

S. 107, THE LUMBEE FAIRNESS ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

NOVEMBER 5, 2025

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

62–673 PDF

WASHINGTON : 2026

COMMITTEE ON INDIAN AFFAIRS

LISA MURKOWSKI, Alaska, *Chairman*
BRIAN SCHATZ, Hawaii, *Vice Chairman*

JOHN HOEVEN, North Dakota
STEVE DAINES, Montana
MARKWAYNE MULLIN, Oklahoma
MIKE ROUNDS, South Dakota
JERRY MORAN, Kansas

MARIA CANTWELL, Washington
CATHERINE CORTEZ MASTO, Nevada
TINA SMITH, Minnesota
BEN RAY LUJÁN, New Mexico

AMBER EBARB, *Majority Staff Director*
LUCY MURFITT, *Chief Counsel*

JENNIFER ROMERO, *Minority Staff Director*
and Chief Counsel
DARREN MODZELEWSKI, *Counsel*
LENN AOKI, *General Counsel*

CONTENTS

	Page
Hearing held on November 5, 2025	1
Statement of Senator Cortez Masto	42
Statement of Senator Mullin	3
Statement of Senator Murkowski	1
Statement of Senator Schatz	2
Statement of Senator Tillis	3

WITNESSES

Barnes, Hon. Ben, Chief, Shawnee Tribe	31
Prepared statement	33
Hicks, Hon. Michell, Principal Chief, Eastern Band of Cherokee Indians	22
Prepared statement	23
Locklear, Arlinda, Esq., Special Counsel on Recognition, Lumbee Tribe of North Carolina	12
Prepared statement	14
Lowery, Hon. John, Chairman, Lumbee Tribe	6
Prepared statement	8

APPENDIX

Hoxie, Dr. Frederick E., prepared statement	49
Letters submitted for the record	56–68
Owle, Hon. Jim, Chairman, Eastern Band of Cherokee Indians Tribal Council, prepared statement	53
U.S. Department of the Interior, prepared statement	55

S. 107, THE LUMBEE FAIRNESS ACT

WEDNESDAY, NOVEMBER 5, 2025

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m. in room 106, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. Good afternoon. The Committee will come to order.

On our agenda this afternoon is one bill, this is S. 107, the Lumbee Fairness Act. It is introduced by our friend and colleague, Senator Thom Tillis.

This bill represents the latest effort in the Lumbee Tribe's more than 120-year quest for full Federal recognition. An identical companion measure passed the House of Representatives earlier this year. It has been incorporated as an amendment into the House version of the National Defense Authorization Act.

President Trump has also expressed support for Federal recognition of the Lumbee Tribe. In a Presidential Memorandum he declared it "the policy of the United States to support full Federal recognition of the Lumbee Tribe of North Carolina, including granting the tribe eligibility to receive all associated Federal benefits."

So, once again, it is the Senate's turn to take a closer look. This Committee has had a long history of examining and debating the Federal recognition process for tribes, including whether recognition should occur through the administrative process at the Department of Interior's Office of Federal Acknowledgement under Part 83 or through direct Congressional action.

Our Committee has also heard arguments that favor and oppose Lumbee going through the administrative process at Interior under Part 83 versus the Congressional legislative recognition process. So today's hearing continues that work with respect to the Lumbee Tribe.

I think it is important to remember that Congress has never given up its Constitutional authority to decide whether a group constitutes a tribe. As recently as 2019, Congress granted full Federal recognition to four tribes through passage of the NDAA, and since 1978, when the Interior established its administrative process, Congress has recognized at least 39 tribes.

So this is serious work. And it is work that I take seriously both as a Senator and as Chairman of this Committee.

Full Federal recognition establishes a government-to-government relationship between the United States and the Tribe, and it also creates a fiduciary trust responsibility on the part of the Federal Government to the Tribe and to its members. Recognition makes a tribe eligible for the special programs and services the United States provides to Native peoples because of their status as Indians.

It also affirms important elements of tribal sovereignty, the ability to govern their own affairs, to tax, to establish a tribal court system, and to exercise limited immunity from certain State and local laws.

Federal recognition can also open the door to specific economic opportunities, including the ability to conduct gaming under the Indian Gaming Regulatory Act.

We have a full panel of witnesses with us today, and I am looking forward to hearing from them. However, it is notable that no representative from the administration is present. We did extend an invitation to the Department of Interior, but due to the ongoing government shutdown, the Department declined to testify in person. The Department has submitted written testimony, which will be made part of the hearing record and posted on the Committee's website, alongside the rest of our written submissions.

So with that, I will turn to Vice Chairman Schatz for his introductory remarks.

**STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Chair Murkowski, for calling today's hearing on the Lumbee Fairness Act. Congress' authority over Indian affairs is broad. It is enshrined in the Constitution and it is plenary.

One of our most sacred duties in the exercise of this authority is Federal acknowledgement. We do this by either delegating our power to the executive or directly recognize tribes by statute. Either way, Federal recognition forms the basis for a tribal government-to-government relationship with the United States that is political in nature and incredibly powerful.

To put this Congressional power into historical context, until 1871, the United States carried out its Indian policy through treaty negotiations. Treaty-making was replaced in favor of the legislative process that we use today.

Over 150 years, Congress has federally recognized just 39 tribes. So it is especially poignant that since 1888, Congress has considered dozens of bills related to the Lumbee Tribe and our Federal obligations to them. The majority have been on Lumbee recognition alone, including Senator Tillis' S. 107, bipartisan legislation that I am a co-sponsor of.

The House of Representatives has passed several Lumbee recognition bills and the Senate has had multiple hearings over several decades. We are here today to continue to build on that record. Each time we have a hearing on Federal recognition for the Lumbee Tribe, we learn more. This is a deliberative process, as it

should be. Federal recognition of a government-to-government relationship between sovereigns is rare. That is because no aspect of Congressional power over Indian affairs is greater than our ability to recognize Tribal relations with the United States.

Thank you to our witnesses for being here today. I look forward to your testimony and the opportunity to add to the record.

The CHAIRMAN. Thank you, Vice Chairman Schatz.

**STATEMENT OF HON. MARKWAYNE MULLIN,
U.S. SENATOR FROM OKLAHOMA**

Senator Mullin, I will give you the courtesy of any comments if you wish. But otherwise, we will turn to our colleague.

Senator MULLIN. Senator Tillis is very impatient. I don't want to get in his way. He kind of gets grumpy.

Senator TILLIS. Like Senator Mullin.

[Laughter.]

The CHAIRMAN. We will immediately turn it over to the sponsor of the bill, Senator Tillis. Thanks for coming over to the Committee. You may proceed with your remarks, and welcome.

**STATEMENT OF HON. THOM TILLIS,
U.S. SENATOR FROM NORTH CAROLINA**

Senator TILLIS. Thank you. Chair Murkowski, Vice Chair Schatz, Senator Mullin, and distinguished members of the Committee, on behalf of Senator Budd, myself, and members of the North Carolina Congressional delegation, I want to thank you for the opportunity to speak in support of the Lumbee Fairness Act.

This issue has come before Congress many times over the decades, but never with this level of unity and support. These days, it is rare to see Republicans and Democrats come together on anything.

But when it comes to Lumbee recognition, the support is overwhelming, and it is bipartisan. We are talking about support from President Donald J. Trump, President Biden, Vice President J.D. Vance, former Vice President Kamala Harris, Governor Josh Stein, the North Carolina General Assembly, and nearly every member of our State's Congressional delegation.

Here in the Senate, nearly two dozen members from both parties have co-sponsored the Lumbee Fairness Act, including Senator Schatz and Senator Mullin, who sit together on this very Committee. And maybe most remarkable, more than 235 federally-recognized tribes who have stood with the Lumbee people, including the Alaska Federation of Natives, representing 186 tribes and corporations.

I also want to offer my special thanks to president Benjamin Mallott and former president Julie Kitka for their unwavering support, unsolicited, and unwavering support.

This kind of unity is rare. It proves that fairness for the Lumbee Tribe isn't partisan; it is simply the right thing to do.

The Lumbee's history is long and well-documented. They were recognized by the State of North Carolina in 1885, and began seeking Federal recognition just three years later. That was 137 years ago. During the 20th century, the Lumbee were among the dozens

of victims of the termination era, one of the darkest periods in Federal Indian policy.

In 1956, Congress passed the Lumbee Act. It acknowledge the tribe but cruelly denied them the benefits and the recognition that every other tribe receives. The Federal Government has since worked to correct the grave injustices of the termination era for nearly every single tribe except for the Lumbee.

Time and again, the Lumbee have proven their case. The records are filled with testimony, studies, and reports that all lead to one conclusion: the Lumbee are a tribe fully deserving of Federal recognition. The House has acknowledged that repeatedly, passing Lumbee recognition with broad bipartisan support in every Congress since the 116th. This year, it was unanimously included in the House-passed NDAA, without a single voice of opposition.

In 2022, I promised to identify and expose the small but persistent opposition to this bill. I have done that homework. What I found is simple: a small handful of well-funded tribes, hiring high-priced D.C. lobbyists to spin half-truths and stir fear, motivated by profit, not principle.

At the center of that opposition is the Eastern Band of the Cherokee Indians, who I assume you will hear from today, and their constituents of North Carolina, and their lead advisor, William Pipestone. Plain and simple, their opposition is rooted in financial self-interest.

