an Indian tribe or any of the history relied upon by the Tribe.

Nothing in the historical material summarized in the Magnotta letter is inconsistent with the historical material submitted by the Lumbee Tribe. The letter describes the examination of 209 members of the Lumbee community done by Carl Seltzer at the behest of the Department of the Interior in 1936. As the letter notes, twenty-two of those individuals were certified based upon this examination as one-half or more Indian blood. However, the letter erroneously asserts that the Lumbee Tribe bases its current claim for recognition on this one event.

In their testimony in support of H.R.898, the Lumbee witnesses summarized the Seltzer examinations briefly. Out of his twelve-page statement on Lumbee history, Dr. Jack Campisi devoted two paragraphs to the Seltzer incident. Out of my ten-page summary of Lumbee efforts to obtain federal recognition, I devoted one footnote to the Seltzer incident. Simply put, the Seltzer incident in only a small part of the Lumbee Tribe's long history, one that dates back to 1737 and establishes a clear link to the aboriginal Cheraw community then located on Drowning Creek. It is this history that shows the Lumbees' tribal existence, not a single event that occurred in the early twentieth century.

Neither does this history "belong to" any individual. The documents produced by Seltzer, a federal employee, are public records. They were obtained by the Lumbee Tribe from the National Archives. They were compiled for the Tribe by Dr. Campisi, in cooperation with the Lumber River Legal Services office, and submitted to the Department of the Interior as part of a voluminous collection of documents in support of the Tribe's petition for federal acknowledgment.

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In the end, the Magnotta letter really raises an internal matter. The descendants of the so-called twenty-two half bloods were members of the same Indian community that voted in the 1952 referendum to adopt the name Lumbee. The descendants of the so-called twenty-two half bloods were members of the same Indian community that was recognized by the State of North Carolina as the Lumbee Tribe in 1953. A quick examination of the tribal roll shows that approximately 800 descendants of the so-called twenty-two half bloods are enrolled members of the Lumbee Tribe today, including two current members of the Lumbee tribal council. Those individuals who are allegedly represented by Magnotta can, if they so choose, disassociate themselves from the Lumbee Tribe. Nothing in H.R.898 deprives these individuals of this right or requires that they enroll in the Lumbee Tribe. However, these individuals have no right to deny the use of public records to the larger, Lumbee community in the Tribe's effort to obtain the federal recognition to which it is entitled.

The Lumbee Tribe stands by its history and its community as described at the hearing held by the committee on H.R.898.

Sincerely,

Jimmy Goins

Mr. Jimmy Goins
Tribal Chairman

The CHAIRMAN. Thank you, Chairman.

Dr. Campisi.

STATEMENT OF JACK CAMPISI, ASSOCIATE PROFESSOR, WELLESLEY COLLEGE, AND RETIRED RESEARCHER FOR THE LUMBEE TRIBE OF NORTH CAROLINA

Dr. CAMPISI. Mr. Chairman and members of the Committee, I would like to thank the Committee for giving me the opportunity to address you on this important legislation. I have submitted a written statement that I request be made part of the record of this hearing.

The Lumbee Tribe received State recognition in 1885, and from that time until the 1970s, the tribe organized and operated its own school system, authorized and funded by the State of North Carolina. Only Lumbee children were enrolled by the Lumbee school committees. They were taught by Lumbee teachers, who were trained at the Lumbee-run Normal School, now part of the University of North Carolina, Pembrooke. The school system remained in tribal control until a Federal judge desegregated in the 1970s.

It was the need for financial assistance for their school in the 1880s that led the Lumbees to seek Federal recognition. They have continuously sought recognition through special bills and from the Department of the Interior. These efforts produced a documentary record on this tribe's history and community that proves their tribal existence. These studies were produced by Congress and the Department of the Interior, and I ask that they be made part of the record.

The documentary evidence on this group proves their tribal existence, even as defined by the Federal acknowledgment regulation. My quarter century of experience with the regulatory process shows that the two criteria—community and political authority—are the most difficult to demonstrate. I have previously described the tribal exercise of authority over education, and in my written testimony I have provided other evidence.

As to community, in 2002 I supervised the drawing of a 1-percent random sample of tribal enrollment to determine the tribe's residency and marriage patterns. This is a map of Robeson County showing the Lumber River, formerly known as Drowning Creek. As the map shows, nearly two-thirds of the people living in the tribal

core area are tribal members, and 70 percent of the Lumbees who are married are married to other tribal members. The regulations say that this evidence alone is conclusive proof of community and political authority. This same pattern existed in the past as well.

Allow me to point out that at the first English contact, the Cheraw Indians were living along Drowning Creek, that there was a Cheraw settlement on Drowning Creek in the 1770s, and that the surnames on a partial list of members of that community are to this day the surnames uniquely found in the Lumbee community.

Finally, the Lumbee tribal members can trace their ancestors back to the first U.S. Census in 1790.

In 1934, the Department of the Interior, in its testimony to the Congress, expressed its view that the modern Lumbee community descends from the historic Cheraw tribe. The Department's view was based on the research of Dr. John R. Swanton, the eminent anthropologist at the Bureau of American Ethnologies of the Smithsonian Institution. This opinion has been supported by acknowledged experts in the field. The ancestral link has not been altered by the various names applied by the State to the Lumbees over the past 130 years. They are the same people, it is the same tribe.

Thank you.

[The prepared statement of Dr. Campisi follows:]

Statement of Dr. Jack Campisi, Associate Professor, Wellesley College, Retired Researcher, Lumbee Tribe of North Carolina

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

Over the course of the past twenty-five years, I have worked on 28 tribal petitions for federal acknowledgment. None has exceeded the Lumbee petition in documentation and no group has exhibited more evidence of community cohesion and political continuity than the Lumbee Tribe. It is my professional opinion that the Lumbee Tribe meets the criteria for recognition. I will outline below the main arguments and evidence in support of this conclusion.

AN OVERVIEW OF LUMBEE TRIBAL HISTORY

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

Lumbees, like other Indians in the state, held their land in severally, but often without patents. Thus, they were in a precarious position.

Added to the problem of tribal survival was the steadily worsening relationship between whites and "people of color" in North Carolina following Nat Turner's uprising in 1831. In 1835, the state passed a constitutional amendment denying tribal members rights they had previously enjoyed. Many refused to abide by the changes and some were charged with violations. One case, in particular, went far toward recognizing the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun, a violation of state law. He was convicted, but promptly appealed, claiming that the law only restricted free Negroes, not persons of color. The appeals court reversed the lower court, finding that "Free persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from Negro ancestors beyond the fourth degree." The following year, in 1859, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself. These cases generally resulted in the Lumbees establishing a special status under the law as Indians, one outside the limitations placed on others who were classified as "free persons of color."

The federal census records are by far the best source of evidence concerning the Lumbee community. It is clear from the names of the heads of households that the area of Robeson County around Drowning Creek, renamed the Lumber River in 1809 by the State Legislature, was occupied almost exclusively by tribal members. Based on the 1850 census (the first census to provide the names of the individual's resident in each household), it is possible to describe the residency patterns of the Lumbee community. Thus, there can be no doubt that there was an Indian community present along Drowning Creek from the mid-1700s, separate from other communities in the area. It is also certain that this community had a well-established leadership structure and that it managed its affairs with relative autonomy.

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

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

Matters came to a head in 1864 when members of the Allen Lowrie family and the local authorities came into armed conflict and a number of individuals on both sides were killed. In March of 1865, the Home Guard captured Allen Lowrie and his son, William, and after holding them for a short time, executed them in a field near the father's house. This was followed by a virtual reign of terror during which the Home Guard tortured members of the Lowrie family and their kinsmen in order to learn the whereabouts of the band. With the death of his father and brother, Henry Berry Lowrie, who was barely twenty years old, took over the leadership of the band. For the next decade, led by Henry Berry Lowrie, and with community support and protection, the band fought against local authorities who sought by a variety of means to oppress the Indian population in Robeson County. The Lowrie Band led a struggle that ended only after the disappearance of its leader in 1872, and the capture and death of the last of the band members in 1874. Henry Berry Lowrie remains a folk hero to the Lumbee Indians and his story is told every year in an outdoor drama called "Strike at the Wind."

By the 1870s, the Lumbees were openly acknowledged to be Indians. While the Lowrie Band was carrying out its defense, others in the tribe were taking equally effective actions to assert their independence. Lumbees were denied access to the white schools in the county and they refused to attend the schools for blacks. This impasse was broken in 1885, when the Lumbees were formally recognized by the State of North Carolina as an Indian tribe and permitted to establish a school system for the children of tribal members only. Tribal members exercised complete control over who could attend the schools. Each Lumbee settlement had a school committee that determined eligibility. In order to be eligible, an individual had to prove Lumbee ancestry back through the fourth generation, that is, back to the 1770's. Because of the rigorous manner in which these rules were enforced in the nineteenth century, school enrollment provides an accurate basis for determining present-day membership.

In 1887, tribal members petitioned the state legislature, requesting the establishment of a normal school to train Indian teachers for the Tribe's schools. Permission was granted, tribal members raised the funds, and along with some state assistance, the normal school began training teachers for the expanding Lumbee school system. That normal school has been in operation continually since, evolving into Pembroke State University and, recently, the University of North Carolina at Pembroke.

In 1888, the Tribe petitioned Congress for educational assistance. The request was sent by the House Committee on Indian Affairs to the Commissioner of Indian Affairs, but no action was taken for nearly two years. Finally, in 1890, Commissioner Morgan responded to the Tribe, telling them that, "So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes." There is no doubt that the government's rejection of assistance was based solely on economic considerations, the commissioner implying that if sufficient funds had been available, services would have been provided to tribes he referred to as "civilized."

The Lumbees made frequent attempts over the course of the next fifty years to receive assistance from the United States. In 1899, Congressman John D. Bellamy introduced legislation to provide educational assistance for the Croatan Indians (as the Lumbees were then called). Again, in 1910 and 1911, legislation was introduced in Congress to change the Tribe's name and to establish "... a school for the Indians of Robeson County, North Carolina." To secure information on the Tribe, the Indian Office sent Charles F. Pierce, Supervisor of Indian Schools, to investigate. He reported favorably on the Tribe, finding "... a large majority as being at least three-fourths Indian." He described them as being law-abiding and industrious and "crazy on the subject of education." Pierce had no doubt that the Lumbees were Indians, or that they were a tribe. Nor did he doubt that federal educational assistance would be beneficial. He opposed the legislation because, in his words, "[a]t the present time it is the avowed policy of the government to require states having an Indian population to assume the burden and responsibility for their education, so far as is possible." After lengthy deliberations, the bill passed the Senate, but not the House, because the chairman of the House committee felt that the Lumbees were eligible to attend the various Indian boarding schools.

The Tribe continued its efforts to secure federal educational assistance, and, in 1914, sent a delegation to Congress. Another investigation was carried out by the Indian Office at the direction of the Senate. Among other things, Special Indian Agent, O.M. McPherson found that the Tribe had developed an extensive system of schools and a complex political organization to represent its interests. He noted that the Lumbees were eligible to attend federal Indian schools, but doubted that these schools would meet their needs. His recommendation was that, if Congress saw fit to establish a school, it should be one emphasizing agricultural and mechanical skills. Again, Congress took no action. Parenthetically, it should be noted that during this period tribal activity was generally at a low level across the United States. Not so for the Lumbees, who actively involved their congressmen in their efforts to achieve federal recognition.

During the 1930s, the Tribe renewed its efforts to achieve federal recognition. In 1934, the Bureau of Indian Affairs asked the eminent anthropologist at the Bureau of American Ethnology, John Reed Swanton, for his professional opinion on the Lumbees. Swanton was emphatic concerning their Indian ancestry, specifying a Cheraw and other eastern Siouan tribes as their ancestry. A later report by Indian Agent Fred Baker (1935), who had visited the Lumbee community, gave further support that they constituted a tribe. Baker discussed a resettlement project with the Tribe in which the government would acquire land for the Lumbees' support, an alternative to the share-cropping and credit system then the predominant means of Lumbee livelihood. Baker reported to Congress:

> "It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all of the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision...
>
> "I find that the sense of racial solidarity is growing stronger and that the members of this tribe are cooperating more and more with each other with the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them."

However, the Bureau of Indian Affairs did not support recognition of the Tribe, despite four studies that all found the Lumbee to be Indian. The apparent reasons were the size of the Tribe and the costs to the government.

Following the First World War, the Lumbees renewed their efforts, both in the state and with Congress, to improve their educational system. At the state level, they were able to get an appropriation of $75,000 for capital improvements at the Indian Normal School. The issue of the Tribe's name had become a concern, and tribal leaders sought legislation in Congress to recognize the name adopted by the State Legislature—The Cherokee Indians of Robeson and adjoining counties in North Carolina. Such a bill was introduced in the Senate in 1924, and at first received favorable support from the Secretary of the Interior, although Commissioner of Indian Affairs Charles H. Burke opposed the legislation. The Secretary later dropped his support and the bill died.

The efforts to obtain congressional recognition were resumed in 1932. Senator Josiah W. Bailey submitted a bill designating the Indians of Robeson and adjoining counties as "Cherokee Indians," but this effort also failed. The following year another bill was proposed, this time designating the Tribe as the "Cheraw Indians," at the suggestion of Dr. Swanton. This name caused a split in the Tribe, with those tribal members led by Joe Brooks favoring it, while others, led by D.F. Lowry opposing it, fearing it would jeopardize the Tribe's control over its schools. Because of the split in the Tribe, the effort failed.

With the passage of the Indian Reorganization Act, Brooks and his supporters attempted to organize the Tribe under a federal charter. Because the Tribe did not possess a land base, it was advised by Assistant Solicitor Felix Cohen to organize under the half-blood provision of the Act. Cohen urged that the Tribe apply for land and a charter under the name of the "Siouan Indian Community of Lumber River." Brooks immediately submitted a proposal that mirrored Cohen's recommendations. Over the course of the next two years, the two projects of establishing recognition under the IRA and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the BIA to the Rural Resettlement Administration, and the land that was to be purchased solely for Lumbee use, was opened to non-Indians. After a lengthy struggle, Brooks was able to have a part of the land set aside for tribal members, and incorporated under the name of the Red Banks Mutual Association.

The Tribe was no more successful in achieving recognition under the IRA. The BIA formed a commission of three to investigate the blood quantum of the Lumbees. In 1936, Dr. Carl C. Seltzer, an anthropologist and member of the commission, visited Robeson County on two occasions and took physical data on 209 Indians applying for recognition as one-half or more Indian blood. He found that twenty-two met the criteria. They were certified by the Secretary of the Interior. What made Seltzer's work so ludicrous was that in several cases he identified full siblings in different ways, one meeting the blood quantum requirement and the other not.

It was not until after the Second World War that the Lumbees again tried to achieve federal recognition of their status as an Indian tribe. The issue of their name continued to cause them problems so, in 1952, the Lumbee leadership conducted a referendum on the name. Of 2,144 tribal members who voted, all but 35 favored the use of the name "Lumbee," derived from the Lumber River upon which they had always dwelled. Armed with this overwhelming support, the leader of the movement, D.F. Lowry, asked the State Legislature to adopt the change. The Legislature approved the name change in 1953. The Lumbee Tribe then took its case to Congress, which in 1956 passed the Lumbee Bill.

There can be no doubt that for more than 200 years the Lumbees have been continuously and repeatedly recognized as American Indians. This was made explicit by the state in the 1880's and by the federal government from at least the beginning of the twentieth century on. Federal and state officials have, on numerous occasions, reviewed the evidence and at no time have they questioned the fact that the Tribe consisted of people of Indian descent. Federal reluctance to acknowledge the Tribe

centered on questions involving the extension of services. It was unfortunate that each effort by the Lumbees to clarify their federal status and to receive services coincided with federal Indian policy shifts away from the trust relationship: the General Allotment Act in 1887; the Citizenship Act of 1924; and the termination policy of the 1950's. The exception, the Indian Reorganization Act, which could have provided a means to recognition, was subverted by bad anthropology and bureaucratic indolence.

RECENT LUMBEE HISTORY

Since the passage of the Lumbee Act, the Tribe has faced a steady string of problems, beginning with an attempt by the Ku Klux Klan to intimidate tribal members in 1958. The Tribe's reaction to this threat was a spontaneous gathering that drove the Klansmen from the field and broke up their rally, a confrontation that focused national attention for a time on the Lumbee community. The tribal members have exerted their influence in other ways. In the 1960's they organized voter registration drives that made their influence felt on local politics, electing members of the Tribe to state, county, and local public offices. When the local school authorities attempted to integrate only the black and Indian schools in the county, tribal members staged sit-ins and filed lawsuits to prevent the loss of tribal control over the schools. It must be understood that the school system was and is a key and integral part of tribal identity, and any threat to the Tribe's control would be resisted. And resisted it was!