And that is their right. But let's not pretend it is anything more than that. The Eastern Band has opposed nearly every recognition effort in their geographic vicinity that might affect their financial interests. They even tried to block the Catawba Tribe's land into trust application and lost, something I also supported.

Now, they are running the same playbook against the Lumbee. They are spending millions of dollars on lobbyists and pay-for-play reports that have been discredited and condemned by the National Congress of American Indians. It is disappointing to see this kind of money wasted on tearing down other tribes instead of lifting up their own people.

However, the lobbying has failed. The ship has already sailed and it is headed full speed toward Lumbee recognition. Today, you will hear the same tiring talking points, that this somehow sets a bad precedent, that Congress should sit back and just let the Interior Department handle it.

That argument doesn't hold water. Recognition through Congress is the precedent. It is the norm. Since 1978, twice as many tribes have been recognized by Congress through the administrative process. Congress has recognized tribes by legislation many times, including the Little Shell Tribe of the Chippewa Indians in the Fiscal Year 2022 NDAA, and six Virginia tribes in 2017. I supported both because it was the right thing to do.

Next month will mark 25 years since Congress passed legislation to grant the Shawnee Tribe full Federal recognition. So, when people say Congress shouldn't act, what they really mean is Congress shouldn't act when they don't like the outcome. I invite anyone with doubts to visit Robeson County, Hoke County, or Scotland County. Go to the University of North Carolina and Pembroke, founded by and for the Lumbee people.

You will see the rich Lumbee culture, their deep roots in North Carolina, and their extraordinary contributions to our State and our Nation. You will find a community defined by pride and resilience and service, educators, first responders, health care professionals, small business owners and farmers. And situated just miles from Fort Bragg, the largest military installation in the world, you will meet countless Lumbees and veterans who have served our Country honorably for generations. They have done everything this Nation has ever asked of them, and all they ask in return is fairness.

I do know one leader who has visited Robeson County and has stood with the Lumbee people. That is President Trump. Just three days into his second term, President Trump made it the official policy of the United States Government to support full Federal recognition of the Lumbee Tribe. That includes access to every Federal benefit that they have earned. And now is the time for Congress to act.

The Lumbee people have waited long enough. They don't ask for special treatment, only fair treatment. They have earned and deserve full Federal recognition. To my friends and colleagues on this Committee, I hope you understand just how important this is, not only to the Lumbee Tribe and the people of North Carolina, but to me personally.

Madam Chair, I am about to wrap it up. I know I am over time. But I really need to emphasize what personal means to me. I became speaker in 2011. Shortly after I became speaker, I met none other than the now-chief, he was the principal chief at the time, Michell Hicks. He came in to tell me the story about the Cherokee and how they need to negotiate a new compact. And I told the chief at the time, I said, I need to study this, but quite honestly, I am embarrassed to say, I don't know much about your story in North Carolina.

So I took time to figure out that story. And this bill, and that study, and the wrong that I wanted to fix there, was embodied in a bill that was passed by none other than me, and it is the only bill in the entire time I was Speaker of the House that I allowed to go to the Floor that did not have a Republican majority vote.

Thankfully, Congressman Tim Moore, who was my Rules Chair at the time, was able to shepherd this through and create a transformational result for the Eastern Band of the Cherokee.

Now, two years later, I discovered the Lumbee Tribe, and I realized that they were working hard to maintain their culture and to do everything that they could if they were to go through the administrative process to prove that they had done the homework, which is why I signed another bill making sure that their cultural heritage could be maintained and continue to go through the process that they were prepared to go through.

But the defect in the statutes is going to prevent this from happening. The only way this happens is through Federal recognition and through an act of Congress.

So, Madam Chair, I appreciate your leadership and I have appreciated your friendship in the ten and a half years, almost eleven years that I have been here. But when I tell you it is personal to

me it is because it is because it is an injustice that needs to be righted.

I look forward to your serious consideration and I look forward to listening to the testimony. Thank you.

The CHAIRMAN. Thank you, Senator Tillis, for your remarks today, as well as your continued relentless advocacy.

Now we will invite the witnesses up to the table, please. We will have the Honorable John Lowery. Mr. Lowery is the Chairman of the Lumbee Tribe from Pembroke, North Carolina. We have Arlinda Locklear, who is a tribal attorney from here in Washington, D.C. We have the Honorable Michell Hicks, who is the Principal Chief of the Eastern Band of Cherokee Indians, from Cherokee, North Carolina, as well as the Honorable Ben Barnes, who is the Chief of the Shawnee Tribe from Miami, Oklahoma.

To all of you, we would remind you that we do have your full written testimony, which will be included as part of the official record. We would ask that you keep your comments to no more than five minutes, so that we have plenty of time for members to ask questions.

I introduced you going in this direction, so we will just continue it, beginning with you, Mr. Lowery. Welcome to the Committee, and you may proceed.

STATEMENT OF HON. JOHN LOWERY, CHAIRMAN, LUMBEE TRIBE

Mr. LOWERY. Chairwoman Murkowski, Vice Chairman Schatz, Senator Mullin, thank you for convening this hearing today and for the opportunity to speak in support of S. 107, the Lumbee Fairness Act. I am John Lowery, Chairman of the Lumbee Tribe.

The Lumbee Tribe has a longstanding appreciation for the vital work of the Senate Committee on Indian Affairs. Over the past 30 years, we have benefitted from at least nine hearings before this Committee.

Throughout the time, we have received strong support from past committee chairs, such as Senator Ben Nighthorse Campbell, Daniel Inouye, Daniel Akaka, John McCain, Byron Dorgan, and many others who were true friends of Indian Country. Senators, please know that your commitment to tribe and your attention to the Lumbee are deeply valued and appreciated.

I am also proud to highlight the tireless efforts of North Carolina's senior Senator, Thom Tillis, on behalf of the Lumbee Fairness Act. Alongside Senator Ted Budd, they have championed and sponsored the cause of full Federal recognition for our tribe following the bipartisan footsteps of North Carolina Senators Terry Sanford, Elizabeth Dole, and Richard Burr.

As you are aware, the House of Representatives has again taken action on our legislation, led by Congressman David Rouzer and with the support of nearly the entire North Carolina delegation, H.R. 474 was included as an amendment to the Fiscal Year 2026 National Defense Authorization Act. Just this morning, President Trump issued a statement supporting the advancement of full Federal recognition of the "great Lumbee Tribe of North Carolina."

I would like to point out also that we have Catawba Nation Chief Brian Harris and Assistant Chief Patricia Leach with us today.

They are our brothers and sisters directly to the west of us, with whom we share a close bond.

We also have Chief Keith Anderson of the Nansemond Indian Nation of Virginia, who are our brothers and sisters to our north. They are all standing in solidarity with the Lumbee people.

Behind me are members of the Lumbee Warriors Association, who are veterans of the United States Armed Forces, and we also have numerous Purple Heart recipients, including Mr. Rudy Locklear. Their service exemplifies the patriotism and the love of country that defines as a people.

Senators, my roots run deep in Lumbee history. I am a direct descendant of Henry Berry Lowery, who during the Civil War led a campaign against a Confederate home guard as they encroached on Lumbee land and conscripted our Indian people. Henry witnessed the murder of his father and brother, execution style, by Confederate leaders, and he vowed revenge. My great-grandfather's grandfather and members of the Lowery gang fought back against those who sought to oppress and steal from us.

Additionally, I am a descendant of Solomon Locklear, Sr., one of 44 tribal leaders who in 1888, petitioned Congress to recognize the Lumbee Tribe, an essential step toward securing Federal funding for our children's education. Today, 137 years later, I stand before you once again advocating for justice and equal treatment through full Federal recognition.

In 1956, the United States Congress passed the Lumbee Act. Sadly, that law was enacted during the height of the Federal Indian termination era, a period when the Federal Government was actively ending tribes' legal relationships with the United States.

While the 1956 Act says that we are Lumbee Indians, it also included language stating that our tribe, the Lumbee Indians, were not eligible for full services or benefits. The language specifically says, "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."

This problematic language of the termination era continues to hinder us today, placing the Lumbee in a legal limbo that only Congress can resolve. There is no bureaucratic process that can amend what Congress has legislated.

Thankfully, since the end of termination, Congress has repeatedly taken steps to undo these unjust laws and move toward self-determination. I am confident that this year, Congress will finally amend this law, this flawed law, and extend the full services and benefits that the Lumbee deserve.

A tribe's legal status should be clear, concise and unambiguous. The Lumbee Fairness Act ensures this for our tribe.

In 1958, just two years after the Lumbee Act, the Ku Klux Klan attempted to intimidate our community by rallying in Lumbee territory and burning a cross. However, that night, more than 100 tribal members, many of whom were World War II veterans, stood ready, armed with rifles and shotguns, and successfully drove the Klan away. It is only by the grace of God that no lives were lost

that night, and the headlines across the Country bore witness to the resilience of the Lumbee Indians.

Today, I stand before you as a leader of a people who have never been afraid to fight, to stand our ground and to resist oppression. When we are pushed, we push back.

As a descendant of Henry Berry, Solomon, and the brave Lumbee who faced down the KKK, I urge you all to act now to do everything within your power to pass the Lumbee Fairness Act and eliminate harmful termination era language. Henry, Solomon, my grandparents, my father, and many others who are no longer with us, Senators Sanford, Inouye, Akaka, McCain, have all passed on. Senator Dole is in her twilight years.