While the Tribe was struggling to maintain its schools, it was actively opposing the so-called "double voting" system, which allowed whites in the towns (which had separate school districts) to vote with whites in the county, who were in the minority, to maintain white control over the county school system. The students in the county school system were predominantly Indian and black. Tribal leaders took the case to federal court, and after losing at the district court, won a reversal at the court of appeals, thus ending double voting.

At about the same time, tribal leaders became involved in an issue with high symbolic value to the Tribe. In 1972, the Board of Trustees of Pembroke State University decided to demolish the main building on the campus and replace it with another structure. Very quickly, a group formed to "Save Old Main." The group waged a statewide and national campaign to save the building, and just at the point when it seemed that they would be victorious, the building was burned to the ground. The Tribe overcame this blow and campaigned hard for the reconstruction of Old Main, which they eventually accomplished. The building was completed in 1975 and is now the site of the University of North Carolina at Pembroke's Native American Resource Center.

Since the end of World War II, the Tribe has grown in stature and influence. It was a primary mover in the establishment of North Carolina Commission of Indian Affairs, an organization that has become a model for state Indian commissions. The Lumbees have played an instrumental role in county affairs, where they have represented a moderating influence.

THE LUMBEE COMMUNITY TODAY

The Lumbees are held together by the same mechanisms and values that have kept them together for the past one hundred years or more, mechanisms and values that are typically Indian. First and foremost is the family, which serves as the center of Lumbee social activities. There is continual and widespread visiting among adults, particularly in the homes of parents and grandparents. Often, children live near their parents on land that was part of the family homestead. Members of families speak to and visit each other on an almost daily basis.

The knowledge that the average Lumbee has of his or her kin is truly astounding. It is very common for individuals to be able to trace their parents' genealogies back five or more generations. Not only are individuals able to name their grandparents, great grandparents, great great grandparents etc., but often they can name the siblings of their ancestors, the spouses of their ancestors' siblings, relate where they lived in Robeson County, the church they attended, and the names of their offspring. It is common for an individual to name two or three hundred individuals as members of the immediate family. Every year there are family reunions that attract members from all over the country. They vary in size from small gatherings of a few hundred close kin to reunions involving a thousand or more persons.

This kinship pattern is well-illustrated by the mapping of all Lumbee heads of household based upon the 1850 federal census that I prepared for the Tribe's petition for federal acknowledgment. I identified 168 households headed by Lumbees in 1850. These heads of household are the ancestors of present-day Lumbees and include descendants of the Locklear extended family documented on the old Cheraw

field in 1790. The households were clustered in what is the core area today of the Lumbee Tribe; in some areas, such as the Prospect community, the area was almost exclusively Lumbee. The households showed an extremely high rate of in-marriage, resulting in complex and multiple kinship and marriage ties among the members—a pattern that continues today as discussed below.

The same kinship pattern is reflected in the list of tribal leaders who appeared on the 1887 petition to the state and the 1888 petition to the Congress. When these individuals' relationships, both marital and kin, are mapped, it again reveals a remarkably tight community. There are multiple ties, as shown by the chart submitted by the Tribe with its petition for federal acknowledgment. Thus, the high rates of marriage and geographic concentration of tribal members shown today, as discussed below, were evident in 1790 and 1850.

Religion also serves to maintain the social boundaries of the Lumbee Tribe. By social boundaries, I mean that there are membership rules, special beliefs and values, a unique history, and a system of political authority and decisionmaking that marks the Lumbees as a separate community. There are more than 130 Lumbee Indian churches in Robeson County, and with one or two exceptions, each has a Lumbee minister. Church membership crosses family lines and settlement areas, thus drawing together different sectors of the Tribe.

For the Lumbees, church is more than a religious experience; it is one of their most important social activities. It involves many of them on a daily basis. The churches have Sunday schools, youth organizations, senior citizens' programs, Bible study programs, and chorus practices, to mention but a few of the activities available. It is common for members of the same household to attend different churches, and this behavior further acts to bring the tribal membership together.

An additional and important activity of the churches is to hold an annual "homecoming" during the fall. The event is well-advertised and individuals come from great distances to attend. Homecomings are held on Sundays after church service and are open to all Lumbees. Families and friends gather in a church's fellowship hall and share a leisurely meal together. Commonly, there are several hundred tribal members in attendance. Homecomings are informal gatherings which offer opportunities for members of a family from different congregations to join with other families.

The family and the churches also provide the main avenues for political participation. In studying the Lumbee community, it is clear that leadership over the years has tended to surface in the same families from generation to generation, something like a system of inherited leadership. These leaders have gained prominence through their participation in the educational system and as church leaders. In the past, many of the Tribe's most dynamic leaders were ministers and teachers. Today, there are other avenues for the demonstration of leadership qualities, but family, education and religious values still command attention.

The importance of the role played by the Lumbee churches in the political life of the Tribe cannot be overstated. During the 1990s, it was the leadership from the churches that initiated and sustained the process for preparing a tribal Constitution. The delegates to the Constitutional Convention were selected by the churches and represented every segment of the Tribe. After nearly ten years of meetings, negotiations, court actions, and redrafts, the Constitution was presented to the tribal members for their approval. On November 6, 2001, the tribal members voted on the Constitution. Eighty-five [85] percent of those voting voted in favor of adoption. The approved Constitution is recognized by the State of North Carolina, and it is the Tribe's governing document.

Lumbee Tribe of North Carolina and The Federal Acknowledgment Regulations

The United States Department of the Interior regulations (25 CFR Part 83) for "Establishing That an American Indian Group Exists as an Indian Tribe" has seven mandatory criteria. They are:

(a) identification as an American Indian entity on a substantially continuous basis since 1900;

(b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(c) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(d) a copy of the group's present governing document including its membership criteria;

(e) the petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes which combined and functioned as a single autonomous political entity;

(f) the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The 1956 Lumbee Act forbids the Federal relationship, making the Tribe ineligible for the administrative process. Were the Tribe eligible for the process, the historical record summarized above demonstrates that the Tribe satisfies all other criteria for acknowledgment.

Criterion (a) Identification as an Indian entity

This criterion can be met by showing evidence of federal, state, or county relationships, or identification by historians or social scientists, in books or newspapers, or by relationships with other tribes or national, regional or state Indian organizations. There are repeated and numerous identifications of the Lumbee Tribe as an Indian entity since 1900, as shown in the summary of the Tribe's efforts to obtain federal recognition above. There can be no serious question that the Lumbee Tribe can and has demonstrated this criterion.

Criterion (b) Community

This criterion provides a number of ways to demonstrate community, foremost among these are rates of marriage and residency patterns. The regulations provide that an Indian group has conclusively demonstrated this criterion by proof that 50 percent or more of its members reside in a geographical area composed exclusively or almost exclusively of tribal members, or that at least 50 percent of its members are married to other tribal members. These are the so-called high evidence standards. The Lumbee members meet both of these standards, thereby proving community conclusively.

To determine the residency and marriage rates for the contemporary period, a 1 percent systematic sample was drawn from the membership files in December 2002. Of the 543 files drawn, 29 were found to contain the name of deceased individuals, or were missing from the files, leaving a balance of 514 files. This corresponds closely with the number of active members (52,850) as reported to the Lumbee Tribal Council in December 2002.

The residency pattern of the Lumbee Tribal members is divided into three categories: core area where the tribal members live in either exclusively or nearly exclusively Lumbee geographical areas; those living somewhere in North Carolina; and those living elsewhere. Included in the first category are the following communities in Robeson County: Pembroke, Maxton, Rowland, Lumberton, Fairmont, St. Paul's, and Red Springs. Within these communities are areas that are exclusively (or nearly so) occupied by Lumbees. These areas are reflected on the attached map.

The data show that of the 511 for whom there was residency data, 330 (64.6%) live in the core area. One hundred and two (19.9%) live in the State of North Carolina, and the 79 (15.4%) live elsewhere, almost all of them in the United States. This means that even without other data on community the Lumbee Tribe of North Carolina meets the high evidence standard of criterion (b)for the contemporary period. It also satisfies criterion (c)—political—for the same period. Based on census and other data, it is certain that the Tribe would meet the same high standard for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

A second type of high evidence has to do with intratribal marriage. Using the same sample, there were 276 records that provided information on the age and marital status of individuals. Of these, 49 were younger than 16, the age selected as marriageable. Another 23 were identified as single, leaving 204 with known marriage partners. Of this number 143 (70%) were married to another Lumbee tribal member. Of the remaining 61, 59 were married to non-Indians and 2 were married to members of other tribes. Once again, the Lumbee Tribe of North Carolina meets the standard of high evidence for the contemporary period under criterion (b) and also criterion (c) for the same period. As with residency, based on census and other data, it is certain that the Tribe would meet the same high standard for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

In addition, the Lumbee Tribe of North Carolina organized, ran, and largely financed its own school system and teacher's training college for nearly one hundred years. It has had and continues to have a complex network of churches that exclusively or nearly exclusively serve the tribal members. Many of these churches are tied together by three organizations—the Burnt Swamp Baptist Association (60 churches), the North Carolina Conference of the Methodist Church (12 churches), and the Lumber River Holiness Methodist Conference (9 churches.) The others are

non-affiliated. Presently, there are in excess of 130 churches in Robeson County exclusively serving the Lumbee people and their spouses.

These facts demonstrate conclusively that the Lumbees have existed from historical times to the present as a community.

Criterion (c) Political

The regulations provide that if community is proven by high evidence as exhibited by the Lumbee community, this is considered conclusive proof of political authority as well. The strength of the Lumbee Tribe's political leadership is also demonstrated by Lumbee history.

The Lumbee history is one of continual resistance to outside domination, beginning in the eighteenth century. In 1754, the ancestors of the Lumbees were described as a community of 50 families living on Drowning Creek, "mixt Crew [or breed] a lawless people." In 1773, they were identified as "A List of the Mob Railously Assembled together in Bladen County [later subdivided to create Robeson County]." In the 1830s, Lumbees opposed the laws limiting their freedoms, and in the Civil War and Reconstruction years, under the leadership of Henry Berry Lowerie, they actively opposed, first the Confederate government, and later the United States.

Following Reconstruction, in the 1880s, the Lumbee leadership sought and gained state recognition (1885) and the establishment of a separate school system, a school system that they ran through locally elected school boards. In 1887, 67 ancestors of the Tribe petitioned the North Carolina Legislature to establish a separate teacher training school for the Lumbees.

During the twentieth century, tribal leaders repeatedly petitioned the Congress for federal recognition. Finally, in 1956, after an active campaign by tribal leaders, a tribal referendum adopting the name Lumbee, and the passage of state legislation in 1953 adopting the Lumbee name for the Tribe recognized in earlier state legislation, the United States Congress passed legislation in 1956 recognizing "the Indians in Robeson and adjoining counties of North Carolina ... as Lumbee Indians of North Carolina." These efforts to achieve state and federal recognition, along with the control of the schools and teacher's college, demonstrate the presence of a strong leadership in the Lumbee community.

From the 1960s on, the Lumbee leadership sought to maintain control over their schools and college, and when that was no longer possible, to share political power in Robeson County. They instituted lawsuits to abolish double voting, fought to save the college's main administration building, and when that burned down, to have it rebuilt, and elect Lumbee leaders to county positions. The Tribe submitted a petition for federal recognition under 25 CRF 83. Finally, beginning in 1993, the Tribe began the process that eventually led in 2002 to the present Constitution and tribal government. The process started with funds from a Methodist Church grant, the delegates were chosen from the participating churches, and the process was deeply influenced by church leaders. The results were overwhelming endorsed by the tribal population in two referenda—1994 and 2001.

The evidence presented here in summary form demonstrates that the Lumbee Tribe of North Carolina has had a continuous political leadership from sustained contact and would meet criterion (c).

Criterion (d) Governance

This criterion requires that a petitioner submit either a statement describing its system of governance or its governing document. By the adoption of a tribal Constitution, one that has been recognized by the State of North Carolina, the Tribe clearly demonstrates this criterion.

Criterion (e) Descent from a historical tribe or tribes

The eighteenth-century records that exist show a Cheraw community precisely where the Lumbees reside today, and they show that this Cheraw community had the same surnames as those common to the modern-day Lumbee community. A 1725 map made by John Herbert showed the Tribe between the Pee Dee River and Drowning Creek, now called the Lumber River. In 1737, John Thompson purchased land in the same general area from the Cheraw, and in 1754, Governor Arthur Dobbs of North Carolina identified on "Drowning Creek on the head of Little Pedee 50 families a mixt Crew [or Breed] a lawless people filled the lands without patent or paying quit rents shot a Surveyed for coming to view vacant lands being enclosed by great swamps." A document written in 1771 refers to "the Charraw Settlement" on Drowning Creek, and another document dated 1773 contains a list of names that connect this community to the Cheraw in 1737. Some of the same surnames as today's Lumbee population appeared on the list: Ivey, Sweat, Groom, Locklear, Chavis, Dees, and Grant (see Dr. James H. Merrill letter to Congressman Charlie

Rose, October 18, 1989, for further discussion). Thus, the community mentioned in the two references cited in above and the community of Indians described in nineteenth century documents were the same, and were the antecedents of today's Lumbee Tribe.

As to criterion (e), Dr. John R. Swanton, a member of the staff of the Bureau of American Ethnology, a federal government agency, and one of the nation's foremost anthropologists and experts on American Indian tribes, particularly in the southeast, concluded in the early 1930s that the Lumbees are descended predominantly from Cheraw Indians. The Department of the Interior adopted this position in its 1934 statement to Congress on one of the proposed recognition bills, relying on Dr. Swanton's report. This has also been confirmed and supported by scholars, such as Dr. William C. Sturtevant, Chief Ethnologist of the Smithsonian Institution and General Editor of the Handbook of American Indians, Dr. James Merrell, Professor of History, Vassar College, and a leading authority on the colonial Carolinas, Dr. Raymond Fogelson, Professor of Anthropology, University of Chicago, a leading authority on the Cherokee and Indians of the southeast, and myself.

Criterion (f) Petitioner's members are not members of any federally recognized tribe

The members of the Lumbee Tribe of North Carolina are not members of any federally recognized tribe. This can be demonstrated by a review of the Tribe's genealogical data.

Criterion (g) The petitioner has not been the subject of a federal termination act

The Solicitor for the Department of the Interior has determined that the 1956 Lumbee Act is an act forbidding the federal relationship.

SUMMARY

Typically, Indian tribes petitioning for acknowledgment under the administrative process have most difficulty with criteria (b) and (c), community and political authority respectively. Every tribe that has been denied acknowledgment through the process to date has failed because of the inability to prove these criteria, and perhaps others. As demonstrated above, the Lumbee Tribe's case on these criteria is so strong as to be conclusive. In light of the heavily documented history of the Tribe since 1900, neither can there be any doubt about the Tribe's ability to demonstrate the other criteria.

In the past few years, the Bureau of Indian Affairs has opposed bills to recognize the Lumbee. The Bureau has complained that there is too little data, specifically that a genealogical link between the Cheraw Tribe on Drowning Creek and the present-day Lumbee Tribe on the renamed Lumber River cannot be made, despite the occurrence of shared and uncommon surnames. Of course, the failure of the dominant society to record the births and deaths of Lumbees over the centuries is no fault of the Tribe; nor does this absence suggest that the Lumbee Tribe is not descended from the Cheraw Tribe. In fact, the Department testified in 1934 that the Tribe was descended from the Cheraw Tribe, based upon the work of the eminent Dr. Swanton. The Department's earlier opinion is also corroborated by the professional opinions of Drs. Sturtevant, Merrill, Fogelson, and Campisi. Thus, the Department's more recent view should be taken as more intellectual curiosity than serious doubt about the origins of the Tribe. And this new found curiosity should be judged in the context of the Department's long-standing determination to oppose recognition of the Tribe, even in the face of its past judgment that the Lumbees truly are an Indian tribe.

The extensive record of the Tribe's history in the eighteenth, nineteenth, and twentieth centuries establish that the Lumbee Indians constitute an Indian tribe as that term is defined in the Department of the Interior's acknowledgment regulations. The Tribe fails only on the last criterion, that is, Congress has prohibited the Department from acting on the Tribe's petition in the 1956 Lumbee Act. Thus, the Congress can act on Congressman McIntyre's bill with full confidence that the Lumbees are, in fact, an Indian tribe.

The CHAIRMAN. Thank you.

Ms. Locklear.

STATEMENT OF ARLINDA F. LOCKLEAR, ESQ., ATTORNEY FOR THE LUMBEE TRIBE OF NORTH CAROLINA

Ms. LOCKLEAR. Thank you, Mr. Chairman. It is my privilege to appear before the Committee today, not only as the tribal attorney

representing the Lumbee Tribe of North Carolina, but also in full disclosure and all fairness as an enrolled member of the tribe as well.

Let me start by first expressing the tribe's deep appreciation to Senator Dole and Congressman McIntyre. Not only are they our champions in both the House and the Senate; they made a particularly gracious move this morning by allowing members of the tribe to take their reserved seats as witnesses. This was necessary, because the Lumbee Tribe lacked the resources to pay for lineholders, such as the Eastern Band did this morning, to ensure that Lumbees could actually see the hearing on the Lumbee recognition bill. Thank you very much for that kind gesture.

Let me start by saying that the Lumbee are unique in a number of respects. Dr. Campisi has talked about the State recognition of the tribe. The State recognition of the Lumbee, as he indicated, began in 1885. From that time, 1888, up until today, the Lumbee Tribe has continuously sought Federal recognition from the Congress. It has done so in the form of bills. It has also done so in the form of administrative processes before the Department of Interior.

The current process is not magic in that regard. It is only the current process. As a number of witnesses have indicated, that result of a 100 year study has produced this documentary record on the Lumbee Tribe.

The names that have been referred to, as Dr. Campisi indicated, have been names imposed by the State of North Carolina, not names voluntarily adopted by the Lumbee Tribe. As an example, let me show you Mr. Locklear, to my left, identified in the Smithsonian files as a member of the Croatan Tribe around the period 1911. His name is Aaron Locklear. Aaron Locklear is an ancestor of mine. I am an enrolled member of the Lumbee Tribe that descends from Mr. Locklear, who was identified by the Smithsonian and the State of North Carolina as a Croatan Indian.

That name was changed in 1911 to Indians of Robeson County. It was changed again by the State of North Carolina in 1913 to the Cherokees of Robeson County. The tribe itself became dissatisfied with that State-imposed designation, largely as a result of the Department's own studies which identified in 1934 the tribe as, indeed, descended from the historic Cheraw Indians.

Largely at the demand of the tribe, the State of North Carolina conducted finally a referendum among the Lumbee people in 1952, where the Lumbee, for the first time, adopted their own name as Lumbee. The name derives from the Lumber River, where we have been since it was named that in 1809, changed from Drowning Creek, where we were in 1737 as the Cheraw Indians. There is no question that the modern day Lumbee Indians are the same Indians that had those various names, and the same Indians that descend from the Cheraw Tribe.

One additional comment on the 1956 Act. When the Congress finally did act, it did so again at the urging of the Department of the Interior to include particular language for the Lumbee Tribe. It's important to note that the reason all of those bills failed to that point was not because of lack of Indian identity, not because the Lumbees were not Indian, but because the Department of the Interior opposed each and every bill. The Department of the Interior

has opposed recognition of the Lumbee Tribe for more than 100 years. And at the urging of the Department of the Interior, when Congress finally did act in 1956, the Congress did this peculiar thing that we've all noted, of putting the tribe half in and half out of the Federal relationship, once again at the urging of the Department, leaving the tribe in an anomalous position that only one other tribe in the history of Federal Indian policy has ever been placed, and that was the Tiwas of Texas.

There has been some comment made that their situation was different from the Lumbee. The legislative history of the 1968 Tiwa Act shows that is not the case. The 1968 Tiwa Act, in its legislative history, explicitly says that it was modeled on the 1956 Lumbee Act. Because the Congress fixed the Tiwa situation in the 1987 Act of Congress, the Congress should fix the situation for the Lumbee Indians and finally recognize the tribe.

Now, finally, let me comment very briefly on some of the tribal characteristics that some of the witnesses have talked about earlier today. With respect to the Eastern Band of Cherokee, we are very pleased for them that they've had the opportunity to retain their language. The Lumbee, unfortunately, have not. Most eastern tribes have not, including most of the eastern tribes recognized by the Department of the Interior in its administrative process. I can identify those for the Committee.

Thank you for the time.

[The prepared statement of Ms. Locklear follows:]

Statement of Arlinda F. Locklear, Patton Boggs LLP, Of Counsel, Attorney for the Lumbee Tribe of North Carolina

It is my privilege to make this statement as counsel for the Lumbee Tribe of North Carolina in support of H.R. 898, a bill to extend full federal recognition to the Tribe. This is an exciting time for the Tribe, a time of genuine hope that, after more than one hundred years of study and process, the Lumbee Tribe may achieve its goal of federal recognition. The Tribe expresses its gratitude to Congressman McIntyre for his leadership and tireless efforts on the Tribe's behalf, and the Tribe is gratified by the strong support for the bill shown by the large number of members who have agreed to co-sponsor Mr. McIntyre's bill. The Tribe is also grateful to the Chairman and this committee for the opportunity to make its case at the hearing today—a truly compelling case for federal recognition.

The hundred year legislative record on Lumbee recognition

In one form or another, Congress has deliberated on the status of the Lumbee Tribe of North Carolina for more than one hundred years. On numerous occasions during that time, Congress has itself or directed the Department of the Interior to investigate the Tribe's history and conditions. On all such occasions, the Tribe's Indian identity and strong community have been underscored.

Congress' first experience with the Tribe followed shortly upon the heels of formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state statute formally recognized the Tribe under the name Croatan Indians of Robeson County, authorized the Tribe to establish separate schools for its children, provided a pro rata share of county school funds for the Tribe's schools, and authorized the Tribe to control hiring for the schools and eligibility to attend the schools. See North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained state legislation establishing an Indian normal school, one dedicated to training Indian teachers for the Indian schools. See North Carolina General Assembly 1887, chap. 254. The Indian Normal School was badly underfunded, though, leading to the Tribe's first petition to Congress for recognition and assistance in 1888.

The 1888 petition to Congress was signed by fifty-four (54) tribal leaders, including all members of the Indian Normal School Board of Trustees. All the traditional Lumbee surnames are represented in the list of signatories—Sampson, Chavis, Dial, Locklear, Oxendine, and others—and descendants of these signatories are active

today in the tribal government. The petition sought federal assistance for the then named Croatan Indians in general and funding for the Tribe's schools in particular. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the state. The Commissioner of Indian Affairs ultimately denied the request for funding, citing insufficient resources:

> While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.

Thus began the Department's long-standing opposition to federal recognition of the Lumbee Tribe, typically because of the cost of providing services.

After the failure of the 1888 petition to Congress, the Tribe sought recognition more directly through proposed federal bills. In 1899, the first bill was introduced in Congress to appropriate funds to educate the Croatan Indian children. See H.R. 4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (See H.R. 19036, 61st Cong., 2d Sess.) and 1911 (See S. 3258, 62nd Cong., 1st Sess.) In 1913, the House of Representatives Committee on Indian Affairs held a hearing on S. 3258 where the Senate sponsor of the bill reviewed the history of the Lumbees and concluded that the Lumbees, then called Croatans, had "maintained their race integrity and their tribal characteristics;" See Hearings before the Committee on Indian Affairs, House of Representatives on S. 3258, Feb. 14, 1913. In response to the same bill, the Department of the Interior dispatched C.F. Pierce, Supervisor of Indian Schools, to conduct an investigation of the Croatan Indians. Pierce reviewed the Tribe's history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance for the Tribe:

> It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it would establish a precedent for the 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.[1] The Secretary recommended that the United States recognize the

[1] The Secretary adopted the view at the time that the Lumbee Tribe is descended from the Cheraw and other Siouan speaking related tribes based upon Dr. Swanton's study. In recent times, 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. Unfortunately, births and deaths of tribal members simply were not recorded by the dominant society in the early 1700's so that a genealogical

Tribe as the Siouan Indians of Lumber River, but also that the Congress include termination language because of the expense of providing federal Indian services to the Indians. Rep.No.1752, House of Representatives, 73d Cong., 2d Sess. The committee adopted the change proposed by the Secretary and reported the bill out favorably, but the bill was not enacted. The following year, the Senate Committee on Indian Affairs took the same action on the identical bill in the Senate, S. 1632, but the Senate floor also did not act on the bill. See Rep.No.204, Senate, 73d Cong., 2d Sess.

These numerous federal bills to recognize the Tribe under various names have a common and clear legislative history—that is, state statutes that modified the name by which the State of North Carolina recognized the Tribe. The 1899 federal bill would have recognized the Tribe as Croatan, just as the State had done in 1885. The 1911 federal bill would have recognized the Tribe as the Indians of Robeson County, just as the State had done in a 1911 amendment to state law. See North Carolina General Assembly 1911, chap. 215. The 1913 federal bill would have recognized the Tribe as Cherokee, just as the State had done in a 1913 amendment to state law. See North Carolina General Assembly 1913, chap. 123. Indeed, a committee report on the 1913 federal bill explicitly acknowledged that the federal bill was intended to extend federal recognition on the same terms as the amended state law. Rep.No.826, House of Representatives, 68th Cong., 1st Sess.; see also S. 4595, 72d Cong., 1st Sess. [1932 bill which referred to the 1913 state statute as its antecedent.] Thus, Congress consistently followed the lead of North Carolina in its deliberations on the Tribe's status and did so in finally enacting a federal bill in 1956.[2]

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 is 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

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connection cannot be made. Nonetheless, the historical connection is clear—the Cheraw Tribe was located precisely where the Lumbee Tribe is today and the Cheraw Tribe had the same surnames typical of the Lumbee Tribe today, such as Locklear, Chavis, Groom and others. Thus, there can be no doubt that the Department had it right in 1934 when it concluded that the Lumbee Tribe is descended from the historic Cheraw Tribe.

[2] 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 famous author of the foremost treatise on Indian law, the Handbook of Federal Indian Law. Cohen concluded that the Lumbees could organize under the Act, if some members certified as one-half Indian blood or more and the Department approved a tribal constitution. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, for that purpose. Approximately 200 Lumbees agreed to submit to Dr. Seltzer's examination; interviews of these individuals were conducted as well as physical examinations. Dr. Seltzer certified 22 out of the 200 tribal members as one-half or more Indian blood, eligible to organize under the Act. However, the Department refused to approve a tribal constitution submitted by those individuals, once again thwarting the Tribe's effort to become federally recognized.

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. Of course, the termination language added before enactment precluded the extension of the federal trust responsibility and federal services to the Tribe. Thus, Congress simultaneously recognized and terminated the Tribe.

Since 1956, federal agencies and courts have reached varying conclusions regarding the effect of the 1956 Lumbee Act. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the Act, although not granted federal services. See "American Indians: Facts and Future," Toward Economic Development for Native American Communities, p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. See Memorandum, April 10, 1970, on Extending Federal Jurisdiction and Services to Hill 57 Indians, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 Act left the Lumbees' status unchanged, i.e., it neither recognized the Tribe nor terminated the Tribe's eligibility for services it might otherwise receive. The one court to construe the statute concluded it was intended "to designate this group of Indians as "Lumbee Indians" and recognize them as a specific group..," but not to take away any rights conferred on individuals by previous legislation. Maynor v. Morton, 510 F.2d 1254, 1257-1258 (D.C. Cir. 1975) [holding that the so-called half-bloods certified under the Indian Reorganization Act were eligible to receive Bureau of Indian Affairs' services].

The Congressional Research Service (CRS) thoroughly reviewed the history and various interpretations of the 1956 Lumbee Act in 1988. It did so in response to a request from the Senate Select Committee on Indian Affairs, which had under consideration at the time H.R. 1426, a bill to provide federal recognition to the Lumbee Tribe. The CRS concluded as follows:

> The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

Memorandum dated September 28, 1988, reprinted in S.Rep.No.100-579, 100th Cong., 2d Sess.

Whatever its ambiguity otherwise, the 1956 Lumbee Act indisputably makes the Lumbee Tribe ineligible for the administrative 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(e). In a formal opinion issued on October 23, 1989, the Solicitor for the Department of the Interior concluded that the 1956 Lumbee Act is such federal legislation and, as a result, the Department is precluded from considering any application of the Lumbee Tribe for federal acknowledgment. A copy of the Solicitor's opinion is attached.

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.

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.[3] 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 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 where 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 (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.)

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[3] 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.

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.

Finally, given the hundred year history summarized above, the Lumbee Tribe has every reason to be skeptical of unbiased and even-handed treatment by the Department of the Interior. The Department has successfully blocked federal recognition of the Tribe for over one hundred years, both before Congress and administratively. It is simply not realistic to expect the Department now to do what it has never been able to do in the past—base its judgment about the Lumbee Tribe purely on the facts and not on fiscal or other considerations.

For more than one hundred years now, the Lumbee Tribe has been studied and "processed." The record produced by these studies, even those by the Department, consistently shows an independent Indian community descended from Cheraw and related Siouan speaking tribes that has existed from white contact until the present as a separate community with known and visible leaders. Under present law, the Lumbee Tribe can only be recognized by an Act of Congress. Legislative precedent under these circumstances support the enactment of H.R. 898, comprehensive recognition legislation, not another half measure.

Major provisions of H.R. 898

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;[4]
- the eligibility of the Tribe and its members for all programs, services, and benefits provided by the United States to Indian tribes and their members, such services to be provided in the Lumbees' traditional territory of Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina;
- the determination of a service population, to be done by the Secretary of the Interior's verification that all enrolled members of the Tribe meet the Tribe's membership criteria; and
- the granting of civil and criminal jurisdiction to the State of North Carolina regarding the Lumbee Tribe, to insure consistent and continuous administration of justice, until and unless the State of North Carolina, the Tribe, and the United States, agree to transfer any or all of that authority to the United States.

These are provisions typically found in recognition legislation and reflect the federal policy of self-determination for Indian tribes. Most importantly, it finally accomplishes the goal long sought by the Lumbee people—treatment like every other recognized tribe in the United States.

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[4] One of the statutes generally applicable to Indian tribes is the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq [IGRA.] This statute was enacted in 1988, exactly one hundred years after the Lumbee Tribe first sought federal recognition. Clearly, the Lumbee Tribe's quest is not motivated by gaming; neither has the Tribe expressed any current interest in gaming. However, the Tribe strongly believes that Congress should not pick and choose among statutes that apply to it and subject it, once again, to second class treatment as compared to other recognized Indian tribes. It should be noted, though, that Congressman McIntyre's bill imposes greater restrictions on the Tribe's ability to game under IGRA than on those tribes that are recognized through the administrative process. H.R. 898 does not create an Indian reservation; as a result, even if the Lumbee membership authorized tribal leadership to negotiate a gaming compact with the State (the Lumbee tribal constitution explicitly requires a special tribal referendum to authorize such), land for such uses could only be taken into trust by the Secretary of the Interior with the consent of the Governor of North Carolina. In contrast, tribes acknowledged through the administrative process can by-pass gubernatorial consent through the designation of an initial reservation by the Secretary of the Interior. 25 U.S.C. § 2719(b)(1)(B)(ii).

Conclusion

Congress and the Department of the Interior have over the last century repeatedly examined the Tribe's identity and history and have consistently found the Tribe to be an Indian community dating back to the time of first white contact. There is no need for further study of the Tribe's history. There is no need for another half measure by Congress. There is need for an Act of Congress that comprehensively and once and for all addresses the status of the Lumbee Tribe and all related issues. On the Tribe's behalf, I urge the committee's favorable action on H.R. 898.

[A supplemental statement submitted for the record by Ms. Locklear follows:]

Supplemental Testimony submitted for the record by Arlinda F. Locklear, Patton Boggs LLP, Of Counsel Attorney for the Lumbee Tribe of North Carolina

At the hearing held on H.R. 898 on April 1, members of the Committee indicated their interest in the background and intent of the 1956 Lumbee Act, 70 Stat. 254, including any legislative history or other material that may bear on the issue. This supplemental statement provides that authority and supports the Lumbee Tribe's interpretation of the 1956 Lumbee Act.

The Supreme Court has held that surrounding circumstances and legislative history broadly defined are relevant in construing Indian statutes. Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977). Placed in this context, it becomes clear that the 1956 Lumbee Act was intended as a recognition bill as introduced, but changed when amended before enactment.

Historical context

The first state recognition of the Tribe occurred in 1885. North Carolina General Assembly 1885, chap. 51. The State of North Carolina amended its recognition of the Tribe in 1911 and 1913, changing the name by which it recognized the Tribe to Indians of Robeson County, then Cherokee Indians of Robeson County. See North Carolina General Assembly 1911, chap. 215; North Carolina General Assembly 1913, chap. 123. Finally, the Tribe grew dissatisfied with the state imposed names and conducted a referendum among its members in 1952 on the adoption of the name Lumbee. The referendum passed overwhelmingly and, under pressure from the Tribe, the state once again amended its recognition of the Tribe in 1953, renaming it Lumbee. North Carolina General Assembly 1953, chap. 874. See state statutes collected in appendix 1.

There is no question but that these state statutes formally recognized the Lumbee Tribe. Indeed, Governor Easley of North Carolina wrote this committee on March 24, 2004, expressing his support for H.R. 898 and referring, among other things, to the continuous state recognition of the Tribe since 1885.

The numerous federal bills to regarding the Tribe were introduced on the heels of state legislation and, most often, were very similar if not identical to the state bills. The first bill, introduced in 1899, would have named the Tribe Croatan just as the State had done in 1885. A bill introduced in 1911 would have recognized the Tribe as Indians of Robeson County, just as the state had done in 1911. Bills introduced in 1913 and 1924 would have recognized the Tribe as Cherokee Indians of Robeson County, just as the state had done in 1913. See federal bills collected in appendix 2.