Do not let us bury another Lumbee or lose another ally in this fight for justice. Congress must move to ensure the Lumbee Indians are no longer second class Natives in our own land. Thank you.

And Chair, I would like to submit into the record a comprehensive list of resolutions and letters from federally-recognized tribes and tribal entities that support Lumbee recognition. The list includes Catawba, Tunica-Biloxi, Oneida Nation of Wisconsin, Pascua Yaqui, Mashantucket Pequot, and many more.

Thank you.

[The prepared statement of Mr. Lowery follows:]

PREPARED STATEMENT OF HON. JOHN LOWERY, CHAIRMAN, LUMBEE TRIBE

Chairwoman Murkowski, Vice-Chairman Schatz, and members of the Committee, thank you for holding this hearing, and for the opportunity to appear before you today in support of S. 107, the Lumbee Fairness Act. My name is John Lowery. I am the duly elected Chairman of the Lumbee Tribe of North Carolina.

The Lumbee Tribe has long appreciated the vital work of the Senate Committee on Indian Affairs. Over the last three decades, we have benefitted from at least nine hearings before this Committee, and we remain grateful for the Committee's work to favorably report our bill out of this Committee at least five times. Senators, please know we appreciate your commitment to Indian Country, and the kind attention you give to the Lumbee people again today.

It is with great pride that I also highlight the work of the senior Senator from North Carolina, Senator Thom Tillis, who has been tireless in his efforts on behalf of the Lumbee Fairness Act. Together with Senator Ted Budd, they have again done the honorable and important work of sponsoring and championing full Federal recognition for the Lumbee Tribe. They follow in the bipartisan footsteps of North Carolina Senators Terry Sanford, Elizabeth Dole and Richard Burr, who during their terms introduced legislation for our Tribe a total of thirteen times before passing the baton in succession to each other, and now to Senators Tillis and Budd.

We will never forget what these proud North Carolinians have done for the Lumbee people; they have our people's everlasting gratitude. Based in no small part on their work, today, S.107 enjoys wide bipartisan support from the nineteen Republican and Democratic co-sponsors of this important legislation, and we are so grateful to each of them.

As you know, the House of Representatives has once again acted on the House version of our legislation. Championed by our Congressman David Rouzer, and enjoying bipartisan sponsorship from nearly all of the North Carolina delegation, H.R. 474 was added as an amendment to the House's Fiscal Year 2026 National Defense Authorization Act.

Today I am here as a direct descendant of Solomon Locklear, Sr., who was one of the 44 tribal leaders who signed a petition to Congress in 1888 asking the United States to recognize our Tribe, a crucial predicate to obtaining Federal funding to educate our Lumbee children. One hundred and thirty-seven years later, I am here again on the same business as my ancestors—to seek from Congress justice and the equal treatment of the Lumbee people through full Federal recognition. Seated immediately behind me are representatives of the Lumbee Honor Guard, all veterans of the United States armed forces. The Lumbee Honor Guard reflects my people's

patriotism and love of country so fundamental to who we are as a people. We ask our country, in return, to do right by the Lumbee Tribe.

Lumbee Tribal Community and History

Home for us is the area in and around what is now Robeson County, North Carolina. This has been our home since the time of European contact when we were forced to take refuge in the swamps of Robeson County to find protection from ever-increasing encroachment from non-Indian settlement. We have been there ever since. Many of you have visited our home, and for those that have not, we urge you to meet our tribal members and experience this vital part of Indian Country.

Our roughly 60,000 enrolled members all directly descend from historical lists of tribal members that date back to the early 1900s. Our kinship ties to one another define our people. All of our people maintain close ties and live in communities—what you might call neighborhoods—that are composed of nearly all Lumbee residents. Most of our people attend schools and churches that are mostly Lumbee and marry other Lumbees. We have historic Lumbee institutions in our community that reinforce these community ties. For example, we have church conferences that consist of all Lumbee churches, such as the Burnt Swamp Baptist Association, which was formed around the turn of the twentieth century. There is also a separate Methodist conference for our Indian churches.

Our tribal government is organized according to our tribal constitution. We have a Chairperson elected by the Lumbee citizenry, and a Tribal Council composed of 21 tribal representatives elected from districts within our territory. We live and exercise tribal authority, independence and self-governance. We are a fiercely independent people, with a very long history as a cohesive, self-governing community. We have protected our community in part by organizing and exercising our influence in local offices that affect our people on a day-to-day basis. Lumbees serve in all levels of local government—as county commissioners, on the board of education, as superior court and district court judges, and district attorneys. The Town of Pembroke, which is the heart of Lumbee territory, has a Lumbee mayor and all-Lumbee town council.¹ The Chancellor at the University of North Carolina is also Lumbee.²

There is one other important thing to know about our people. Our community is dedicated to ensuring the best possible education for our children. Shortly after the Lumbee Tribe was formally recognized by the State of North Carolina in 1885, the State authorized the Tribe to run its own school district for our children. Tribal leaders controlled it completely and enrollment was limited to Lumbee children only. Two years later, the State authorized an “Indian normal school” to train teachers for our Indian schools, but provided no money for construction of facilities. This why in 1888 our tribal leaders approached Congress to request that the Federal government recognize the Tribe and by doing so provide Federal funding for education.

In the absence of Federal funding, tribal members pooled their resources and built their own Indian normal school to train Lumbee teachers for our Lumbee run school system. The Indian normal school evolved over time and eventually became the University of North Carolina at Pembroke—a remarkable achievement by any standard. So even though our efforts to obtain Federal Indian education assistance failed, our dedication to the education of our children persisted. In fact, the Tribe operated its own Indian schools and the Indian normal school until the mid-1970s, when a Federal judge ordered the desegregation of our schools because the Tribe was not Federally recognized.

Lumbee Tribal community and history also have been the subject of extensive professional research and is well-documented by a host of doctorate-level and legal experts. I am attaching to my testimony today the Prepared Statement of Dr. Fred Hoxie, who along with various other experts, like Dr. Jack Campisi, have testified before Congress on multiple occasions confirming the Lumbee Tribe’s status as a tribe deserving of federal recognition. I am also honored to be joined in this hearing today by the United States’ foremost legal expert on federal recognition, Ms. Arlinda Locklear, who I am proud to say is also a member of the Lumbee Tribe. Ms. Locklear will testify in much greater detail about the immense amount of documented scholarship verifying the vitality and continued existence of our community.

¹The Town of Pembroke was incorporated in 1895. But at that time, it was singled out as the only incorporated town where the Governor appointed the mayor and other leaders. All those appointees were non-Indians. Our Lumbee warriors returning from World War II refused to accept this situation. In 1945, State law was changed under pressure of Lumbee people to allow for election of these positions. Ever since, the Town of Pembroke leadership has been all Lumbee.

²The University began as “the Indian Normal School,” and was designated by the State of North Carolina as an historically American Indian university in 2005. General Assembly of North Carolina, Session 2005, Sess. Law 2005–153, Bill 371.

Respectfully, I say all of this to demonstrate that the Lumbee are a vibrant, productive, proud people, and we have dealt with the same problems as other Indian communities. We have not only survived, we stand strong. We are well known in Indian Country. We are the largest tribe east of the Mississippi River and the largest non-Federally recognized tribe in the country and our people have served this country and Indian Country in the military, as educators, doctors, lawyers, and business people.

Passage of the Lumbee Fairness Act is Very Long Overdue

As both this Committee and the House of Representatives committee of jurisdiction have well documented, congressional efforts to extend formal recognition to the Lumbee Tribe stretch back to 1899.³ These proposed Federal bills generally followed the terms of the most recent State legislation recognizing the Tribe but none was enacted until Congress passed the Lumbee Act of 1956.⁴

Unfortunately, this enactment occurred at the height of the Federal Indian termination era, when the Federal government was actively terminating tribes' special legal relationship with the United States. As introduced in 1955, the bill was once again intended to recognize the Tribe on the same terms by which the State had most recently confirmed its recognition of the Tribe. But the bill was amended in the Senate before enactment to include termination language. Thus, while the 1956 Act designated the Tribe as Lumbee Indians, it went on to provide "nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indian shall be applicable to the Lumbee Indians." 70 Stat. 254.

Sadly, at the time the Lumbee Indians thought that we had been recognized and so we celebrated—oral tradition tells us that the streets of Pembroke were closed for a tribal-wide celebration.⁵ But instead of clarifying the status of the Tribe, the 1956 Lumbee Act caused confusion and effectively has relegated the Tribe to "second class" status. For example, at various times, lawyers at the Department of the Interior have interpreted the 1956 Lumbee Act as prohibiting administrative action to clarify the Tribe's status, and at other times, they argued the opposite. However lawyers might interpret the 1956 Lumbee Act, the reality is that the Tribe never received Federal Indian services or enjoyed the protective reach of Federal Indian statutes.

The bottom line is this: only Congress can for all time and for all purposes resolve this uncertainty with the Lumbee Fairness Act. The 1956 Lumbee Act is now 70 years old. It is long past time to rectify the injustice it has inflicted on our Tribe and our people.