These federal bills oftentimes specifically referred to the similar state legislation as the antecedent for the proposed federal bill and indicated a federal intent similar to that of the state legislation. This identity in purpose was made explicit in 1924. In its report on the bill, the House committee stated:

> By an Act of the State of North Carolina [referring to the 1913 state legislation] these Indians have been designated as Cherokee Indians, and this legislation caries out this Act and gives the Indians the same Federal status, but they are not recognized as a part of any other Cherokee bands and does not give them any tribal rights to lands or moneys belonging to any other Cherokee Indians.

Rep.No.826, House of Representatives, 68th Cong., 1st sess. In other words, the federal bill would recognize the Tribe on the same terms as had the recent state statute. When this bill failed, a very nearly identical bill was introduced in 1932. S. 4595, 72d Cong., 1st sess. The 1932 bill also referred to the 1913 state legislation as its antecedent and explicitly stated that the Croatan Indians "shall hereafter be

designated Cherokee Indians, and shall be *recognized and enrolled as such..." (emphasis added.) 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 enrolled as such..." H.R. 5365, 73d Cong., 1st sess. For the first time, the proposed federal bill departed from the then current state law by designating the Tribe Cheraw. It was supported by the Secretary of the Interior, who testified based on Dr. Swanton's research that the Tribe descended from the Cheraw and related Siouan speaking tribes. He recommended as follows:

> In view of the foregoing, I do not favor the bill in its present form. However I do believe that legislation to clarify the status of these Indians is desirable. Therefore, it is suggested that all after the enacting clause be stricken out and the following substituted therefor: That those Indians in Robeson and adjoining counties, North Carolina, who were formerly known as "Croatan Indian," shall hereafter be designated "Siouan Indians of Lumber River," *and shall be so recognized by the United States Government:* Provided, That nothing contained herein shall be construed as conferring Federal wardship or any other governmental rights or benefits upon such Indians.

Rep.No. 1752, House of Representatives, 73rd Cong., 2d sess.

Legislative history

As noted above, the state last amended its recognition of the Tribe in 1953, following a referendum among the membership on the adoption of the name Lumbee. Two years later, another effort was made for federal recognition. The legislative history makes clear that the purpose of the federal bill was the same as that of the state law—to recognize the Tribe as Lumbee. Thus, what became the 1956 Lumbee Act followed the pattern of attempting federal recognition upon the same terms as the most recent state recognition legislation.

The 1955 federal bill (which eventually became the 1956 Lumbee act) was identical to the statute passed in 1953 by the state which recognized the Tribe under the name Lumbee. H.R. 4656, 84th Cong., 2d sess. The bill was passed without amendment in the House of Representatives and referred 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 wrote:

> 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. Except for the possibility of becoming entitled to Federal Services as Indians, the position of this group of Indians would not be enhanced by enactment of this bill. In fact, as the bill refers to them in terms that are different from the terms of recognition accorded under state law, some confusion as to their status might result from its enactment.[1]
>
> 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 Department's recommendation and amended the bill to include 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 Indians shall be applicable to the Lumbee Indians. The bill was enacted as amended. See Pub.L. 570, Act of June 7, 1956, 70 Stat. 254. The Department's amendment would not have been necessary unless the bill would otherwise have made the Tribe eligible for federal Indian services. Indeed, it appears to be the Department's consistent position that, without the termination

[1] The Secretary of the Interior was apparently unaware that the state had changed by the name by which it recognized the Tribe. As noted above, in 1953 the state had amended its law to repeal the Cherokee designation and recognize the Tribe as Lumbee. Thus, there was no inconsistency between the proposed federal bill and the most recent state recognition legislation. To the contrary, the federal bill tracked the state law verbatim and was clearly intended by its sponsors to have the same effect as the state law—recognition of the Tribe as Lumbee.

language added to the 1956 Lumbee Act at the Department's request, the bill would have made the Lumbees a federally recognized Indian tribe.[2]

Senator Scott, the Senate sponsor of the bill that became the 1956 Lumbee Act, noted the identity in purpose between the 1953 state recognition legislation and the proposed federal bill—i.e., to recognize the Tribe. He testified before the 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."[3] Reprinted in S.Rep.No.100-579, 10th Cong., 2d sess., p. 31. In contemporaneous newspaper accounts of the bill's progress, it was widely described as a recognition bill. Id.

There are also excerpts from the legislative history of the 1956 Act suggesting that Congress did not intend by the Act, even without the amendment proposed by the Secretary of the Interior, to make the Tribe eligible for federal Indian services. For example, in a colloquy on the House floor, the House sponsor Mr. Carlyle was asked whether the bill would commit the United States to furnishing services. Mr. Carlyle responded in the negative. Representative Ford then stated that, "[i]t simply provides for the change of name," and Mr. Carlyle agreed. 102 Cong. Rec. 2900 (May 21, 1955).

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 the law. The Department of the Interior has itself made this clear in the context of Congress' deliberations in 1977 on legislation to recognize the previously terminated Siletz Tribe. In its comments on the bill, the Department recommended that 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. Thus, in construing the 1956 Lumbee Act, eligibility for federal Indian services must be distinguished from federal recognition. The one court to construe the Act seemed to reach the same conclusion: "True, the limited purpose of the legislation appears to be to designate this group of Indians as "Lumbee Indians" and recognize them as a specific group. Moreover, Congress was very careful not to confer *by this legislation* any special benefits on these people so designated as Lumbee Indians. But we do not see that Congress manifested any intention whatsoever to take away any rights conferred on any individuals by any previous legislation." (emphasis in original.) *Maynor v. Morton,* 510 F.2d 12511257-1258 (D.C. Cir. 1975).[4]

In sum, the historical context leading up to the 1956 Lumbee Act and the Act's immediate legislative antecedent—the 1953 State Act recognizing the Tribe as

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[2] In 1974, for example, the Department commented on a bill that would have simply repealed the termination sentences at the end of the 1956 Lumbee Act. See H.R. 12216, 93d Cong., 2d sess. The Department opposed the bill on the ground that, if enacted, it would make the Lumbees a federally recognized Indian tribe. H.Rep.No.93-1394, 93d Cong., 2d sess., p. 7.

[3] The tribal population figure given by Senator Scott in his statement before the Senate subcommittee 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. This figure was erroneous. According to a correction to the figure appearing 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 the 1950 federal census data.

[4] The precise question before the court was whether so-called half-blood members of the Lumbee community, certified as such in 1936 under the Indian Reorganization Act [IRA] of 1934, had lost their eligibility for services under the IRA because of the 1956 Lumbee Act. The court held that they did not; the court did not directly determine whether the 1956 Lumbee Act was intended by Congress to recognize the Tribe, albeit without federal Indian services.

Lumbee—both support the Tribe's construction of the Act as recognition legislation. This is corroborated by the need felt by the Department to amend the bill before enactment to insure that the Tribe was not made eligible for federal Indian services.

In an 1988 opinion on the subject, the Congressional Research Service reviewed the legislative history of the Act and concluded as follows:

> The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. *It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.*

Reprinted in S.Rep.No.100-579, 100th Cong., 2d sess., p.31. A copy of this opinion is attached as appendix 3. Simply put, Congress did a half job of it in 1956 and Congress should complete the job by enacting H.R. 898 and recognize the Lumbee Tribe, finally and indisputably.

The CHAIRMAN. Thank you. I thank all of the witnesses.

I would like to start with Dr. Campisi, if I could. Some of today's witnesses, and the argument has been made, that the records relating to the genealogical descent from historic tribes are deficient. My question is, how do your records compare with those of other federally recognized tribes?

Dr. CAMPISI. The difficulty with the records, particularly in the south, complicate the problem for any researcher, whether looking at federally recognized or non-recognized, the shifts of population, the merging of tribes, the destruction of courthouses during the Civil War, for example, the normal loss of documents as one goes on.

What we are trying to prove is not that every individual—it is not simply that individuals descend from somebody who was recognized as an Indian some time in the past. What we are trying to demonstrate is that there is a tribal connection between an existing group and a group that existed in the past, and was recognized as a tribal entity or entities.

The regulations are clear, that combinations of tribes are acceptable, so long as they have a lengthy history of working together.

With that in mind, one then looks at the documents to ascertain what was the native population in the area where the present population exists, and what kind of ties can we make between those two groups. Ninety-some percent of the world's population does not have a genealogical record. That's a reality. But we do have a record of tribal identity in the area contiguous with the Lumbees and continuous from the time of that recognition, from the 18th century.

The CHAIRMAN. How does that compare to the administrative process that others are working their way through? How do your records compare to what the Department of the Interior requires in the normal administrative process that we've all grown to love so much?

Dr. CAMPISI. Well, the Department has taken a variety of positions on tribal relations. They have differed with different decisions, different with HOMA, from the Eastern Pequot. The record I think would compare favorably with what the branch has done in the past, when the branch reads and looks at those records from

the point of view of what is the contiguous tribal relationship of the 18th century through the 20th century. I think it would compare favorably.

Ms. LOCKLEAR. Mr. Chairman, if I may supplement that response with regard to the regulations in particular, the regulations only require proof of descent from an historic tribe. They do not say that that proof must be genealogical. The regulations allow for historical proof of that fact. The Lumbee Tribe has demonstrated historical proof of that fact. So we believe that, even under those regulations, the tribe has proved its tribal existence.

The CHAIRMAN. I understand that. What I'm trying to do and what I'm trying to understand is how it compares to the hearing that we had yesterday and some of the difficulties that tribes seeking recognition have gone through. Although this is not a unique situation, it is a special situation to have Congress act on legislation. I'm trying to figure out how it compares with some of the tribes that were in here yesterday and the efforts that they have made and the difficulties that they have had.

I understand that a lot of work has gone into this, but for my own sake, I'm trying to understand exactly how this works.

I did want to ask Chairman Goins a question. In going back to the 1956 Act, there is an argument that the '56 Act—and I was just researching it up here a minute ago, on what the exact language is in the Act—that it did not recognize the Lumbee Tribe because there's no language in the Act itself that expressly recognizes the tribe.

How do you respond to that? What is your argument or your response to that argument that's been put on the table?

Mr. GOINS. My response would be, first, that when that Act was passed in 1956, in our home town of Pembrooke, N.C., we had a great parade. We felt and was told that we were federally recognized. It was only later that we understood the full consequences of the Lumbee Act.

In our minds, we were recognized with the benefits, until later—and let me repeat again—when it was told to us that no, it didn't occur like that. You were recognized without the benefits.

The second point I would like to say is that all through the literature that we have here, it cries out from the Department of Interior's own research that we are Indians. So why wouldn't the 1956 Act say that we're Indians? How could you make an argument it did not recognize us from all the material we have here?

This is not our material. We didn't pay somebody to put it together. It was Congress and the Senate that authorized the Department of Interior to come up with these studies on the Lumbee people. And time and time again, in 1914, 1933, and 1934. They even went so far as to come down and buy land for the Indians. They went so far to come down to check my people's cheeks, to make sure of their hair, the color of our skin, how big our teeth was, to recognize us as Indians. So we're being led all these years to believe exactly what the Department of Interior said here, that you are Indians.

So that's why I believe in my heart, when you say the 1956 Lumbee Act, that's what we're talking about, that I'm taking it

from the concept that the Department of Interior recognized us as Indians in the 1956 Act, but without the benefits.

The CHAIRMAN. Thank you.

Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. I will address this to Ms. Locklear, but others may respond also.

Numerous studies have been conducted over the years by Congress and the Department of Interior on the Lumbee ancestry. Have any of these studies expressed doubt as to the tribe's Indian ancestry?

Ms. LOCKLEAR. No, Congressman, they have not, in none of these studies, and depending on how you count them, there are nine or ten over the last 100 years where neither the Department, nor any of its experts, has ever doubted that the Lumbees were Indian.

Mr. KILDEE. We have about 562 federally recognized tribes in the country, with 12 in my State. Some use quantum and the nature of sovereignty, of course, that a sovereign nation determines citizenship. Some use quantum. Some use lineage.

Basically, what do the Lumbees use for their rolls?

Ms. LOCKLEAR. There are two enrollment criteria that the Lumbee Tribe uses. First, a member must trace ancestry to a base roll, lineal ancestry only, which consists of many of the church records that you've heard described of all-Indian churches, school records of all-Indian schools, and also Federal Indian census. These documents date to around 1900.

Second, a member must maintain contact with the tribe. Unlike blood quantum use only, this ensures that the Lumbee people are a true community and not just a group of people who happen to share racial ancestry.

Mr. KILDEE. So you base it upon lineage from existing rolls that still exist, plus staying in community with the Lumbee people?

Ms. LOCKLEAR. Yes, sir.

Mr. KILDEE. You indicated—and maybe you could expand upon this—that the various names applied to the tribe were more externally imposed rather than adopted by the tribe. Could you expand upon that?

Ms. LOCKLEAR. Yes. These names were the result of State legislation. The first legislation that recognized the tribe was in 1885, and by that State legislation, the tribe was recognized as the Croatan Indians. The State amended that law based on—by its own motion, not at the request of the Lumbee Tribe, in 1911 and in 1913, to change that designation.

Mind you, the Lumbee Indians were still the same Indians that were recognized, in the same community, in the same place. They were simply changes in name only at the initiative of the State. The only initiative that the Lumbee Tribe has ever done to adopt its own name was that in 1952, where as a result of a special referendum conducted by the State, at the request of the tribe, the tribe finally adopted the name Lumbee, as derived from the Lumber River. The State, as a consequence, once again amended its law to recognize the tribe under the same name.

Mr. KILDEE. And that was the only internal naming of the tribe?

Ms. LOCKLEAR. That was the only internal name we adopted, yes.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Further questions? Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman. I apologize for missing the earlier part of your testimony, but I did catch part of it to give me I think a very good understanding of what we're approaching here today.

Certainly the Lumbee Tribe has what I consider a very strong history of continual existence. If that is a documented piece of evidence, as you suggest, that you have that documentation, why are we here seeking legislative approval or recognition rather than the Federal acknowledgment process?

Ms. LOCKLEAR. May I, Congressman?

Mr. GIBBONS. Yes.

Ms. LOCKLEAR. First of all, Congress has never—We hear the argument, as we've heard time and again this morning, do what every other tribe has to do. Make the Lumbees go through the process. No tribe like Lumbee has ever had to go through the process. Every tribe, where there was a special Act of Congress that precluded administrative action on the tribe, was recognized by the Congress.

What is proposed today is that we, once again, single out the Lumbee Tribe and do something through legislation that Congress has never done before. Congress has never repealed a prohibition against administrative action and then required administrative action.

Second, if you look at the history of the tribe's efforts, it is very clear that the Lumbee Tribe's principal opponent to recognition has been the Department of the Interior. We think it would be supremely unfair at this point for the Congress to say to the tribe, now that we're finally going to act, we're going to send you to the not-so-tender mercies of the Department of Interior, never mind the fact that had it not been for the Department's opposition all these years, you might have been recognized by Congress before now.

Mr. GIBBONS. I guess I'm not convinced that the Bureau of Indian Affairs is so uncaring and so callous toward Native Americans as perhaps has been painted. But that being the case, as you say, I will take you at your word for that.

When I look at the land you have put up here on this map, how much of that area is ancestral lands for the Lumbee?

Ms. LOCKLEAR. The exterior boundaries of this map are the exterior boundaries of Robeson County. Robeson County, in every document, is identified as the ancestral origin, the place of beginning, for the Lumbee people.

Mr. GIBBONS. Should then Congress set aside Robeson County as a reservation for the Lumbee Indians, to take it completely off the tax rolls and make it a reservation?

Ms. LOCKLEAR. No, Congressman. H.R.—

Mr. GIBBONS. How much of that land should be put into reserve status for you?

Ms. LOCKLEAR. The tribe does not request, and neither does H.R. 898, provide for the trust acquisition of any particular parcels, and it does not create a reservation. The Lumbee people have

resided in this place, on this land, for centuries, and we don't now want to establish ourselves as a reservation.

Mr. GIBBONS. Some tribes have that desire and that intent, and that's the reason why I asked.

Ms. LOCKLEAR. Yes.

Mr. GIBBONS. Let me ask if the Lumbee have any desire, any intent, any plans to engage in gaming if they become a federally recognized tribe.

Ms. LOCKLEAR. Let me say, Congressman, that the Lumbee Tribe has never even discussed the issue. There are no plans, there is no backer, there is no purpose, there is no intent. The intent of the Lumbee Tribe is solely to be treated like every other federally recognized tribe.

Mr. GIBBONS. So I can take from your testimony that the Lumbee Tribe has never engaged in discussion with any kind of casino developer or investors interested in gaming, then?

Ms. LOCKLEAR. That's correct.

Mr. GIBBONS. Very good.

That's all I have, Mr. Chairman. I yield back the balance of my time. Thank you.

The CHAIRMAN. And further questions? Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I want to offer my personal welcome to Chief Goins. I am also a chief by tradition. My chieftain name is Faleomavaega. I say a personal welcome to you, sir, because we both served in Vietnam in 1968, so I know what you're saying.

Dr. Campisi, I wanted to ask you if you were in any way involved also with the research with the Pequot tribe in Connecticut.

Dr. CAMPISI. Yes, I worked on the Pequot petition, the Massatucket Pequot petition.

Mr. FALEOMAVAEGA. And you recall the Pequot Tribe also sought Federal recognition through Congress, am I correct?

Dr. CAMPISI. That's correct.

Mr. FALEOMAVAEGA. And this was passed by the Congress?

Dr. CAMPISI. That's correct.

Mr. FALEOMAVAEGA. Does the Pequot Tribe currently have a language of its own?

Dr. CAMPISI. No, it does not.

Mr. FALEOMAVAEGA. But it's federally recognized?

Dr. CAMPISI. Correct.

Mr. FALEOMAVAEGA. So are you saying that language really is not a critical factor to be given Federal recognition?

Dr. CAMPISI. According to the regulations, language is not a critical factor. It is one consideration amongst many.

Mr. FALEOMAVAEGA. You indicated earlier that tribal schools were set up by the State of North Carolina a hundred years ago? I mean, it's always been in place since North Carolina recognized the Lumbee as a tribe since 1885, am I correct?

Dr. CAMPISI. That's correct.

Mr. FALEOMAVAEGA. And then since 1888, this tribe has continuously sought Federal recognition but has been denied each time, especially by the Department of the Interior?

Dr. CAMPISI. That's correct.

Mr. FALEOMAVAEGA. Why do you suppose there was so much opposition from the Department of the Interior?

Dr. CAMPISI. Well, I think a couple of factors of different time periods. Some have been alluded to before.

I think in the latter part of the 19th century, there was a very strong assimilationist viewpoint. The Department of Interior took the position that they didn't have the money to educate Lumbee people, that the Indian schools that existed were either being closed down, reduced, or were already overcrowded.

I think they came along in the Depression, it looked like they were going to come in during the 1930s, but by 1938, '39, the Department's sentiment seemed to have shifted and the land that was supposedly set aside for Lumbees was not set aside.

In the 1950s they had the unfortunate condition to come in just when the Congress had voted through termination, and so there was—well, there was a strong interest in the tribe, there was this closing out in '56.

Mr. FALEOMAVAEGA. Dr. Campisi, do you recall years ago we had a hearing and one of the gentlemen that testified in this very Committee, this gentleman was the one that wrote the very regulations on how to federally recognize a tribe. Do you remember we had a hearing that year?

Dr. CAMPISI. Yes.

Mr. FALEOMAVAEGA. And do you recall the statement that was made by that gentleman who wrote the regulations that we now have as the Federal recognition process?

Dr. CAMPISI. Could you refresh my memory?

Mr. FALEOMAVAEGA. I'll refresh your memory. The gentleman said, if he were to seek Federal recognition by the very regulations that he wrote, it would be totally impossible to recognize a tribe in the process. I will get a copy of that statement, Mr. Chairman, to be made part of the record of that congressional hearing, as I remember very distinctly. I know my time is getting short here.

Arlinda, welcome.

Ms. LOCKLEAR. Thank you.

Mr. FALEOMAVAEGA. You indicated in your statement that each time, as we were constantly seeking recognition, the Department of the Interior was always in opposition.

Why do you suppose this has been for all these years?

Ms. LOCKLEAR. If we take the Department at their word, it appears to be because of cost. In its first statement to the Congress in 1890, the Department said—and I'm roughly paraphrasing—we have too little funds already to service the existing population, so we oppose the addition of any "civilized tribes" to that service population.

The Department never denied that the Lumbees were Indian, never denied that they existed as a community with political authority. Simply that they didn't have the money to provide the services.

Mr. FALEOMAVAEGA. My good friend and colleague from North Carolina had given these to members of the Committee, and you have given an indication for all these name recognitions and changes. You mentioned in your statement, Arlinda, that these

name changes were never made by the Lumbees; it was done by the State of North Carolina, am I correct?

Ms. LOCKLEAR. That's correct.

Mr. FALEOMAVAEGA. As well as the Department of the Interior?

Ms. LOCKLEAR. That's correct.

Mr. FALEOMAVAEGA. As much as I've done, and in all the readings that I have done—and please, Arlinda, please be frank with me on this—wasn't also one of the reasons why the Department of Interior opposed consistently was because some of the families that married into the Lumbees were African Americans? Could there be a racial tone to this whole reason why, for all these years, there was discrimination heaped against the Lumbee people?

Ms. LOCKLEAR. A reasonable inference to that effect can be drawn. The Lumbee people have experienced discrimination for a lot of reasons, from a lot of sources, over the years, that I would be happy to elaborate on. But that can be—that is a fair inference from the historic record.

Mr. FALEOMAVAEGA. Am I also correct that at one time the Klu Klux Klan made an effort to go through Robeson County and the Lumbees chased them out and they never came back again?

Ms. LOCKLEAR. That's correct, in 1958.

Mr. FALEOMAVAEGA. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Mr. Bishop.

Mr. BISHOP. Thank you.

Dr. Campisi, if I could just ask you a quick question. You made a very quick reference in your statement to the educational system and the situations that were there. And then I read also from your written testimony when you went into a little more detail.

Could you please just detail the impact of any change that would be in the status of your school system if you had a Federal recognition versus otherwise, either what is the present system or what is the desired system in schools? Could you just talk about the education concepts and how that would change if there is Federal recognition?

Dr. CAMPISI. I don't think I'm—that's really a question I think that goes more to the tribe than to me. I mean, the students go to public school and my perception is that they would continue to go to public school.

Mr. BISHOP. All right. You just made a quick reference to that in your statement, if either the Chairman or the others would like to comment on that.

Mr. GOINS. I would like to say that in Robeson County our kids, they go to public schools. But I want you to also realize that Robeson County is one of the poorest counties in North Carolina, so quite naturally, our school system is going to be one of the poorest. The drop-out rate amongst our Indian kids is the highest in the State of North Carolina, amongst the Lumbees.

To give you another point of information out, the syphilis rate amongst Lumbees is the highest in Robeson County, as far as I know—somebody correct me—in the United States. Yes, it will make a difference, not only on health but education for our kids.

The drop-out rate—we've had studies and studies done by Duke University, UNC, the Department of Instruction of the State of

North Carolina, and it still is not helping. It's time that somebody empowered the Lumbee people to start solving their own problems for our people.

Mr. BISHOP. So what I'm hearing is you would stay within the public school system there and there would not be a change in the school status, regardless of the designation?

Ms. LOCKLEAR. That's not entirely clear. Let me elaborate a bit.

The tribe lost control of its own separate school system in the early 1970s, when the Federal court required the desegregation of the three separate school systems in North Carolina. There was black, there was white, and there was Lumbee Indian.

Immediately following that, Lumbee children were bussed to accomplish desegregation. When the desegregation order was dissolved so that bussing was no longer required simply because of the geographic concentration of the tribe, many of today's students currently attend schools that are predominantly Indian. However, as the Chairman has indicated, the tribe does not have control over who teaches them or what they are taught, and as a result of that, the performance of our children has dropped dramatically over the last 30 years.

It is a goal of the tribe to try to reestablish some control over, to some extent, over the public school system insofar as Lumbee children are concerned, so that we can try to turn that around.

Mr. BISHOP. You probably said this earlier, and I apologize for that, but what percentage of the population of the county would be Lumbee?

Mr. GOINS. It's 43 percent, I think, the last figures. Forty-three percent of Robeson County. It's almost a third, a third and a third, of the other races.

Ms. LOCKLEAR. With the highest majority being—with the highest minority being the Lumbee Indians.

Mr. BISHOP. Do you happen to know how many Lumbee students you have in that county in the school system?

Ms. LOCKLEAR. We could get that information for you.

Mr. BISHOP. Roughly, what kind of percentage of the student body does the Lumbee Indian tribe make?

Mr. GOINS. It's over 10,000 students in the public schools of Robeson County. I would like to add that the school I went to, Prospect, from the first grade to the twelfth grade, it was 100 percent Lumbee.

Back in the old days, we used to have what we called the blood committees. In other words, it was our local Board of Education, our little private school. But if those fellows—Ladies and gentleman, whatever family you went to, you didn't go to our school, so we called them the blood committees. In fact, that school today is probably, out of 800 kids, I would estimate there's probably still 750 just Lumbees going to that school, just because of where it's located in our community.

Mr. BISHOP. You don't have just kind of a rough figure of what percentage of the students in Robeson County are Lumbee? Is it going to be similar to the other population?

Ms. LOCKLEAR. We would expect.

Mr. BISHOP. About 40 percent as well. OK.

Thank you. I appreciate that. Thank you, Mr. Chairman.

The CHAIRMAN. Further questions?

Mr. MCINTYRE. Mr. Chairman, if I may just clarify a couple of points.

The CHAIRMAN. Mr. McIntyre.

Mr. MCINTYRE. Thank you very much for indulgence.

Attorney Locklear, you referred to several studies done by the Government to prove the Lumbee Indians existence as an Indian Tribe. This does include the 1914 investigation ordered by the U.S. Senate, that was in accordance with the Secretary's letter to the President of the Senate, who would have been the Vice President of the United States, who said he conducted a careful investigation on the ground as well as extensive historical research covering all aspects of the tribe's history and condition, running 252 pages in length. You were including that as documentation, correct?

Ms. LOCKLEAR. That's correct.

Mr. MCINTYRE. And are you also including the 1934 study done by John Swanton of the Smithsonian Institution, who also did an investigation to prove the tribe's ancestry as Indian?

Ms. LOCKLEAR. That's correct.

Mr. MCINTYRE. You have also mentioned that every tribe that was precluded by Congress was corrected by Congress, and I believe Mr. Gibbons, who stepped out now, had asked you why there is a separate process. I know he didn't hear our earlier testimony.

But it is your position also that the Lumbee Tribe is the only tribe that has been put in its unique and unfair position by action of the U.S. Congress with regard to it not being able to obtain Federal recognition; is that correct?

Ms. LOCKLEAR. That's correct. As far as we are aware, the Lumbee Tribe is the only tribe left that would qualify because of that particular circumstance for the need for special legislation. None of the other petitioners pending before the Department of the Interior has that circumstance.

Mr. MCINTYRE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I, too, apologize. With the conflicts and meetings I had, I was not able to hear some of the earlier testimony, but I am interested in this legislation and in this issue, and I thank you for bringing it to us.

I wanted to follow up on a couple of points. One is relative to the status of a reservation. If I heard you correctly, this legislation would not create tribal land status, is that right?

Ms. LOCKLEAR. It would not create a reservation, that's correct.

Mr. WALDEN. Would not create a reservation.

It is also correct, though, that it would not preclude the eventual creation of a reservation?

Ms. LOCKLEAR. The Secretary of the Interior does have authority under other statutes to designate such lands. Whether or not this Act, as a special Act of the Lumbee, would be construed by a court to preclude the use of that authority with respect to the Lumbee is a legal question that I wouldn't—that I couldn't judge at this point. But it is clearly the intent of this statute not to create a reservation.

Now, let me say—

Mr. WALDEN. Is it also the intent of those who are bringing this proposed statute to us not to seek creation of a reservation at any time in the future?

Ms. LOCKLEAR. I think that's correct. Clearly, we can't bind a future tribal government or a future Secretary of the Interior, but clearly, it is the intent of this statute that there not be a reservation for the Lumbee Tribe.

Mr. WALDEN. We could, within this statute, make that action occur?

Ms. LOCKLEAR. Yes.

Mr. WALDEN. Is that something you would favor or oppose?

I would obviously have to consult with the tribal council in that regard, but my view is that, being that that's the intent of the tribe all along, I don't think that would be a particular problem, subject to consultation with—

Mr. WALDEN. Certainly, and I respect that, obviously. I ask that because there are some other situations around the country where these issues were left ambiguous, but those who sat at tables like ours at the time say no, this is what the agreement was, but because the statute was silent, now a different group are coming in and saying well, tough, we want to do something different now. It is obviously causing some issues.

Ms. LOCKLEAR. I understand.

Mr. WALDEN. And help me with this one as well. Is there a requirement within this to develop a sustainability plan, an economic sustainability plan on behalf of the tribe?

Ms. LOCKLEAR. Not in those terms. The Act requires that the Department of the Interior and the Department of Health and Human Services, which would provide services to the tribe under this Act, must prepare a needs assessment for the tribe for the delivery of those services in advance of delivery of those services, not an economic development plan, though, per se.

Mr. WALDEN. OK. Because I know in some of these agreements as well that Congress has enacted, there have been requirements for an economic sustainability plan to be established as well. In some cases, those have come back then and said, the way we establish our economy is to acquire lands around us that maybe at one time we used to call home, so that's why I go down that route.

Some of my colleagues have raised the issue of casino gambling, which obviously is an issue that a lot of people have concerns on both sides about. The creation of a casino would not be precluded by this Act either, would it?

Ms. LOCKLEAR. No. But let me point out in that regard that there are provisions in this Act that would make the acquisition of a casino more difficult by the Lumbee Tribe than were the tribe recognized by the administrative process.

Under the administrative process, IGRA expressly provides that a tribe recognized under that can avoid the approval or concurrence of the Governor. Under H.R. 898, the tribe cannot. Before gaming could take place under 898—

Mr. WALDEN. Right. The Governor of the State has to enter into a contract.

Ms. LOCKLEAR.—it would require the Governor's concurrence.

Mr. WALDEN. That's because these are occurring after IGRA was—

Ms. LOCKLEAR. After 1988, and because they would be in that sense under IGRA off reservation acquisitions.

Mr. WALDEN. Right. So this just follows current law in that respect. Well, by that I mean anything after '88 and IGRA has to go through a more complicated process in collaboration with the State.

Ms. LOCKLEAR. That's correct.

Mr. WALDEN. So it's not different than what other tribes would face that took lands into trust after '88.

Ms. LOCKLEAR. Well, it is in the sense that the post-1988 acquisitions by tribes that go through the acknowledgment process are exempted. Duly recognized tribes, through the administrative process, are exempted. The Lumbee Tribe would not be.

Mr. WALDEN. Oh, I see. OK. In other words, they started before the Act because they weren't in existence—

Ms. LOCKLEAR. Correct.

Mr. WALDEN.—and therefore they're treated that way. OK.

There were a couple of issues raised by the Bureau—and I apologize if you've already addressed these, but I would certainly like to know your take on them. They include being able to verify tribal membership. They're concerned about that process. Apparently they would only have a year to do so. I assume you've been through the testimony of Mr. Olsen.

Ms. LOCKLEAR. That's correct. They seem to have a different view of what that provision anticipates, though, than I think the bill itself provides for.

You heard testimony from Mr. Fleming, who runs the Branch of Acknowledgment and Research, formerly known as the Branch of Acknowledgment and Research, now the Office of Federal Acknowledgment. What they do is an initial determination of eligibility for every individual.

That's not what we anticipate happening, however, under this bill. This bill provides for the more limited verification that those folks actually enrolled demonstrated that the documentation is there to demonstrate their eligibility for enrollment. We think that process is much more limited and could take place much quicker than what Mr. Fleming's office does on the typical acknowledgment petition.

Mr. WALDEN. Mr. Chairman, I know my time has expired, but perhaps you could help me if you could review the issues raised by Mr. Olsen in his testimony and at some point just drop me a line about how you address those questions that he raises, because they are ones we at least need to think about.

Thank you, Mr. Chairman.

The CHAIRMAN. Further questions?

Mr. ABERCROMBIE. Mr. Chairman, thank you.

Miss Locklear, I want to congratulate you on your testimony. This is as good a ten page summary of a detailed and complicated issue with a long history as I've ever seen.

Ms. LOCKLEAR. Thank you.

Mr. ABERCROMBIE. That's the good news, right?

[Laughter.]

In fact, it is well reasoned and I understand precisely what it is you're trying to accomplish here. The thing that I feel badly about—and this has been expressed, as you no doubt heard, by more than several members this morning—especially coming from me, coming from Hawaii. Believe me, I have great sympathy and empathy for these difficulties. It is painful to find people feeling the necessity of confronting one another as Native people, as to what a proper conclusion or outcome should be with respect to recognition, or what might even be determined as being restoration or rights, or termination of rights, or privileges.

I don't know if you've had an opportunity to see or read the testimony of Mr. Martin, who will be appearing after this panel, but if you will grant me for conversation's sake that I am quoting him accurately, and for a reason of trying to address the questions that you've raised and the conclusions you've reached in here, OK?

Ms. LOCKLEAR. Yes.

Mr. ABERCROMBIE. Because there are people who may be listening in or dealing with the issue for the first time who might think there is unalterable opposition to the recognition of the Lumbees, and I don't think that's exactly correct. I think there is more an argument about how it should come about.