Broad Support for Lumbee Recognition in Indian Country

The Lumbee Tribe is honored to have broad support throughout Indian Country for full Federal recognition of the Tribe. Altogether, more than two hundred tribes have expressed support. This includes large tribal organizations, such as the Alaska Federation of Natives, with a membership of 186 tribes, and the Midwest Alliance of Sovereign Tribes, with a membership of 35 tribes. It also includes approximately 20 individual tribes that have adopted resolutions of support. These supportive tribes represent all regions of Indian Country. For example, the Blackfeet Tribe from Montana, Jamestown S'Klallum Tribe from Washington State, the Jamul Indian Village of California, Hopi Tribe from Arizona, Choctaw Nation of Oklahoma, and Oneida Nation from Wisconsin all support Lumbee recognition. The long list of support also includes tribes which are members of United Southern and Eastern Tribes (USET), such as the Mashantucket Pequot Tribal Nation (Connecticut), the Mashpee Wampanoag Tribe (Massachusetts), the Pamunkey Indian Tribe (Virginia), the Catawba Indian Nation (South Carolina), and the Tunica-Biloxi Tribe of Louisiana.

The Eastern Band of Cherokee, which for generations has jealously guarded its position as the only federally recognized tribe in North Carolina, has long waged

³Senate Report No. 111–116, 111th Cong., 2d Sess; House Report No. 111–103, 111th Cong., 1st Sess.

⁴The State recognized the Tribe as Croatan in 1885, as Indians of Robeson County in 1911, as Cherokees of Robeson County in 1913, and as Lumbee in 1953. The final name change was the only one requested by the Lumbee Tribe, following a referendum conducted by the State. Up until that point, the Tribe has simply followed whatever name the State imposed so that it could continue to maintain control of its State authorized school district.

⁵Because of the history of State recognition under various names, tribal members viewed the "giving of a name" as recognition. Even today, older tribal members who inquire about the pending bill will sometimes ask when Congress will give the Tribe its name.

a vicious campaign against Lumbee recognition based on mistruths. While the Eastern Band has urged some other tribes to join in their opposition, the reality is that the opposition has been wildly overstated. For example, Eastern Band has argued that all 35 tribal members of USET oppose Lumbee recognition—but this is demonstrably untrue, as Lumbee has received from eight individual USET Tribes letters and resolutions explicitly supporting the Lumbee legislation. Not only that, Eastern Band's claim of USET opposition was based on a USET resolution that supported the administrative acknowledgment process, but which did not oppose Lumbee recognition or even explicitly reference the Lumbee Tribe. This is, at best, a misrepresentation about those tribes' positions.

When letters and resolutions are fairly and closely read, it becomes clear that the majority of tribes that have expressly taken a position on recognition of the Lumbee Tribe support recognition. In the end, though, a fair and just Indian policy does not depend upon a head count in Indian Country. It depends upon equal treatment for all Indian tribes and the Lumbee Fairness Act is built upon this principle.

There is No Sound Reason to Oppose the Lumbee Fairness Act

Some people have urged that the Lumbee Tribe should be made to go through the administrative recognition process. But Congress has never imposed this on tribes in a position like the Lumbee Tribe—instead, Congress has enacted recognition or restoration legislation. The best example is the Tiwas of Texas. Just as the Lumbees were recognized by the State of North Carolina, the Tiwas had been long recognized by the State of Texas. But in 1968, Congress enacted legislation to transfer any Federal responsibility to the State and included termination language—in fact, the legislative history of the 1968 shows that it was modeled on the 1956 Lumbee Act. 82 Stat. 93. In 1987, Congress enacted remedial legislation to restore Federal responsibility for the Tiwas and recognize them as the Ysleta del Sur Pueblo. 101 Stat. 667. It is long overdue for Congress to do the same for the Lumbee Tribe by enacting the Lumbee Fairness Act.

Some people alleged that the origins of the Lumbee Tribe are unknown and therefore Congress should not recognize the Tribe. This is just not true. In response to one of the many bills to recognize the Indians of Robeson County as “Siouan Indians of Lumber River,” Senator Wheeler, Chairman of the Committee on Indian Affairs in 1934, asked the opinion of Dr. John Swanton on the origins of the Lumbee Tribe. Senate Report No. 204, 73d Cong., 2d Sess. Dr. Swanton was the most well-known and respected anthropologist in the field of American Indian studies. Dr. Swanton researched the question and concluded that the Robeson County Indians descend from the aboriginal Cheraw Indians, along with remnants of other Siouan speaking tribes.

Other historical data support Dr. Swanton's conclusion. A 1725 map showed that at the time of sustained European contact, there was a Cheraw Indian community located on Drowning Creek. A 1771 document lists names of the “Charraw Settlement” and the list included classic Lumbee names, such as Sweat, Groom, Locklear, Chavis and Dees. The 1790 census identifies families with these same names residing around Drowning Creek, and modern-day Lumbees can trace genealogical descent from those families. In 1809, the State of North Carolina enacted legislation to change the name of Drowning Creek to the Lumber River. NC Public Laws of 1809, Chap. XXXII. This is the very same river where Lumbees reside today. It is from the Lumber River that we derived our name, and the same river after which our name was acknowledged by the State of North Carolina in 1953 and by the Congress in 1956. Congress has known of our origins since at least 1934, and likely even earlier.⁶

Some have argued that making Lumbees eligible for Federal Indian services will cost too much, or that the budget for those services may reduce the services for other recognized tribes in the Eastern Region, Bureau of Indian Affairs. Not only inaccurate, this is the most unjust reason of all to oppose the Lumbee Fairness Act. It is simply beneath the dignity of other tribes even to suggest that Federal recognition of a deserving Tribe should depend upon cost to the federal government. And it is factually inaccurate to suggest that the cost of Lumbee services will impact the level of services for other tribes in the Eastern Region.⁷

⁶In a 1915 report to Congress, Special Indian Agent O.M. McPherson conducted a thorough review of the historical record, noted other historical possibilities, but also identified Cheraw as the probable origin of the State recognized Croatan Indians. Senate Document No. 677, 63d Cong., 3d Sess., at 23.

⁷As a state recognized tribe, the Lumbees already receive Federal funding from several Federal agencies, including Housing & Urban Development, Department of Energy, Department of

In sum, I am sad to say that in my opinion, all of these allegations are beneath the dignity of the tribal leaders who have made them.

Conclusion

We Lumbees are now in the seventh generation of efforts to achieve full Federal recognition. In many tribal traditions, Native people plan for their future for the next seven generations. In our case, we extend gratitude and honor to our last seven generations for having kept the faith, for focusing on the future, for teaching us the values that have enabled us to endure, and for getting us to this moment in history when we are so close to full Federal recognition from the United States.

I urge you to support our effort and to join us in this righteous cause. Thank you Chairwoman Murkowski, Vice Chairman Schatz, and members of this vitally important Committee for your consideration of our situation and support of the Lumbee Fairness Act. I am happy to answer any questions you or the committee members might have.

The CHAIRMAN. We will include that as part of the record. Thank you, Chairman Lowery.

Ms. Locklear, welcome.

STATEMENT OF ARLINDA LOCKLEAR, ESQ., SPECIAL COUNSEL ON RECOGNITION, LUMBEE TRIBE OF NORTH CAROLINA

Ms. LOCKLEAR. Thank you very much. We appreciate the opportunity to speak again today. My name is Arlinda Locklear. I have been an attorney working with the tribe on this effort since 1988. So I have been at it for a few of those time that the Chairman has referred to, as well as other witnesses today.

We have had multiple hearings and multiple opportunities to act and to give justice to the Lumbee people since 1899, when the first Federal legislation was introduced. All of those bills have failed. And let me tell you, that has been a heartbreaking process for the Lumbee people.

But we owe a vote of thanks to this Committee in particular, because as a result of that process, you have developed the richest record that exists for any non-federally recognized tribe in this Country. We have a record that allows you to proceed with the enactment of S. 107 with full confidence that by doing so, you would extend full Federal recognition to a tribe that truly exists as such.

The most important document that is in that long, rich record is a report that was asked for, sought by this Committee, and submitted in 1915 by Special Indian Agent O.M. McPherson. We have particularly his record, which I have with me today, as well as the testimony of multiple expert witness over the last 100 years that give you the body of evidence to prove tribal existence.

I think it is worth noting the quality of the experts and the pre-eminence of their appearance here and the testimony that they provided in support of Federal recognition. We are honored to include among that group Dr. Jack Campisi, who has probably authored

Education, which means that enactment of S. 107 would impact only the Bureau of Indian Affairs at the Department of interior and Indian Health Services at Health and Human Services. And these agencies have processes for bringing on so-called new tribes into their programs, processes that protect the services of other recognized tribes. The Bureau of Indian Affairs has a three-year process for this purpose, at the end of which the newly recognized tribe receives services when Congress provides appropriations for that purpose. Similarly, the Indian Health Service brings new tribes into its budget process in a way that guarantees those tribes will receive services when Congress explicitly appropriates funding for those services. Finally, there are regulatory guardrails in place that protect the existing budgets for Federally recognized tribes. See 25 C.F.R. § 900.19 (Secretary must provide full amount of funds set out in self-determination contracts with tribes); 25 C.F.R. §§ 1000.501, 1000.671 A self-governing compact is an enforceable contract under which Secretary must provide all funds for which the compact contracts.

more petitions in the administrative process than any other expert. We include also Dr. Sturtevant, who was the general editor for the authoritative Smithsonian Handbook of North American Indians.

We include among that group Dr. Ray Fogelson, who is no longer with us, but Dr. Fogelson was the editor for the Southeast Volume in particular of the Smithsonian Handbook of North American Indians. And we count among those experts Vine Deloria, who spoke eloquently in 1988 to this Committee in particular about political authority.