So that we have a common ground here, I'm going to refer to the BAR, which is the Branch of Acknowledgment and Research in the Department of Interior, right, and the Federal Acknowledgment Process, the FAP, OK? He will be speaking on behalf of the United South and Eastern Tribes.

What he says is: "USET has a long-standing public tradition of supporting any Indian group—" and that word group has been used already here today, and I don't take it pejoratively, by the way, OK? "—supporting any Indian group seeking to go through the Federal acknowledgment process. This position is reiterated," according to Mr. Martin, in a USET Resolution, entitled Restating Position on Lumbee Recognition, passed in 1993, never rescinded. So this position of supporting the Federal Acknowledgment Process for the Lumbees is at least 10 years duration, I believe, by the tribe, by the USET.

It said it expressly rejected the concept of legislative recognition. I understand that part. And it favored the participation in the FAP by the Lumbees of North Carolina on an equal basis with other petitioning groups. I think you've heard the argument today that if this legislation passes, other tribes will want to have the same thing. That is a complicating factor over and above what the merits or demerits of your presentation might be.

"It is not the intent of the USET to encourage the denial of recognition of any tribe." It then goes on to say, "While we recognize that an Interior Solicitor's opinion states that the Lumbees cannot access the BAR because of Federal legislation—" and I think that's what Mr. Olsen went into, which to an outsider, if you will, or a lay person, would seem like a crazy contradiction. How in the hell can we be in this position if the Lumbees can't—they're Indians, but they can't have access because they're Indians. I mean, that kind of a "Catch 22" situation.

So the "USET believes the appropriate remedy for the Congress is to clear this barrier through legislation that would allow the

Lumbees access to the BAR administrative process." He then goes on to say, therefore, they endorse and support H.R. 1408, a bipartisan bill that would accomplish this.

Are you familiar with 1408?

Ms. LOCKLEAR. Yes, I am, Congressman.

Mr. ABERCROMBIE. Is it correct that 1408 would give the Lumbees access then to the recognition process?

Ms. LOCKLEAR. If enacted by Congress, technically, it would.

Mr. ABERCROMBIE. OK. Because my understanding is, if that happens, and we can do that, that doesn't—does 1408 specifically address the Lumbees, or is it addressed to anybody who finds themselves in the position of the Lumbees of this kind of "Catch 22" recognition?

Ms. LOCKLEAR. Only the Lumbees are left in that position. It is a specific Lumbee bill.

Mr. ABERCROMBIE. But it would be applicable to anybody in that position. I don't know if it names the Lumbees or not. I haven't seen the bill.

Ms. LOCKLEAR. It names the Lumbee Tribe.

Mr. ABERCROMBIE. OK.

I ask you, then, if that passes, I am presuming then the USET and other tribes of good will would support that, to give you the chance to participate. Could you not reasonably expect them to get the support of other tribes for the recognition, the support—in other words, of going through the process and being able to participate and have the same equal chance as anybody else of recognition?

Ms. LOCKLEAR. It appears from the testimony of the Eastern Band of Cherokee today that our position has already been prejudged and we would anticipate their opposition. They have already made a judgment in that regard, whether it's by Congress or the Department of the Interior, it seems.

Mr. ABERCROMBIE. Well, Mr. Martin can speak to that, but I do not read it this way. I read it the opposite, that once you have equal access to the process, it says here they have a long-standing tradition of supporting any Indian group seeking to go through the Federal Acknowledgment Process. Now, I read that as being supportive.

Ms. LOCKLEAR. We would welcome that. It would be a new experience.

Mr. ABERCROMBIE. OK. Then, Mr. Chairman, the reason I've kind of gone through this lengthy inquiry is that I would like to see if we can't find a way to get out of this confrontation process, and if the Lumbees could have access then to the process, like every other group, then the merits or demerits would be decided along with everybody else.

The only question then is what the Chairman has brought up in several venues, can we accelerate this process so that we don't end up with something that, by default, becomes stoppage because it goes on year after year, that we give them sufficient revenues or positions or whatever needs to be done to make these decisions?

I believe that the Chairman, by his actions in this Committee, shows that he wants to get things accomplished, and if it's a question of inertia that's preventing decisions being made, that he will

act accordingly. I think he will have the support of the Committee. That's an issue separate from this.

If we can resolve this issue, it seems to me then we can jump to the issues of how do we get this recognition process decided, one way or the other, in a timely fashion.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. MCINTYRE. Mr. Chairman, could I just mention one thing to my colleague?

The CHAIRMAN. The time has expired, but yeah.

Mr. MCINTYRE. Thank you. I'll keep it brief.

I don't believe you were here earlier today when we had some of the testimony that Senator Dole and I entered regarding the fact that putting the Lumbees through the process again would be repetitive and, quite honestly, an extensive waste of taxpayer money and tribal money when they have already proven and met all the criteria to be a tribe.

The only issue now is the Federal Government granting them recognition, and that is denied by congressional action of 1956. So the concern here would be not to make them jump two hoops when they've already been through one of these hoops. It's just a question of granting the recognition now, which the only reason they're prohibited is because of the 1956 Act.

Mr. ABERCROMBIE. OK. Well, I'll deal with it in Committee.

The CHAIRMAN. Yes. We can talk about that, Neil.

The time has expired. Before I dismiss this panel, I want to thank you for your testimony. I know that, unfortunately, this is not the first time that you guys have been here. Hopefully, we can take care of this issue so that it's not an ongoing issue. I think, one way of the other, in working with my colleagues, we can come to some kind of a fair resolution on this matter. So I want to thank you for being here.

Ms. LOCKLEAR. Thank you, Mr. Chairman.

Mr. GOINS. Thank you.

The CHAIRMAN. I would like to call up our final panel of witnesses, Mr. Tim Martin, Executive Director of the United South and Eastern Tribes, and William J. Brooks, Jr., President of the North Carolina Family Policy Council.

Could I ask you to raise your right hand.

[Witnesses sworn.]

Thank you. I appreciate your patience. I know this has been a long hearing. It is nice to have both of you here today.

Mr. Martin, welcome back to the Committee. It's good to see you again and I look forward to your testimony. We will begin with you.

STATEMENT OF JAMES T. MARTIN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES

Mr. MARTIN. Thank you, Mr. Chairman. It has been a long day. It's been an emotional day, but these are serious issues and I appreciate the effort of this Committee. I appreciate the efforts of every person on either side of this issue, because it's an issue that goes to the heart of everybody's personal commitment. I am thankful for everyone.

I would start by saying to the Chairman and distinguished members of the Committee, on behalf of USET, the United South and Eastern Tribes, I am thankful for the opportunity to provide testimony on H.R. 898, to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

My name is James T. Martin. I am the Executive Director of USET, the United South and Eastern Tribes, representing 24 federally recognized Indian tribes in the south and eastern part of the United States.

Prior to my tenure as Executive Director of USET, I was the tribal administrator for 10 years. I had worked for my tribe, the Poarch Band of Creek Indians, in excess of 20 years, the last being 10 years. I am an enrolled member of the Poarch Band of Creek Indians in south Alabama.

USET appreciates the opportunity to provide testimony regarding the attempts by the Lumbee Tribe of North Carolina to obtain Federal recognition through legislation and not through the Federal Acknowledgment Process administered by the Department of Interior.

USET recognizes that Congress has the power to extend recognition to certain groups, but in its own infinite wisdom, Congress has decided that the Federal recognition process, a complex and tedious one, is not to be entered into lightly. Congress, therefore, has deferred most Federal recognition determinations to the U.S. Department of the Interior which has established a set of regulations standardizing the Federal recognition process and creating an administrative procedure to determine whether particular Indian groups qualify as federally recognized Indian tribes.

The BIA Federal Acknowledgment and Research procedures was a result of a 2-year study of the congressionally established American Indian Policy Review Commission, and at the demands of tribes across the country calling for standardized criteria in determining the future relationships between a tribe and with the United States.

The BAR, 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 American Indian that has existed since historical times as a distinct political group.

The Lumbees are seeking immediate recognition without going through the BIA FAP process and meeting the BAR guidelines, thus circumventing the established system.

USET member tribes believe that the formal act of recognition through the BAR, even though complex, is an essential act for a tribe to establish a productive, meaningful, and above all, creditable trust relationship with the U.S. Government and other tribal governments.

USET has a long-standing tradition of supporting any Indian group that goes through the process. Congressman Abercrombie very eloquently read that portion of my statement, so therefore I will go forward. But it is a long-standing tradition of us to support any group that goes through the BAR process. We do not claim to say if this group is Indian or not. We're not the experts. But even Congress, in its infinite wisdom, said we're not the experts, either, that we will defer to the experts with the criteria that the Congress

stated over a 2-year period to study from different people, to set the criteria that is used.

As stated, we believe the appropriate remedy is for Congress to clear the legislative BAR that was put against these group of people and allow the Lumbee Tribe of North Carolina to go through the BAR process.

The relationship that all Federal tribes have with the Federal Government and the public perception of that tribe is diminished if a group is afforded Federal recognition without serious technical review. Thus, Congress should take the politics out of Federal recognition and allow the expert agency and the staff employed of experts to be able to qualify whether that group of individuals meet the technical review and standards necessary to be declared a federally recognized Indian tribe, not Indians of Indian descent, but a federally recognized Indian tribal government that enjoys a government-to-government relationship in perpetuity between that tribe and the U.S. Government.

I thank you for this opportunity to provide this testimony, and I will be pleased to answer any questions you have at this time.

[The prepared statement of Mr. Martin follows:]

Statement of James T. Martin, Member, Poarch Band of Creek Indians in Alabama, and Executive Director, United South and Eastern Tribes, Inc.

Chairman Pombo and distinguished members of the House Resources Committee, on behalf of the United South and Eastern Tribes, Inc. (USET) I thank you for the opportunity to provide testimony regarding H.R. 898 "To provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes."

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama and Executive Director of USET, an inter-tribal organization consisting of twenty-four federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States.

The primary function of USET is to provide a forum for the exchange of information and ideas among its member Tribes, the Federal Government, and other entities. USET appreciates the opportunity to provide testimony expounding on concerns regarding the attempts of the Lumbees of North Carolina to obtain federal recognition through legislation and not through the formal acknowledgment process administered by the U.S. Department of the Interior.

USET acknowledges that the federal recognition of Indian Tribes is a formal act, creating a perpetual government-to-government relationship between a Tribe and the United States, this recognition acknowledges the sovereign status of a Tribe. Federal recognition ensures Tribes the dignity they deserve and equal opportunities that fellow Tribes enjoy. Federal recognition is a complex process, important to the sovereign and cultural sustainability of Tribes, in that federal recognition also creates an official trustee relationship and fiduciary responsibilities on the part of the United States. USET affirms that federal recognition mandates an obligation by the federal government to protect and preserve the inherent sovereign rights of Tribes.

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. Without federal recognition, Tribes have experienced great difficulty sustaining themselves as independent sovereign and cultural entities.

Federal recognition creates the trust relationship that identifies the federal government's fiduciary responsibility to manage and protect Indian lands, natural resources, and trust assets. The member Tribes of USET realize the affirmative advantages of proper federal recognition.

Furthermore, Federally recognized Tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction over their tribal members and civil jurisdiction over all persons, Indian and non-Indian, within their territory. Federally recognized Tribes have the authority to engage in economic development activity with certain jurisdictional and tax advantages.

We recognize that Congress has the power to extend recognition to certain groups, but in its infinite wisdom Congress has considered the federal recognition process a complex and tedious one, not to be entered into lightly. Congress therefore has deferred most federal acknowledgment determinations to the U.S. Department of the Interior, which has established a set of regulations standardizing the federal recognition process and creating an administrative procedure to determine whether particular Indian groups qualify as federally recognized Indian Tribes. The BIA/ Branch of Acknowledgment and Research (BAR) procedures were the result of a two-year study of the Congressionally established American Indian Policy Review Commission and at the demands of Tribes across the country calling for standardized criteria in determining the future relationships of tribes with the United States. The BAR, 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. This procedure was established in 1978 and the process was streamlined 1994. The Bureau of Indian Affairs (BIA) maintains authority to oversee the recognition procedure and has set up a Federal Acknowledgment Process (FAP). The Lumbees are seeking immediate recognition without going through the BIA FAP process and meeting BAR guidelines, thus circumventing an established system.

Seven criteria outlined in the Mandatory Criteria for Federal Acknowledgment, 25 C.F.R. sections 83.7 (a)-(g) were established through a formal notice and comment process with input from the tribes and other interested persons. The criteria are: (a) continuous identification since 1900 as American Indian; (b) existence as a distinct community since historical times; (c) maintenance of autonomous Tribal political influence/authority over members; (d) furnishing of a copy of the Tribe's governing document; (e) furnishing a list of all known members and show they descend from a single Tribe; (f) proof that members don't belong to any other American Indian Tribes; and (g) proof that the Tribe was not the subject of congressional termination legislation. These are complicated tasks to accomplish and require years of work by expert historians, genealogists, attorneys, professors, tribal members, and a host of others, but the thorough process of gathering information and the scrutiny of that information provide greater credibility to those Tribes that gain recognition.

USET member Tribes believe that the formal act of recognition, even though complex, is an essential act for Tribes to establish a productive, meaningful, and above all, creditable trust relationship with the United States government and other tribal governments. USET believes it is essential that the United States affirm the existence of Tribes as distinct sovereigns within the established system.

USET has a long-standing public tradition of supporting any Indian group seeking to go through the federal acknowledgment process. This position is reiterated in USET Resolution No. 93-15LA, Restating Position on Lumbee Recognition, duly passed at the Annual Board Meeting on December 8, 1993 (attached). This resolution expressly rejected the concept of legislative recognition of Indian groups and favored the participation in the FAP by the Lumbees of North Carolina on an equal basis with other petitioning groups. It is not the intent of USET to encourage the denial of recognition of any Tribe, but it is our intent to demand that the FAP process and BAR guidelines for federal recognition be administered equally for all groups seeking federal recognition and that groups not be allowed to bypass the process. While we recognize that an interior Solicitor's opinion states that the Lumbees cannot access the BAR because of federal legislation, USET believes the appropriate remedy is for Congress to clear this barrier through legislation that would allow the Lumbees to access the BAR administrative process. USET endorses and supports H.R. 1408, a bipartisan bill that would accomplish this.

Additionally, federal legislative acknowledgment of a group gives unfair preferential treatment to that group over all other groups who are in the BAR process and patiently awaiting review and determination. Moreover, providing federal acknowledgment to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of according a group federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally recognized tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgment without serious technical review. Thus, Congress should take the politics out of federal recognition and allow the expert agency to do its job.

As I conclude my testimony, I thank the Committee for the opportunity to provide comments and restate the USET position on the request for federal recognition by the Lumbees of North Carolina.

Again, I thank you for the honor of appearing before you to discuss this significant issue. I will be happy to answer questions at this time.

The CHAIRMAN. Thank you.

Mr. Brooks.

STATEMENT OF WILLIAM J. BROOKS, JR., PRESIDENT, NORTH CAROLINA FAMILY POLICY COUNCIL

Mr. BROOKS. Mr. Chairman and members of the committee, my name is Bill Brooks and I'm President of the North Carolina Family Policy Council, a statewide, nonprofit and nonpartisan research and education organization. Thank you for the opportunity to testify on House Resolution 898, the Lumbee Recognition Act.

My comments will focus primarily on one aspect of the bill, and that is the potential of this legislation to pave the way for the Lumbee Tribe of North Carolina to establish casino gambling in eastern North Carolina. While I understand the passage of this bill will not immediately grant the Lumbee Tribe the right to gamble, it would represent a significant step in that direction, and this is a major concern for many in my State.

North Carolina remains one of 11 States in the Nation without a lottery, and our citizens and State lawmakers have traditionally resisted gambling at almost every opportunity. The only forms of gambling that are legal in North Carolina are bingo, limited video gambling with no cash payouts, and the Harrah's Cherokee Casino in the mountains of western North Carolina, which offers only bingo and video-based machines.

In fact, the Cherokee casino is the only casino in the southeastern United States, and it is somewhat difficult to get to, not being on an Interstate or other major highway. Nevertheless, this facility boasts about 3.3 million annual visits, making it the largest private tourist attraction in North Carolina.

A casino operated by the Lumbee Tribe would be situated in Robeson County, most likely on Interstate 95—and I have listed in my testimony some of the cities that are within range of the feeder market for the casino. We're talking about, of course, Lumberton and Southern Pines and Pinehurst, the golf capital of the world, Chapel Hill, Raleigh/Durham, Myrtle Beach, and Columbia, S.C. It would be located just 32 miles from Fayetteville, the home of Fort Bragg and the 82nd Airborne.

I-95 is the major Interstate thoroughfare between New York and Florida, and runs through the heart of Robeson County, with 39,000 vehicles per day. Considering the ease of access to this gambling from any direction, such a casino would have a profound social and economic impact on parts of North Carolina and South Carolina.

John Warren Kindt, a noted gambling expert and professor at the University of Illinois, he estimated that a casino in Robeson County may become a billion dollar annual operation, with income generated primarily by cannibalizing regional commerce and tourism. In addition, when one considers the negative multiplier effect when money is removed from local business economies, the cumulative regional economic impact could actually be a loss of two to three billion dollars. As a major part of the economy of the coastal

region depends on tourism and retirement, the negative economic impact on the region from gambling would be significant.

In addition, a casino in Robeson County would result in numerous adverse social effects on the region. Easy access to gambling means that a significant number of citizens would develop a pathological or problem gambling habit. Numerous studies have demonstrated a high correlation between gambling addiction and increases in crime, domestic violence, child abuse, divorce, unemployment, theft, bankruptcy, embezzlement, and even suicide. Because this region of North Carolina is relatively gambling-free, the introduction of a gambling casino would have a serious impact on many families in the area, both directly and indirectly.

We agree with the findings and recommendations of the National Gambling Impact Study Commission, that there be a moratorium on gambling expansion in the United States. The North Carolina Family Policy Council requests that, should this Committee decide to take positive action on H.R. 898, or, quite frankly, the other bill that's under consideration, that the bill be amended to expressly prohibit the Lumbee Tribe from operating any gambling activities.

In addition, we believe the Committee should adopt a policy that in the eastern United States all future tribal recognitions would include the same provision. This would ensure that we do not develop a casino domino effect, as we have seen with State lotteries, where neighboring States start gambling and then the next State sees citizens cross the borders spending money, thereby giving fuel to the cry for additional gambling to keep the money in the State.

In conclusion, there is precedent for such an approach. In the early 1980s, the U.S. Senate Committee on Agriculture, Nutrition and Forestry, which at the time had jurisdiction over all national forests east of the 100th meridian, delayed the approval of all eastern wilderness bills until the sponsors agreed to include language in the bills which released lands not designated as wilderness to multiple use management. An amendment prohibiting additional gambling could easily be placed on individual bills, even those that might start a tribal recognition process within the established Federal framework. Congress should take the advice of the National Gambling Impact Study Commission and take whatever steps are necessary to prevent the expansion of gambling.

Thank you.

[The prepared statement of Mr. Brooks follows:]

Statement of William J. Brooks, Jr., President, North Carolina Family Policy Council

Mr. Chairman and members of the committee, my name is Bill Brooks, and I am President of the North Carolina Family Policy Council, a statewide nonprofit, nonpartisan research and education organization. Thank you for the opportunity to testify on House Resolution 898—Lumbee Recognition Act.

My comments will focus primarily on one aspect of the bill, and that is the potential of this legislation to pave the way for the Lumbee Tribe of North Carolina to establish casino gambling in Eastern North Carolina. While I understand the passage of this bill will not immediately grant the Lumbee Tribe the right to gamble, it would represent a significant step in that direction, and this is a major concern for many in my state.

North Carolina remains one of 11 states in the nation without a state lottery, and our citizens and state lawmakers have traditionally resisted gambling at almost every opportunity. The only forms of gambling that are legal in North Carolina are bingo, limited video gambling with no cash payouts, and the Harrah's Cherokee Ca-

sino in the mountains of Western North Carolina, which offers only bingo and video-based machines.

In fact, the Cherokee casino is the only casino in the southeastern United States and it is somewhat difficult to get to, not being on an interstate or other major highway. Nevertheless, this facility boasts about 3.3 million annual visits making it the largest private tourist attraction in North Carolina.

A casino operated by the Lumbee Tribe would be situated in Robeson County, most likely on Interstate 95. Lumberton, the county seat is 73 miles from Wilmington, 52 miles from Southern Pines and Pinehurst, and about 100 miles from Raleigh, Durham and Chapel Hill, all in North Carolina. It is just 74 miles from Myrtle Beach and 133 miles from Columbia, South Carolina. Also, the casino would be located just 32 miles from Fayetteville, home of Fort Bragg and the 82nd Airborne.

I-95 is the major interstate thoroughfare between New York and Florida and runs through the heart of Robeson County with 39,000 vehicles per day. Considering the ease of access to this gambling from any direction, such a casino would have a profound social and economic impact on eastern parts of North Carolina and South Carolina.

John Warren Kindt, a noted gambling expert and professor at the University of Illinois, has estimated that a casino in Robeson County may become a billion dollar annual operation, with income generated primarily by cannibalizing regional commerce and tourism. In addition, when one considers the negative multiplier effect when money is removed from local business economies, the cumulative regional economic impact could actually be a loss of two to three billion dollars. As a major part of the economy of the coastal region depends on tourism and retirement, the negative economic impact on the region from gambling would be significant.

In addition, a casino in Robeson County would result in numerous adverse social effects on the region. Easy access to gambling means that a significant number of citizens would develop a pathological or problem gambling habit. Numerous studies have demonstrated a high correlation between gambling addiction and in increases in crime, domestic violence, child abuse, divorce, unemployment, theft, bankruptcy, embezzlement, and even suicide. Because this region of North Carolina is relatively gambling-free, the introduction of a gambling casino would have a serious impact on many families in the area, both directly and indirectly.

Although H.R. 898 would not automatically authorize the Lumbee Tribe to establish a gambling casino in North Carolina, federal recognition along with the possession of "Indian Lands," as defined by the Indian Gaming Regulatory Act (IGRA), would place the Tribe in a position to seek a Tribal-State gaming compact with the State of North Carolina. The designation in H.R. 898 that land in Robeson County be treated as "on reservation" trust acquisitions, as well as Section 3(a) of the bill, which states that "members of the tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation," would make the Tribe's process of obtaining "Indian Lands" relatively easy. Because IGRA requires states to negotiate in good faith with federally recognized tribes when they seek a Tribal-State gaming compact and because the State of North Carolina has already entered into a Tribal-State Compact with the Eastern Band of Cherokee Indians, the State would find it difficult to deny a gambling compact to the Lumbee Tribe.

We agree with the findings and recommendations of the National Gambling Impact Study Commission that there be a moratorium on gambling expansion in the United States. The North Carolina Family Policy Council requests that, should this committee decide to take positive action on H.R. 898, the bill be amended to expressly prohibit the Lumbee Tribe from operating any gambling activities.

In addition, we believe the Committee should adopt a policy that in the eastern United States that all future tribal recognitions would include the same provision. This would ensure that we do not develop a "casino domino effect" as we have seen with state lotteries, where neighboring states start gambling and then the next state sees citizens cross the borders to spend money, thereby giving fuel to the cry for additional gambling to keep the money in state.

There is precedent for such an approach. In the early 1980's, the U.S. Senate Committee on Agriculture, Nutrition and Forestry, which at that time had jurisdiction over all national forests east of the 100th meridian, delayed the approval of all eastern wilderness bills until the sponsors agreed to include language in the bills which released lands not designated as wilderness to multiple use management.

An amendment prohibiting additional gambling could be easily placed on individual bills, even those that might start a tribal recognition process within the established Federal framework. Congress should take the advice of its own national

commission and take whatever steps are necessary to prevent the expansion of gambling.

The CHAIRMAN. Thank you.

I would like to recognize Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much.

Mr. Brooks, if I understood you correctly, if the sponsor of this bill, Mr. McIntyre, would agree that there should be an amendment that would prohibit the Lumbees, when and should they be recognized, from creating a gambling casino, then you would be supportive of his effort if the bill was amended so it would prohibit that event of gambling happening in the future? That's what you said, is that right?

Mr. BROOKS. Representative Jones, I wish I could say that. We would not oppose it, nor support it, because it's not an issue that we have done research on, in terms of the actual establishment of the Lumbee Tribe. There are a lot of factors there and that's just not one of our issues. But gambling is, and we have done a lot of research on that.

Mr. JONES. I guess I would ask Mr. McIntyre, if this bill does move, would you have any opposition to an amendment that would be put on the bill that would prohibit the Lumbees, when and should they be recognized, from going into the process of trying to have gambling on that reservation or adjoining lands? Yes or no.

Mr. MCINTYRE. Well, Mr. Chairman—I mean, I'll be glad to respond, but are we questioning each other as members, since I'm already up here on the panel and previously answered this question as a matter of record?

Mr. JONES. Mr. Chairman, could I ask the sponsor of the bill if he would object to the committee, should this bill begin to move, to that kind of amendment.

The CHAIRMAN. If the gentleman wishes to engage.

Mr. JONES. Just a yes or no, that you would not be in favor of an amendment, or you would be in favor of an amendment.

Mr. MCINTYRE. Well, as I stated previously—and I hate, for time considerations, to be redundant—but this is an issue that the tribe would have to decide. I do believe that the tribe should have the sovereignty to make these decisions, and according to its own constitution, it would have to have a referendum to make that decision. As I explained earlier this morning, I know there is a great difference of opinion within the Lumbee community, some who are, in fact, we know are very much opposed to consideration of that.

Mr. JONES. Is that a yes or no answer? I mean, I couldn't—

Mr. MCINTYRE. My answer is, as I said this morning, I think the red man is tired of the white man telling him what to do. I will respect what the Lumbee tribal council and Lumbee people will decide.

Mr. JONES. So basically you would not be in opposition should the majority of the Committee accept and support that type of amendment. In other words, you'll let the will of the Committee move forward, whether amended or not amended?

Mr. MCINTYRE. I will respect, obviously, actions taken by this Committee, and I'm greatly appreciative of the Committee's efforts

for the hearing. I will also respect what my constituents, the Lumbee Tribe, would desire on this issue.

Mr. JONES. OK. I think I understand what you're saying. Thank you for your nonanswer, thank you very much.

Mr. Martin, I want to also say to you that I appreciate your position, because everyone that has testified today, whether they be from the Lumbees or from the Cherokees, I think we all realize that there's a problem with the process. I think the gentleman from Hawaii, who has left the dais—I was in the outer office making phone calls, but I did hear some comments that he made. I think Mr. Olsen acknowledged this, that the process needs to be analyzed and fixed by the Congress, because that's where the problem is for this tribe, that we have a process that's just not working in an expeditious way. I realize it's going to take time when you analyze the heritage of any tribe. But still, I think we should narrow the timeframe that it takes now, because it does need help and needs to be fixed.

Mr. Brooks, I guess the only last question I would have, Mr. Chairman, is more of a statement, but somewhat of a question.

You talk about the economic impact should, down the road, the Lumbees apply for permission to open gambling facilities in that part of North Carolina. I did not hear you say this, but maybe you did and I missed it.

Do you see Fort Bragg as being a feeder to a gambling operation that would be on or off I-95?

Mr. BROOKS. Well, it's within the 35-mile location feeder market range, within that, so it would be very easy access. There is a 35-mile zone and there's a 100-mile zone, in which a number of economic studies have been done.

If you go out to the 100-mile zone, you just about pull in Camp Lejeune and Seymour Johnson Air Force Base, too, plus I'm not sure what's in South Carolina. But there is a number of military installations that would be included in that.

Mr. JONES. Mr. Chairman, I'm going to close but just make one quick statement.

I think we should look at Mr. Taylor's bill along with Mr. McIntyre's bill and see if we can't fix this process for not only the Lumbee Indians, but the Indians across America that have a right to be considered and recognized by the Federal Government. I think the whole issue that has created this problem is that the system itself needs to be fixed.

With that, I yield back my time. Thank you.

The CHAIRMAN. Thank you.

Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

First of all, I welcome the testimony of the two gentlemen. No one can question their sincerity or their expertise on these matters. I have known Tim Martin for many years and I hold you in high regard. I appreciate the fact that you have testified here today. Your testimony has been very clear, and I have no questions to ask.

Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions? Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I, too, would like to thank Mr. Martin for his statement and his presentation before the Committee. I think the gentleman from North Carolina does make some valid points in some of the concerns he has raised concerning the process.

I would like to share with Mr. Martin, in your statement you said that Congress, in its infinite wisdom. With all due respect, Mr. Martin, Congress did not have any sense of wisdom when we first established the American Indian Policy Commission in the 1970s, and this was one of the areas that Congress has totally neglected to address. So what did Congress do? We just simply let the Interior Department draw up these regulations on the process, where we came up with these seven criteria. The process never was really scrutinized to the extent that now, it is not only so complex, but so difficult for so many of the Indian tribes to meet the extremely high costs of having to hire attorneys and anthropologists and archaeologists.

I would like to ask Mr. Martin, let's suppose a tribe does make an application in the process and the tribe does not have the funds, what do you think we should do then to give assistance to these tribes? Or should we just say forget it?

Mr. MARTIN. Thank you, Congressman. That's an excellent question.

If you will look at my testimony yesterday, I did testify before this committee yesterday to that point. I believe that tribes that come forward and go through the process, who do not have the resources, should be offered technical assistance grants. I testified yesterday that ANA, the Administration for Native Americans, at one time did offer technical assistance grants to tribes that were going through the FAB process.

I believe it is incumbent upon this Congress to look at that as a vehicle to help those tribes who do not have the resources so that they are not enticed by third party influence to be able to put together petitions of the greatest—I mean, as I said, the rapid increase in final petitions over the last years, those petitioners now average at least 25 years before nothing is being done to them. But I did address it yesterday. I believe in a form of technical assistance to the tribes in the process, who do not have the resources.

I also testified that the Assistant Secretary should be able to expand his authority to look at frivolous petitioners, ones that, by any stretch of the need, cannot pass a red face test, that they're not going to be able to go through the process and to be able to shrink this never-ending growth of petitioners.

Mr. FALEOMAVAEGA. I want to mention to Mr. Martin that I have attempted several times to introduce legislation to change the FAB system, to provide a better and more orderly fashion on how the process should function. I cannot agree with Mr. Martin more when he says we don't want frivolous petitions.

We have approximately over 100 tribes in California that are not recognized, and the process, as you indicated earlier, there is no question about the complexity of the issue that we're talking about.

I want to share with Mr. Brooks, you mentioned the National Gambling Impact Study Commission, and now we're looking at a

moral tangent to this whole legislation. We're talking about the concern with gaming and gambling.

With all due respect, Mr. Brooks, I'm not a gambler, but to suggest the very nature of how this whole gambling commission came about was pitying the poor American Indians simply because of the successes, limited as they may be, that all of a sudden our Nation comes out and says we've got to keep an eye on these Indians; they're being too successful in their gaming operations.

So what happens is we try to moralize the issue. Oh, let's continue to let the States do the lottery, the horse racing and all that. That's not gaming. So we can make the arguments both ways.

My concern is that Congress is the one that set up the law on how the Indian tribe goes about getting into gaming operations. And on top of that, it is highly restrictive. It's up to the Governors, the State Governors, on whether or not to allow these Indian tribes. So there is no way—If you want to talk about the Cosa Nostra, the Mafia or the Syndicate being involved in Indian gaming, its impossible because the Congress is regulating, not the State governments.

Mr. BROOKS. May I respond, Mr. Chairman?

Mr. FALEOMAVAEGA. I'm not through with my statement. But I will give you time, Mr. Brooks.

My concern, Mr. Brooks, I have the utmost respect and concern for many of the good people of North Carolina who are anti-gambling. But with all due respect, I think we're being unfair to let the Lumbee people, as a tribe, if they should be recognized 1 day, make that decision. There's a process that, if they should be allowed to do gaming in North Carolina, then the good people of North Carolina and their leaders have to meet on that basis. But to prejudge it and say let's prohibit the tribe from doing any gaming I think is being unfair.

Please, Mr. Brooks.

Mr. BROOKS. As I mentioned, we only have one casino currently in North Carolina, and that is a video poker casino. The Cherokee would like to have, as I understand, full-blown casino gambling, but our State law only has video poker machines. In fact, bills have passed our Senate for three sessions to ban video poker they way they did in South Carolina, and there is one pending now, coming up in a short session.

The problem has been the Cherokee casino, because they already have a casino, it's a pretty good sized one, they've got a 15-story hotel, and they're building another one. The will is not in the legislature to make them go away. Therefore, people have talked about how they could make that happen, but the will is also not in our legislature or in our State. Nobody is asking to have casinos.

It seems to me there's a problem when you have a group of people, whether they be the Lumbee or the Cherokee, or anybody for that matter, that can say to eight million people in the State that we have the right to gamble, irrespective of what you think about it. The casino is an issue that nobody is proposing down in North Carolina. It's one of those things, though, that we will get if the Cherokee get recognition, most likely.

Mr. FALEOMAVAEGA. I just want to say to Mr. Brooks—and I know my time is over—I think that's something that the good leaders of North Carolina will address at that point in time.

I also want to mention that there was a concern from my good friend from North Carolina about Fort Bragg. We have Nellis Air Force Base right next to Las Vegas, so I don't see the logic in suggesting that we're going to poison the morality of the good soldiers that we have at Fort Bragg, no more than there is at Nellis Air Force Base or Edwards or any other place.