What I would like to do this afternoon is summarize very briefly what the characteristics of tribal existence are, and give you confidence in the record that you have already that establishes those criteria. In a Supreme Court decision in 1901 called *Montoya v. The United States*, the Supreme Court gave us guidance as to what an Indian tribe is. The Supreme Court indicated that an Indian tribe consists of a body of Indians of the same race, factor number one, who are united in a community in a particular territory, factor number two, and who are united under one leadership or government, factor number three.

A few years later, in 1913, the Supreme Court spoke in *United States v. Sandoval*. And in that opinion, the Court went to great lengths to confirm this body's penultimate authority to make the decision on establishing a formal government-to-government relationship with an Indian tribe. It noted that that authority is limited only to those groups that are "distinctly Indian communities."

So we have some indication of what those criteria are. I would like to speak very briefly to those with regard to Lumbee.

First, a body of Indians. Your record, beginning with the 1915 McPherson report and continuing to today, establishes that there is a single related body of Indians residing in Robeson and adjoining counties who call themselves Lumbee, and I will note for the record have done so informally, even before the adoption of formal State recognition, since the early 1920s. That has been the name we have chosen for ourselves.

Second, these folks are united in a community occupying a particular territory. They are so united in a community that even today more than 60 percent of modern day enrolled members are married to other Lumbees. They attend all-Lumbee schools, they attend all-Lumbee churches, and their primary interaction is among other Lumbees.

They also occupy a territory that they have been in since the time of first sustained white contact in the early 1700s. And that is Robeson and adjoining counties. That is home. And the record establishes, your record, that more than 50 percent of the enrolled members of the tribe reside today in that traditional territory.

Finally, leadership. Many of the events that the chairman spoke about demonstrate the effectiveness and the repeated assertion of independence that the long record of political authority shows among the Lumbee people.

In this regard, let me highlight the testimony that you received in 1988 from Vine Deloria, who spoke eloquently about the form of leadership at Lumbee. He noted that more than any other federally-recognized tribe the form of leadership at Lumbee is more like the traditional form of leadership that existed before the adoption

of the IRA and before the formation of formal tribal governments. That is what leadership among indigenous communities looks like, and it still exists at Lumbee today.

Finally, let me say a word about, very quickly, the administrative process. These facts and criteria and evidence that I have summarized for you indicate that under those criteria, we have established what they refer to as high evidence of tribal existence. The concentration of membership within a defined territory, Robeson and adjoining counties, and the high in-marriage rate themselves, those two factors are considered to be conclusive evidence of tribal existence in those regulations.

So you have the evidence before you. We urge you to act, and we think you can do so, again, with full confidence that you are recognizing a true Indian community.

Thank you.

[The prepared statement of Ms. Locklear follows:]

PREPARED STATEMENT OF ARLINDA LOCKLEAR, ESQ., SPECIAL COUNSEL ON
RECOGNITION, LUMBEE TRIBE OF NORTH CAROLINA

Chairwoman Murkowski, Vice-Chairman Schatz, and members of the Committee, thank you for the opportunity to appear in support of S.107, the Lumbee Fairness Act. My name is Arlinda Locklear. I have been involved as an attorney for the Tribe in its effort to obtain federal recognition since March 1988. I am also an enrolled member of the Lumbee Tribe.¹

Let me start with explaining how I came to be the Tribe's attorney in this effort. This story illustrates the strength of the Lumbee community and the Lumbee people's insistence upon their independence as a self-governing tribe. Robeson County is the heart of the Lumbee community. Even though our community constitutes nearly 40 percent of the population of the county, including a number of practicing attorneys, our community had never had a Lumbee Superior Court Judge before 1988. So when the State created a new superior court judge position for the county, the Lumbee people were determined that one of our own should be elected to that position. At that time, a prominent member of the Tribe (and a good friend) named Julian Pierce was Director of the Indian legal services office in the community. In that capacity, Mr. Pierce had overseen the research relating to and submission of a Lumbee petition for federal recognition under the administrative acknowledgment process in 1987. Mr. Pierce then resigned and ran for the newly created Superior Court judge position. To our great sadness, Mr. Pierce was murdered after the nomination process had closed but before the election. When the State of North Carolina refused to reopen the nomination process for that judgeship, the Lumbee people mobilized, resulting in Mr. Pierce's election to the judgeship even though he could not serve. The Lumbee people kept the pressure on an embarrassed State and, soon after the election, another new judgeship was created and a Lumbee Indian was appointed to the position. We have routinely elected Lumbees as judges in the county ever since.

With the loss of Mr. Pierce, I was honored to step into Mr. Pierce's shoes to continue the work on federal recognition. I speak to you today based on forty years of experience with the issue since. Lumbee history is a long and remarkable one, but I will focus on a few features of our history and experience that demonstrate the Tribe's unique claim to federal recognition and other circumstances that reflect the simple justice of the Tribe's pursuit of equal treatment as a self-governing native community.

Early Lumbee Efforts to Achieve Federal Recognition

The Lumbee Tribe began its effort to obtain federal recognition soon after formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state leg-

¹ In addition to work on behalf of my own Tribe, it has been my honor to represent other non-federally recognized tribes for decades in the worthy work for federal recognition (before the Congress as well as the Department of the Interior), including the Miami Nation of Indiana, the Brothertown Nation of Wisconsin, the Gay Head Tribe of Massachusetts, and the Tunica-Biloxi Tribe and United Houma Indian Nation of Louisiana. The recognition work has been a major part of my work throughout my career.

isolation recognized the Tribe under the name Croatan Indians of Robeson County,² 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 of students to attend the schools.³ North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained State legislation authorizing the creation of an Indian "normal school", *i.e.*, a school dedicated to training Indian teachers for the Lumbee schools. North Carolina General Assembly 1887, chap. 254. But because the Indian normal school was badly underfunded, the Lumbee Tribe petitioned Congress in 1888 for Federal Indian education assistance. For the Committee members' information, the Tribe has on display a picture showing the Indian Normal School students around 1920.

The 1888 Lumbee petition to Congress was signed by fifty-four (54) tribal leaders, including one of Chairman Lowery's ancestors. The petition sought Federal assistance for the then-named Croatan Indians in general and funding for the Tribe's schools in particular. A copy of this petition is on display for the Committee members' information. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the State. Citing the federal policy of encouraging states to assume responsibility for educating Indian children and the shortage of funding, the Commissioner of Indian Affairs denied the request for funding in 1890. Shortly thereafter, the Tribe began its quest to receive federal recognition more directly through federal legislation.

In 1899, the first bill was introduced in Congress to appropriate funds to educate the Croatan Indian children. H.R.4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (H.R. 4.19036, 61st Cong., 2d Sess.) and 1911 (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 Tribe and concluded that the Lumbees, still called Croatans, had "maintained their race integrity and their tribal characteristics." Hearing 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 Tribe. Pierce reviewed the Tribe's history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance:

It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it would establish a precedent for the Catawbias of S.C., the Alabamas of Texas, the Tuscarroras of N.Y., as well as for other scattering tribes that are now cared for by the various states.

All the 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 thereon to Congress. S.Res. 410, 63d Cong., 2d Sess. The Secretary assigned Special Indian Agent O.M. McPherson to conduct the investigation. According to the Secretary's letter transmitting the McPherson Report to the President of the Senate, 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. Indians of North Carolina, 63rd Cong., 3d Sess., 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 now under the name of Cherokee Indians of Robeson County, mimicking a name that had recently been applied to the Tribe through State legislation. H.R.8083, 68th Cong., 1st Sess. This bill failed and in 1932 a very nearly identical

²The Croatan name was offered up by Mr. McMillan, a member of the State legislature who considered himself an amateur historian. It was not a name sought by the Tribe.

³The Tribe jealously defended its authority to control enrollment into its schools. In 1913, the State Attorney General opined that the Robeson County Board of Education could overrule enrollment decisions made by the Tribe. The Tribe refused to accept this limitation; it sought and obtained a special act from the North Carolina Legislature overturning the Attorney General's opinion and restoring tribal authority. North Carolina General Assembly 1919, chap. 211.

bill was introduced in the Senate. S. 4595, 72d Cong., 1st Sess. This bill failed as well.

In 1933, a federal bill was introduced that was nearly identical to the prior two bills, except that it directed that the previously designated 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 the eminent Dr. John Swanton, a specialist on southeastern Indians with the Smithsonian Institution Bureau of Ethnology, which concluded that the previously named Croatan Indians actually descended from Cheraw and other related Siouan speaking tribes. The Secretary recommended that the broader linguistic name of Siouan be used as the tribal designation for the Tribe, but also recommended that Congress include termination language because of the expense of providing Federal Indian services to the Tribe. 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 an identical bill in the Senate, S. 1632, but there was no further action on the bill. S. Rep.204, 73d Cong., 2d Sess.

These numerous federal bills between 1899 and 1934 to recognize the Tribe under various name have a common and clear legislative purpose, *i.e.*, to recognize the Tribe on the same terms as the most recent State legislation recognizing 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 its law. 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 its law. 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. Thus, the North Carolina Congressional delegation consistently followed the lead of North Carolina in its deliberations on the Tribe’s status and clearly intended to recognize the Tribe in the various bills.