But I do respect the gentleman's point of view about the concerns about gaming and the effects of gambling, but I just don't feel that we ought to target or point to the Indians as the cause of all the moral problems that we have in our country, and to suggest that gaming is the reason for this. I just wanted to share that concern.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. McIntyre.

Mr. MCINTYRE. Thank you, Mr. Chairman. I have just two very quick questions.

Prior to those questions, I do want to express my deep appreciation for your time and indulgence today. I know it's been a long hearing. I greatly appreciate the Committee members who have taken the time to spend with us, and obviously, all of those who have joined us to testify. But thank you, Mr. Chairman, for your courtesies today.

Mr. Martin, just two quick questions. Were you aware that seven of the tribes in your organization, seven of the 24, which would be about one-third, were recognized by congressional action?

Mr. MARTIN. Each of those tribes that were recognized in congressional action—

Mr. MCINTYRE. So you do recognize they were recognized by congressional action? Are you acknowledging they were recognized by congressional action?

Mr. MARTIN. The legislation that recognized them was tied to land claims. The question of them being an Indian tribe was never in doubt. The legislation pertained to land claims, not the question of whether that tribe existed as a tribe or not.

Mr. MCINTYRE. OK. My question was, it was by congressional action, correct?

Mr. MARTIN. Technically, that's correct.

Mr. MCINTYRE. So seven of your tribes, nearly one-third, were recognized by congressional action.

Were you aware that only six of the tribes in your organization have been through the FAP process?

Mr. MARTIN. Yes, sir.

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

The CHAIRMAN. Thank you.

I want to thank this panel for your testimony. Obviously, there is an emotional issue, a very important issue that all of us have a solemn duty in moving forward with this legislation.

Mr. Martin, just in terms of clarification, your testimony does not pass judgment on the Lumbees' petition, but you oppose the bill because you said it does not support the Lumbee using the administrative process but rather the legislative process.

Mr. MARTIN. Yes, sir. Several questions earlier from different Congressmen who had to leave—I think Mr. Walden and Mr. Jones—they asked questions of the Congressman from North Carolina, the sponsor of the bill, about gaming and education.

We support the Lumbees going through the FAB process. If they are federally recognized, we will welcome them with open arms. I would say to the Lumbee group, do not diminish your recognition, if you're successful in getting it, by arbitrarily agreeing to anything that makes you any less of a special group of people that you will join if you're federally recognized.

We will support anyone who goes through the process, and if they go through the process and are declared to be a federally recognized Indian tribal government, we will support them in every endeavor they can, that exercises their right of sovereignty, if it is bestowed upon them.

Mr. MCINTYRE. May I have a follow-up question?

The CHAIRMAN. Very quickly.

Mr. MCINTYRE. Yes, sir.

If H.R. 898 passes the U.S. Congress and, therefore, recognition is given by the U.S. Congress, will you still recognize them and welcome them with open arms as a fellow Indian tribe?

Mr. MARTIN. As I stated in our testimony, this body and the U.S. Senate and the President, with the signature of the United States, if they so choose that they are recognized, then they will be accepted.

Mr. MCINTYRE. Thank you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Martin, my follow-up question to you is directly to the point that you raised at the end of your answer; that is, one thing I'm not sure we want to start doing is recognizing anybody as a sovereign tribe with different rights than every other sovereign tribe. We have already caused problems by doing that in the past and I'm not sure that this Committee, as constituted, if that is such a great idea to start doing that.

Mr. MARTIN. Let me clarify my statement, to make sure I'm clear.

The CHAIRMAN. I understand your statement, because if Mr. McIntyre's bill is adopted, I'm not exactly sure that everything is available to the Lumbee people as it would be if they went through the normal process. This is something that we're going to try to figure out exactly what that means.

Because we've already had testimony today that they would have a different ability or a restricted ability, if they chose to become a gaming tribe, than if they went through the other process. I'm not exactly sure that that's—

Mr. MARTIN. It was to the point where the Congressman was saying if they would be welcomed with open arms as a member of a federally recognized group.

The CHAIRMAN. Oh, I understood that part.

Mr. MARTIN. OK. But we would then advocate to make sure that the standard of sovereignty is not reduced by any means.

The CHAIRMAN. That was my follow-up question, because that is something that I think, if we do proceed with legislation of any kind, I think we have to be careful exactly what that says.

Mr. MARTIN. Yes, sir.

The CHAIRMAN. And to the point of whether or not this Committee and Congress has the right to recognize tribes, we have the right in the Constitution, and I'm not sure the Administration has the right anywhere. I mean, this is our responsibility.

At some point that changed, but that is the way things have been done since before I got here, and maybe those who have been around longer can explain to me why that happened. But since we've been here, it hasn't.

Mr. Brooks, just a final question to you. In regards to the issue of gaming—and I know that that has become a big issue across the country; it's a big issue in California, and it's a big issue in my district. People have differing opinions. Like Mr. Faleomavaega, I'm not a gambler and I'm not real wild about it to begin with. But it is something that we are dealing with.

Your opposition to the recognition or to the legislation is not based on the Lumbee Tribe; it's in opposition to gaming, to gambling. Am I accurate in that?

Mr. BROOKS. Yes, sir. It really has nothing to do with the Lumbee Tribe. It could be a group of people, it could be a bill in the North Carolina Legislature that would authorize a casino.

We have looked at gambling over the last decade. We have looked at studies all over the country. It is very easy to see what's happening in communities. The studies are numerous and they're out there. So we can also apply an economic analysis to that and look and see what kind of impact it's going to have on communities.

Like I said, the communities around that area, particularly those down on the coast that are within easy driving distance, Southern Pines and Pinehurst, which are right over on the other side of Lumberton, would be prime targets because of their tourism and retirement-based communities. You're just taking money right out of those communities and sending it down the highway.

Then you get all the social problems. Unless the Lumbee Tribe can figure out a way to say our people can't gamble themselves, you get a lot of social problems that come from that. It just happens.

The CHAIRMAN. Just as a means of clarification, and in reviewing your testimony, this is not opposition to them being recognized as a Federal tribe. It's in opposition dealing with the gaming issue.

Mr. BROOKS. That's right. No words of support for that recognition. We just are neutral on that.

The CHAIRMAN. There was something you had in your testimony dealing with Senate action in the 1980s on wilderness bills. Could you provide for the Committee background on that particular piece of legislation? That was something that jumped out at me in your testimony and I'm interested in the history of that. I would like to have some background information on that, if you could provide it for the Committee.

Mr. BROOKS. Yes, Mr. Chairman, I would be glad to do that.

The CHAIRMAN. Thank you very much.

If there are no further questions, I want to than this panel for your testimony. It has been a long day, but I think this has been something that is extremely important and a long time in coming. I appreciate all of the witnesses for their testimony today.

I want to thank the audience for your decorum during this hearing. On an emotional issue like this, sometimes things get out of hand. I appreciate all of you for the way you represented yourselves here today.

Mr. FALEOMAVAEGA. Mr. Chairman.

The CHAIRMAN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. I would like to ask unanimous consent that the full text of my statement be made part of the record.

The CHAIRMAN. Without objection.

Mr. FALEOMAVAEGA. Mr. Chairman, I want to thank you again just for the fact we held a hearing on this very important legislation, Mr. Chairman. It is a tribute to you and I really, really appreciate this opportunity for the members of our Committee to hold this hearing.

Thank you.

The CHAIRMAN. Thank you.

I will say to this panel before I dismiss you that there may be further questions that will be submitted to you in writing, if you could answer those in writing so that they can be made part of the hearing record. That is the same for all witnesses who testified here today.

I thank you all very much for being here. The Committee is adjourned.

[Whereupon, at 1:30 p.m., the Committee adjourned.]

The following information was submitted for the record:

- Easley, Hon. Michael F., Governor, State of North Carolina, Letter submitted for the record
- Shapard, Bud, Research Services Officer, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs (Retired), Letter submitted for the record

[The letter submitted for the record by The Honorable Michael F. Easley, Governor, State of North Carolina, follows:]

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

MICHAEL F. EASLEY
GOVERNOR

March 24, 2004

The Honorable Richard W. Pombo, Chair
House Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Nick J. Rahall, II, Ranking Member
House Resources Committee
1329 Longworth House Office Building
Washington, DC 20515

Dear Representatives Pombo and Rahall:

Thank you for the invitation 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 is long overdue.

Recognition of and interaction with the Lumbee people as a unique, distinct Indian tribe began when white 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 Native American community situated mostly along and to the west of what is now known as the Lumber River in Robeson County. Historical records show a well-developed tribal group living on and using the land. As early as 1890, the U.S. Department of Interior acknowledged this fact among others as evidence that the Lumbee people are Native Americans..

A proclamation by colonial Governor Matthew Rowan on May 10, 1753 stated that Drowning Creek (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. Logically, it is reasonable to conclude that these individuals were members of what is today known as the Lumbee Tribe.

In 1885, North Carolina's General Assembly passed a bill recognizing and naming the Lumbee tribe Croatan. In 1953, the State officially changed the tribe's name to "Lumbee Indians" following a 1952 tribal referendum.

Representatives Pombo and Rahall
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March 24, 2004

For more than a century, North Carolina 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 the several federal investigations into the Lumbees' history, genealogy and ethnicity concluded that the Lumbees are in fact Native Americans. 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 Resources Committee in particular for holding this hearing and for inviting me to offer written comments about the Lumbee Tribe recognition bill.

With warm personal regards, I remain

Very truly yours,

Michael F. Easley

[The letter submitted for the record by Bud Shapard, Research Services Officer, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs (Retired), follows:]

274 LITTLE RIVER CAMPGROUND ROAD
PISGAH FOREST, NORTH CAROLINA 18768
APRIL 21, 2004

Hon. Richard Pombo
Chairman, House Resources Committee
United States House of Representatives
Washington, DC

Dear Mr. Chairman

The Asheville Citizen-Times newspaper recently carried a front page article which discussed the controversy over the bill currently pending in Congress to recognize the Lumbee Indians of North Carolina as a federally recognized tribe. The article discussed comments and actions by several congressmen and quoted the principal chief of the Eastern Band of Cherokees who opposes the legislation, and advocates keeping the consideration of the Lumbee petition under the purview of the Bureau of Indian affairs. While this appears on the surface perfectly reasonable, it is an unconscionable stratagem to prevent the deserved recognition of the tribe. Consequently, I sent the following letter to the editor of the Citizen-Times which they published in part. I respectfully request that the House Resources Committee make this letter part of the April 1, hearing record on H.R. 898.

Dear Editor:

I don't ordinarily respond to newspaper stories, but the April 3 article "Cherokee say Lumbee decision should be made by Indian Affairs" is so filled with misleading, if not erroneous, information that I believe a response might be worthwhile. I have some background with the Bureau of Indian Affairs. I retired from the Bureau after 25 years' service. I wrote the original regulations for the recognition of Indian

tribes, organized the Branch of Federal Recognition in 1978, and was the branch chief for the first ten years of its operation. After my retirement in 1987, I assisted 10 unrecognized tribes with the preparation of their petitions for Federal acknowledgment. I am also a North Carolinian and have known of the Lumbees since childhood.

I am sure Michell Hicks is a fine Principal Chief for the Eastern Band of Cherokees, and it is indeed heartwarming to find a tribal leader who places such confidence in the Bureau of Indian Affairs. In that, I'm sure he bravely stands alone among tribal leaders in this country. He does, however, have a big dog in the fight over the recognition of the Lumbee Indians, and is perhaps more than a bit biased on this issue. He is also dead wrong on a couple of points. First, Congress is absolutely the appropriate venue to consider the Lumbee petition for recognition. Congress has plenary powers over all governmental interaction with Indian tribes, and should they so choose, it would be Congress, not the Bureau of Indian Affairs, which should deal with the Lumbee recognition question. Incidentally, Congress has never passed specific legislation authorizing the Bureau of Indian Affairs to recognize tribal groups. Congress has tacitly allowed to Bureau to continue with the recognition program. Theoretically, our legislators should be dealing with the Lumbee issue in the first place. Aside from the fact that Congress has the absolute right to handle any recognition matter, it is a well known that there has been an all-pervasive, longstanding prejudice against the Lumbees within the Bureau. The Lumbees are a very large tribe, by far the largest unrecognized tribe in the country seeking federal acknowledgment. The size issue has negatively affected Bureau-wide opinion of the tribe. In my opinion, there would be a tremendous pressure from within the Bureau for the acknowledgment branch to reject a tribe of this size.

Another argument apparently raised by Principal Chief Hicks is that "recognition would mean less federal money for other tribes, including the 13,000-member Eastern Band." There is a special budget item in the bureau's budget set aside for "new tribes." Not one cent is, or ever has been, taken from the existing Indian Service budget when a new tribe is recognized. I believe that more than 20 tribes have been recognized since the inception of the recognition process in 1978, and I would defy anyone to show that it has affected the Indian Affairs budget in any way except to increase it. Perhaps the Principal Chief should compare the incoming federal funds in 1978 with the amount the Eastern Band presently receives.

Other factors in the Lumbee case are the acknowledgment regulations and the acknowledgment branch itself. The regulations were flawed when they came off the press in 1978. When I wrote the original regulations, no one was quite sure how to do it. Virtually all of the criteria are loaded with subjective, waffle words, allowing the bureaucrats in the branch to make their decisions on often unsupportable personal interpretations of the regulations. The original regulations were later revised but the revision only made matters worse.

This raises another issue specific to the Lumbees. The Bureau does not have the extant capability to deal with a group the size of Lumbee. When the regulations were drafted, it was originally anticipated that petitioning groups would have from one hundred to two thousand members. The Lumbees have, according to your article 53,000 members. Just the matter of proving the Indian ancestry of 53,000 members is, to say the least, a gargantuan ordeal. We knew that Lumbee was unique back in the 1980s, and contemplated establishing a separate office in Robson County when it came time to deal with the Lumbee petition. We also discussed the possibility of turning the case over to Congress for consideration since it would cost the taxpayers considerably less, and would not bog the BIA staff down for years. By the bureau's own admission, it now takes 15 years for the branch to bumble its way to a decision, and that is after years of preparation by the petitioner. Now, if the bureau takes 15 years to complete processing a petition of 2000 people, it would take something on order of 395 years, give or take a few months, to complete a petition for a tribe with 53,000 members.

I suppose Representative Charles Taylor has to support the hometown folks, but his bill to remove the "1956 stumbling block and let the Lumbee pursue recognition through the BIA," would toss the fate of the Lumbees into an unfriendly, perhaps even hostile, Bureau, and doom them to years of unnecessary harassment by the Division of Acknowledgment. It may be good politics but it is duplicitous and unfair, at best, and possibly a ploy to stop the recognition of the Lumbees altogether.

I think the Cherokee opposition to the Lumbee recognition is not based on the fact that the Lumbees are not Indians, but that they are not good enough Indians—having no traditional dances and not speaking a traditional Indian language. Like many other recognized and most unrecognized tribes, much of the Lumbee traditional Indian culture was lost in their close association with white society over the

centuries. Dances and a fading language however, are not, or should not, be a determinative factor in federal recognition, if tribal members can trace Indian ancestry.

Then there is the matter of casinos. One has to wonder if the casino-rich Cherokees are not more than a little concerned about having a modicum of casino competition from the Lumbees along the I-95 corridor. As Representative McIntyre said, the process is about federal recognition, not gambling houses. Nevertheless, as I understand it, a casino probably would not be a factor since most of the Lumbees are bible-totin Baptists and are living in the middle of North Carolina's bible belt, but I'll bet the possibility gives the Cherokees heartburn. I do find Rep. Walter Jones, Jr. to be disingenuous with his comment that a Lumbee casino would be an "almost uncontrollable" problem. He is currently accepting $4000 from the casino-owning Cherokees. Perhaps he should look at things in a more positive vein. If the Lumbees were recognized and set up a casino, he might double his take.

In my opinion, the bottom line is that the Lumbees should be recognized, and would have been recognized long ago, if they were not so doggone big. If recognized, their size would make the Lumbees one of the largest tribes in the country, and would reduce the Eastern Band to the second largest tribe in the state. I suggest that this is at the bottom of the Cherokees' recommendation to delay the Lumbee recognition by dumping it into the Bureau of Indian Affairs. While it is true that recognizing the Lumbees would cost the feds a pretty penny, it is the morally correct thing to do. The Bureau of Indian Affairs is not the appropriate place to handle the petition. It has neither the staff, money, nor time to handle a case this size. Even with its present case load of moderate sized petitioners, it is years behind in its work. The data, the history and the sociology of the tribe have been thoroughly researched, written about and generally on the table for years. The facts are well known, and there is darn little else that the Indian Service can do but delay the decision. This should be a Congressional matter. I don't believe the Lumbees can get a fair hearing in the Bureau, but even if they could, it is unlikely that any of the 53,000 Lumbees living today would ever see the conclusion of the process. I suspect that this may be exactly what the Cherokees would like.

Sincerely,

Bud Shapard
Research Services Officer
Chief, Branch of Acknowledgment and Research
Bureau of Indian Affairs (Retired)

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