In 1934, Congress inaugurated a new policy for Indian Country with the enactment of the Indian Reorganization Act (IRA). Among other things, the IRA 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 IRA applied to the Lumbees. The inquiry was referred to the then Associate Solicitor Felix Cohen, who advised that the Lumbees could organize under the IRA if some members of the Tribe were certified as one-half or more Indian blood. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, to Robeson County for that purpose. 209 Lumbees agreed to submit to Seltzer’s examination. Out of those examined, Dr. Seltzer certified 22 members as one-half or more Indian blood and eligible to organize under the IRA. The science behind physical anthropology has since been thoroughly discredited and the Lumbee experience bears out the wholly unreliable nature of the alleged science. In several instances, for example, full siblings were examined by Dr. Seltzer but with differing outcomes—one sibling was designated as one half or more while the other sibling was not. This effort by the Lumbee Tribe also failed ultimately.⁴

While these legislative and administrative efforts failed to achieve the Tribe’s goal of federal recognition, they nonetheless produced a remarkable and unique federal record documenting the Tribe and its community. As of a consequence of the half dozen bills introduced between 1899 and 1934 to recognize the Lumbee Tribe, four substantial reports were conducted by federal Indian agents into the Lumbee Tribe, its history, and community. All confirmed the tribal ancestry and distinct community with strong leadership of the Lumbee Tribe. But they also opposed the extension of federal Indian statutes and services to the Tribe because of federal policy to insist that states assume the responsibility for educating Indian children or limited federal appropriations.

⁴In the early 1970’s, the survivors of the 22 certified half-bloods asked for the services to which they were entitled under the IRA. The Bureau of Indian Affairs (BIA) declined, interpreting the 1956 Lumbee Act as cutting off any rights that might arise under the IRA. Ultimately, the D.C. Court of Appeals rejected this interpretation of the 1956 Lumbee Act. *Maynor v. Morton*, 510 F.2d 1254 (D.C. Cir. 1975). The surviving half-bloods then received BIA housing assistance but the BIA declined to take land into trust for them, a necessary precondition to organizing under the IRA.

The 1956 Lumbee Act

Because 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 disgruntled with their designation under State law as Cherokees of Robeson County. Under pressure from the Tribe, the State of North Carolina conducted a referendum among the tribal members in 1952 on the tribal name. The choice was between adopting the name Lumbee⁵ or maintaining the State designation as Cherokees of Robeson County. The results were clear: 2,109 members chose to be known by their own name Lumbee and only 35 members chose maintain the State designation as Cherokee. To its credit, the State of North Carolina once again amended its law in 1953 to recognize the Tribe as Lumbee Indians of Robeson and adjoining counties. North Carolina General Assembly 1953, chap. 874.

As it had always done, once again the Tribe prevailed upon its congressional delegation to introduce the identical bill into Congress to recognize the Tribe on the same terms as the State. The Federal bill passed without amendment in the House of Representatives and was sent to the Senate. There, the Department of the Interior objected again based on its effort to avoid federal financial obligations:

We are therefore unable to recommend that the Congress take any action which *might ultimate result in the imposition of additional obligations on the Federal Government* or in placing additional persons of Indian blood under the jurisdiction of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition. . . if your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

(Emphasis added.) The Senate committee adopted the Secretary's recommendation so that when the bill was enacted into law, it contained classic termination language: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indian shall be applicable to the Lumbee Indians." Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

The Impact of the 1956 Act—Confusion and Limbo

Since 1956, federal agencies and courts have construed the Lumbee Act in different ways. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the act, although not granted federal services. *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. Memorandum, April 10, 1970, 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 only court to construe the Act concluded that it designated the group as Lumbee Indians but did not take away individual rights that had been bestowed by previous legislation such as the IRA. *Maynor v. Morton*, above.

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 H.R.1426 under consideration at the time, a bill to provide federal recognition to the 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

⁵The name Lumbee had been informally used by the Tribe for decades by this time. The earliest recorded use of the name is in a 1926 article referring to the Tribe as such in the Raleigh News and Observer, a newspaper founded in 1865 with the widest distribution in the State.

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. Finally, the Solicitor's Office at the Department of the Interior has also taken varying views on the Act, concluding in 1989 that the Act precluded the Tribe from participating in the administrative acknowledgment process, but finding otherwise in 2016. M-37040, Reconsideration of the Lumbee Act of 1956, Dec. 22, 2016. Whatever its ambiguity and however it might be construed, the 1956 Lumbee Act is clearly "a step toward recognition," one that Congress took following repeated consideration of the Tribe, its history, and its community. Yet, Congress has not completed the process of recognition.

Congress imposed legislation like the 1956 Lumbee Act on only one other occasion. In 1968, Congress enacted legislation for the state recognized Tiwas of Texas, legislation that designated the Tiwas as Indian, transferred any federal responsibility for the tribe to the state, and included termination language. 82 Stat. 93. 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. Because of this unique circumstance, Congress enacted legislation in 1987 extending full federal recognition to the Tiwas of Texas, recognized by Congress as the Ysleta del Sur Pueblo of Texas. Pub.L. 100-89, 101 Stat. 667. Like Congress corrected the historical injustice for the Tiwas in 1987, Congress should now correct the same injustice for the Lumbee Tribe.

Modern Lumbee Efforts to Obtain Federal Recognition Legislation

It became clear to the Lumbee over time that the 1956 Lumbee Act did not accomplish the Tribe's long-standing goal of federal recognition.⁶ As a result, the Tribe resumed its efforts to achieve federal recognition. As noted above, the Tribe prepared and submitted a documented petition for federal acknowledgment under the administrative process in 1987. When the Solicitor's Office opined in 1989 that the 1956 Lumbee Act precluded administrative action to clarify the Tribe's status, the Tribe turned once again to federal legislation.⁷

Since 1988, the Lumbee Tribe's Congressional delegation has introduced more than a dozen bills to recognize the Tribe.⁸ During this period, the bill passed the House of Representative *six times* but failed in the Senate. Also during this period, multiple hearings were held on the issue in both the House and the Senate, resulting in more than a half dozen committee reports. Thus, Congress' modern day deliberations on the issue have expanded the already voluminous congressional record on the Lumbee Tribe's history and community. We know of no comparable Congressional record on any other tribe-specific federal legislation.

The Congressional Record on the Lumbee Tribe Shows High Evidence of Tribal Existence

The Supreme Court has defined an Indian tribe as follows: "By a 'tribe', we understand a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory. . . ." *Montoya v. United States*, 180 U.S. 261, 266 (1901). The Court has also repeatedly acknowledged that Congress has authority to decide whether a group of Indians constitutes an Indian tribe, so long as the group is a "distinctly Indian community." See *United States v. Sandoval*, 231 U.S. 28, 46 (1913). Thus, there are three necessary components of tribal existence: first, people of Indian ancestry, second, who reside in sufficient proximity to constitute a community, and

⁶The final evidence of this failure came in the 1970's when the State of North Carolina was ordered by a federal court to dismantle its racially segregated schools. Lumbee parents thought their children were exempt from that federal court order but they were told otherwise by the federal judge. According to the judge, the Tribe was not federally recognized and its separate schools violated the Fourteenth Amendment to the US Constitution. As a result, the Tribe lost control over schools it had operated under state law since 1885.

⁷The Tribe requested that the Department return the petition to the Tribe, in light of it ineligibility for the process. The Department declined to do so. Nonetheless, the Department has not proceeded to process the Lumbee petition.

⁸See H.R. 5042, 100th Cong.; H.R. 2335 101st Cong.; H.R. 1426 (S. 1036, Senate companion), 102d Cong.; H.R. 334, 103d Cong.; H.R. 898 (S.420, Senate companion), 108th Cong.; H.R. 21 (S. 660, Senate companion), 109th Cong.; S.H.R. 27 (S.333, Senate companion), 110th Cong.; H.R.31 (S. 1735, Senate companion), 111th Cong.; H.R. 27 (S. 1218, Senate companion), 112th Cong.; H.R. 1803 (S. 1132, Senate companion), 113th Cong.; H.R. 184 (S. 2285, Senate companion), 114th Cong.; H.R. 2352 & 3650 (S. 1047, Senate companion), 115th Cong.; H.R. 1964 (S. 1368, Senate companion), 116th Cong.; H.R. 2758, 117th Cong.; H.R. 1101 (S. 521, Senate companion), 118th Cong.

third, who are united under some form of leadership or government.⁹ The congressional record on the Lumbee Tribe shows that the Tribe exhibits all three components of an Indian tribe.

First, Congress has known since 1933 that the Lumbees descend from the Cheraw and related Siouan-speaking tribes. Dr. Swanton expressed this view in an opinion provided to Congress at a hearing on a Lumbee recognition bill at that time. Since then, other renowned anthropologists and historians with PhDs in the field have reached the same conclusion and so testified to Congress. These include: Dr. Jack Campisi (author of the Lumbee petition submitted in 1987), who testified in 1988 (as well as in multiple later hearings) in support of the Lumbee recognition bill; Dr. Ray Fogelson (deceased), editor of the Southeast Volume of the Smithsonian Handbook of North American Indians, who testified in 1988 in support of Lumbee recognition; Dr. William Sturtevant (deceased), general editor of the Smithsonian Handbook of North American Indians, who testified in 1988 in support of Lumbee recognition; and Dr. Fred Hoxie, Swanlund Professor of History at the University of Illinois emeritus and member of the founding Board of Directors, Smithsonian National Museum of the American Indian, who testified in 2019 and has submitted a statement again today in support of Lumbee recognition.¹⁰

In a committee report on a Lumbee recognition bill in 2007, the House Sub-Committee on Indian and Insular Affairs summarized the historical record on Lumbee ancestry, which corroborates these experts' views:

11The evidence establishes that the [Lumbee] Tribe descends from the historic Cheraw and related Siouan-speaking tribes. Historically, the Cheraw were located on Drowning Creek in North Carolina. Drowning Creek was renamed the Lumber River by the State of North Carolina in 1809. The ancestors of the modern day Lumbee Tribe have been located around Drowning Creek/Lumber River ever since the first contract with Europeans in the early 1700's.

Congress' deliberations on the Tribe's history produced authoritative reports by the Department of the Interior. In 1914, Special Indian Agent O.M. McPherson, sent to investigate the history and condition of the tribe, concluded that the tribe was descended from the Cheraw Tribe. In 1934, the Department expressed to Congress, based upon a report by the eminent John R. Swanton of the Bureau of Ethnology, that the Lumbees descend from the Cheraw and related Siouan speaking tribes of coastal North Carolina.

H.R. 110–164, 110th Cong., 1st Sess., at 3–4.

Second, Dr. Campisi has testified to this Committee on the nature and strength of the Lumbee community. Dr. Campisi examined federal census records dating back to 1850 to establish that the Lumbee and their ancestors resided in close knit communities that were almost exclusively Lumbee. S. Hrg. 100–881 on S. 2672, 100th Cong., 2d Sess., Aug. 12, 1988, at 63–64. Dr. Campisi updated his research for his testimony in 2019. After examining a statistical sample of enrolled members, Dr. Campisi concluded that as of that year approximately 60 percent of Lumbee members were married to other Lumbees. Hearing before the House Sub-Committee for Indigenous Peoples of the United States, on H.R.1964, Dec. 4, 2019. The Department of the Interior considers an in-marriage rate this high to be conclusive proof of community; in other words, no other proof is necessary according to the administrative process. 25 CFR § 83.11(b)(1)(I).¹¹

Third, the Lumbee Tribe has a long history of highly effective political leadership. As the discussion above regarding relations with the State of North Carolina demonstrates, the Tribe has always been able to mobilize in support of the community goals and independence and achieve those goals. Vine Deloria, Jr., testified before

⁹These are also the essential components of a tribe in the administrative acknowledgment regulations. The three substantive mandatory criteria are descent from an historic tribe, the maintenance of a community, and the presence of political leadership of some type. 25 CFR Part 83, §§ 83.11(b), (c) & (e).

¹⁰The Eastern Band of Cherokee commissioned a report on Lumbee ancestry by Ms. Jean Kelley, who has a masters degree from the University of Arizona. Ms. Kelley concluded that the Lumbee Tribe cannot prove a connection with a historic tribe. But she fails to address the contrary view of eminent professionals, doctorate-level professionals. She also ignores the historical record that corroborates these experts' views.

¹¹The Lumbees are also geographically concentrated in their traditional territory of Robeson and adjoining counties, North Carolina. Dr. Campisi testified at the same hearing that more than 50 percent of the enrolled tribal members live in exclusively or nearly exclusive Lumbee areas in their traditional territory. The Department considers this high level of geographic concentration to be conclusive proof of both community and political authority. 25 CFR § 83.11(b)(2)(I).

this Committee in 1988 and spoke directly about political authority in the Lumbee community:

If we wish to speak of the traditional Indian method of government, what distinguished Indians from others who constituted political entities, then we are basically speaking of loose alliances of extended family groups, capable of acting in concert with each other as the occasion demanded.

I stress this aspect of traditional life because, while I believe the Lumbees to have satisfactorily proven that they have maintain a continuous political existence, the committee should note, now and in the future, that formal tribal government is a creation of the Bureau of Indian Affairs and not an Indian characteristic. A traditional Indian community more closely resembles what we find in Robeson (sic) County among the Lumbees, large extended families who exert social and political control over family members, and who see their family as part of an extended people.

S. Hrg. 100–881, on S.2672, to provide federal recognition of the Lumbee Tribe of North Carolina, at 93.¹²

Make no mistake, the last 140 years of failed attempts by the Lumbee Tribe have been frustrating, and, frankly heart-breaking, for the Tribe. The only saving grace is that the protracted deliberations have resulted in an extraordinary record that speaks eloquently to Lumbee existence, identity, and persistence. This Committee can act favorably upon the Lumbee Fairness Act with full confidence that, in doing so, it recognizes a distinct and remarkable Indian community within the meaning of Supreme Court authority.

The Lumbee Enrollment Criteria

The Lumbee Tribe has long been known as the largest non-federally recognized tribe in the country. In 1977, the American Indian Policy Review Commission, Final Report, Chap. XI, Nonrecognized Tribes, put the enrollment then at 40,000. Because the Tribe was not historically recognized by the United States, there were no federal rolls of membership to which present members can be genealogically traced. But there are important records that identify historic members of the Tribe. These documents comprise what tribal law calls the source documents and from which applicants for enrollment must trace descent.

The most important of these is school records. Enrollment in Lumbee schools was historically the only service available exclusively to Lumbees and, as discussed above, the Tribe controlled enrollment in those schools. Initially, the state limited enrollment in the Indian schools to Indians, then called Croatan, “now living in Robeson County and their descendants.” North Carolina Assembly 1885, chap. 51. In 1889, the State amended its law to require proof of Indian ancestry to qualify for enrollment “to the fourth generation.” North Carolina General Assembly 1889, chap. 60. Each school had a committee to determine that an enrolling child met this criteria. These so-called “blood committees” kept detailed records on their deliberations and those records are the most important of the Tribe’s source documents.

Other source documents include federal census records for the tribal territory (Robeson and adjoining counties in North Carolina) that identify Indians, church records,¹³ and historic lists of tribal members such as the petitioners signed by tribal leaders and submitted to the State and Federal governments. It is every applicant’s responsibility to prove a genealogical connection to an individual on these source documents by birth or death certificates and similar vital records. The roll, including these supporting documents, are now digitized.¹⁴

Descent from a source document is only the first step to qualify for enrollment in the Lumbee Tribe. The applicant must also demonstrate that she or he has maintained tribal contact, either historic (such as attendance at an Indian school or

¹²As he noted in his testimony, Vine Deloria testified on the Lumbee bill “based on extensive and prolonged contact with numerous people of the [Lumbee] tribe during most of my adult life.” In addition, Deloria’s aunt Ella Deloria, a noted linguist, had worked in the Lumbee community in the 1940’s on a dictionary of Siouan languages spoken in that part of North Carolina. S.Hrg.Rep. at 89.

¹³The importance of the all-Indian churches in the Lumbee community cannot be overstated. In 2019, Dr. Campisi estimated there were more than 150 Indian churches in Lumbee territory, with an all Indian congregation and in nearly every case an Indian minister. Dec. 4, 2019, Statement on H.R. 1964. In fact, there are so many Lumbee churches that they have been organized in their own separate conferences for more than 100 years. Like the schools, these tribal institutions kept detailed records on their membership.

¹⁴Because the roll and supporting documents have been digitized, the Tribe is confident that the Secretary can verify the accuracy of the roll within two years as required by section 5 of the Lumbee Fairness Act, S. 107.

membership in an Indian church) or present contact (such as visitation or knowledge of the community). For most new applicants, tribal contact is determined in an interview conducted by the Tribal Enrollment Office. In addition, enrolled members under the age of 55 must update their enrollment every seven years to maintain eligibility to vote in tribal elections and other tribal rights. Because of this requirement of tribal contact, the Tribe believes its enrollment process not only has integrity but also reflects the historic reality of a strong community with close connections among its members. There are now 62,000 enrolled members in the Tribe.

Historically, the large number of enrolled Lumbee members has been used against the Tribe by the Department of the Interior. Since 1890, the Department has repeatedly complained about the size of the Tribe and the associated cost of providing services to tribal members. But this cannot be accepted as a principled basis for failure to recognize the Tribe. Indeed, it means that the injustice done to an Indian community is all the greater because of the large number of Indian people harmed by Federal neglect.

Neither is fear of impacting other tribes' service budgets a principled, or even factually accurate, basis for reluctance to recognize a clearly legitimate Lumbee Tribe. The budget impact is not as large as the usual per capita calculation of adding new members to the Federal Indian service population might suggest. Because the Lumbee Tribe is state recognized, it already receives Indian services from many federal agencies, such as Housing and Urban Development, Department of Education, and Department of Energy. These services should be excluded from any calculation of budget impact.¹⁵ The new fiscal impact would be limited to the BIA, Department of the Interior, and Indian Health Service (IHS), Department of Health and Human Services. The 2022 CBO estimate placed those costs, once fully implemented, at \$43 million per annum and \$80 million per annum, respectively. Those two agencies have a process that extends full services to members of newly recognized or restored tribes only when Congress appropriates money for that purpose.¹⁶ In addition, out of the 574 federally recognized tribes, 567 of them receive their BIA and IHS funding through either a self-determination contract or a selfgovernance compact, and the Secretary is precluded from reducing the amount of funding in both cases.¹⁷ 25 CFR § 900.19 (self-determination contracts), and 25 CFR §§ 1000.501, 1000.671 (self-governing compacts), mandating that the Secretary provide the full funding contracted for with those tribes. As a result, federally recognized tribes are protected from any diminution of their services from bringing Lumbee tribal members on board for federal services.

Simply stated, the large number of Indians who are enrolled with the Lumbee Tribe and excluded from Federal Indian services makes it all more urgent that Congress get on with the business of correcting this long-standing injustice by extending full federal recognition to the Lumbee Tribe.

Conclusion

In 1935, BIA Commissioner Collier sent Superintendent Fred Baker of the Sisseton Agency to visit the Lumbee community as part of deliberations on application of the IRA to the Tribe. Superintendent Baker reported that he met with approximately 4,000 members of the community and that they strongly supported the plan to acquire land for and organize the Tribe. Superintendent Baker observed, "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." It did not happen sooner. It is now much later and time for government action.

The CHAIRMAN. Thank you, Ms. Locklear.
Next, we turn to Chief Hicks. Welcome.

¹⁵The most recent CBO cost estimate of Lumbee recognition was prepared in 2022. It acknowledged that the budget impact would be less than one might expect because the Tribe currently receives Federal Indian services from these agencies.

¹⁶In the case of the BIA, it already has a 16 line item in each year's budget for newly recognized tribes. Those tribes are allocated a pro rata share of the new tribes appropriation; if the need exceeds the appropriation, then the need goes unmet. Newly recognized tribes can receive new tribes fund for three fiscal years, during which time the tribe negotiates its own budget that is included in the Administration's next budget request. Once that budget is appropriated, that tribe's members receive the funded services. In the case of the IHS, that agency's manual explicitly provides that newly recognized or restored tribes receive services only when Congress appropriates funding for that budget.

¹⁷Staff Report, 2024 Oversight Hearing, House Committee on Natural Resources. <http://www.HHRG-118-1124-20240306-SD002.pdf>.

**STATEMENT OF HON. MICHELL HICKS, PRINCIPAL CHIEF,
EASTERN BAND OF CHEROKEE INDIANS**

Mr. HICKS. [Greeting in Native tongue.] Chair Murkowski, Vice Chairman Schatz, and members of the Committee, thank you on behalf of the Eastern Band of the Cherokee Indians.

I want to express my deep appreciation for convening this substantive hearing, and for your willingness to examine the facts. A careful, evidence-based review of this matter is long overdue. Your commitment to that standard honors every federally-recognized tribe and the integrity of this Committee's work.

I speak today not to question anyone's personal identity, or heritage. This is not about policing identity. It is about evidence. It is about documentation and the integrity of the Federal recognition process.

I stand here as Principal Chief and as the voice of generations of Cherokees who safeguarded our identity, safeguarded our language and our sovereignty, through centuries of forced removal, division, boarding schools, and unprecedented political pressures. This bill asks Congress to recognize a group that has never demonstrated descent from any historical tribe.

Let me be clear: for more than a century, this group has cycled through claimed identities, the Croatan, Tuscarora, Siouan, and Cheraw, and even the Cherokees, choosing whatever labels seemed most advantageous at the time. Yet in all this time, not one verifiable genealogy, historical roll, treaty or historical document has demonstrated continuous tribal existence or descent from a historical tribe. Their claims rest on theories, speculation, and invented narratives.

Federal records show this clearly. In the late 1800s, only 223 individuals in their counties identified as Indian. Ten years later, the number jumps to 4,000, a 1,700 percent spike. What changed was not ancestry or history, it was access to a separate school system for those willing to claim Indian identity on paper.

But the deeper historical record is even more revealing. For generations, before that moment, the families this group now claims as ancestors appears in official records as free British subjects, and later, American citizens. Not as Indians, not as a tribe, not as a political community distinct from others. They exercised their full civil rights. They did not claim an Indian identity.

Only after the Civil War, when North Carolina rewrote its constitution and imposed new racial restrictions on non-white citizens did these families suddenly adopt an Indian identity, calling themselves Croatan, to access the separate Indian school and government resources.

And history, that was not the end of identity shifts. For over 40 years, from 1913 to 1953, this group identified as Cherokees and legally recognized by North Carolina as the Cherokee Indians of Robeson County. Over the objections of the Cherokee Nation and the Eastern Band of the Cherokee, their members self-identified as Cherokee on Federal school applications. And they petitioned Congress for recognition as Cherokee.

Some individuals still assert Cherokee identity today. When those claims were rejected because they could not be substantiated, the group adopted yet another identity. This is not a pattern of

continuous tribal existence. It is a pattern of shifting assertions, driven by circumstance, not historical evidence.

If Congress passes this bill, this group would be the first Americans in history to receive Federal recognition without demonstrating any descent from a historical tribe. This is not fairness, it is abandonment of every safeguard that protects tribal sovereignty and identity.

The Office of Federal Acknowledgement exists to ensure recognition decisions rely on proof, not assertion, documentation, not desire, historical truth, not political pressure. Recognition confirms a documented tribal reality. It does not create one.

Congress has also been misled on the cost. Independent analysis shows the real price is in the billions, diverting treaty-based resources away from tribes with proven history and legal rights.

I want to state this plainly and respectfully. There is no tribal language, there is no treaty relationships, no continuous tribal government, no documented lineage to a historical tribe. We do not fear another tribe. I want to make that clear. We fear falsehood becoming Federal law.

If there is evidence, let it be presented. If there is a tribal origin, let the OFA confirm it. And if they meet the same standard every other tribe meets, we will welcome them to the group of federally-recognized tribes. But Congress must legislate identity by replacing evidence with assertion.

In conclusion, thank you in advance for insisting that proof matters, and that Federal recognition must remain grounded in the truth.

On behalf of the Eastern Band of the Cherokee Indians, I urge you to hold the line, even though it is difficult, protect the integrity of tribal sovereignty, protect the integrity of Federal recognition, protect the principle that history and evidence still matter in the United States Congress.

[Phrase in Native tongue.]

[The prepared statement of Mr. Hicks follows:]

PREPARED STATEMENT OF HON. MICHELL HICKS, PRINCIPAL CHIEF, EASTERN BAND
OF CHEROKEE INDIANS

Chairman Murkowski, Vice Chairman Schatz, and Members of the Committee on Indian Affairs, I am honored to testify today to express the views of the Eastern Band of Cherokee Indians on S. 107, the "Lumbee Fairness Act." I am particularly grateful to the Committee for holding a hearing that focused on the merits of Lumbee recognition, which is important to my Tribe but and tribal nations across Indian country.

Since before the arrival of Europeans on 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, Virginia, and West Virginia. Since European contact, 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 our ancestral homelands to the Indian Territory as part of the federal government's American Indian Removal Policy. Thousands died. Our Eastern Band people call this event "Gay go whoa oh duh nuh ee," or the "Removal." We, the Eastern Band of Cherokee Indians, are the descendants of those Cherokees that resisted the 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 enduring the Trail of Tears. The Great Smoky Mountains wrapped its arms around us, protected us, and helped us preserve our lives and our culture. The mountains continue to provide us refuge and resources today.

Through all of this, the Cherokee people have fiercely protected our separate identity as Cherokees. There are three, and only three, Cherokee Tribal Nations: the Eastern Band of Cherokee Indians (“Eastern Band”), the United Keetoowah Band of Cherokee Indians, and the Cherokee Nation. Many of our Tribal members are fluent speakers of the Cherokee language. We have a separate culture that makes us different from any group of people in the world. The leadership of the Cherokee, and the Cherokee people ourselves, have fought with tenacity and determination for nearly 500 documented years to ensure that our way of life, our beliefs, and our sovereignty will survive. For over a century, Eastern Band Tribal leaders have been forced to actively protect the separate political and cultural identity of the Cherokee People from a multitude of groups that falsely claim to be Cherokee tribes. The Lumbees are one of these groups.

Irrefutable Facts About the Lumbee Group

I want to begin by highlighting the following irrefutable facts about the Lumbees:

- For over 125 years, the group of people that now calls themselves the “Lumbee Tribe” have sought federal recognition as a tribe from Congress. For over 125 years, Congress has rejected legislation that would federally acknowledge this group as a tribe.
- The group now identifying as Lumbee has never had treaty relations with the United States.
- The group now identifying as Lumbee has sought federal recognition under different names: Croatan, Cherokee, Siouan, and Cheraw. One of these “tribes,” however, is not even a historical tribe but an Indigenous language group (Siouan).
- The group now calling itself Lumbee does not have a tribal language or tribal culture, according to Lumbee expert testimony before Congress.¹
- Independent experts Dr. Virginia DeMarce, the former Chair of the National Genealogical Society, and Paul Heinegg, an award-winning genealogist and author, have published detailed, pre-1900 research that undermines Lumbee claims to having Native ancestry.⁹

Heinegg summarizes his conclusions concerning Lumbee identity, referring to the Lumbee as “an invented North Carolina Indian tribe.”¹⁰

- The “Lumbee Fairness Act” specifically prohibits the Secretary of the Interior from reviewing the DeMarce and Heinegg research when verifying Lumbee rolls.
- For forty years, the State of North Carolina recognized the Lumbee group as, and the Lumbees held themselves out to be, “Cherokee” Indians.
- The name “Lumbee” does not come from a historic tribe—it comes from the geographical name of the river that runs through Robeson County, North Carolina, and was chosen by vote by this group from a list of options as their most recent identity.²
- The historical record surrounding the identity of the group calling itself Lumbee is replete with falsehoods and inconsistencies. For example, census records for Robeson County from the year 1900 identified families as “Croatan,” but never Lumbee. Confusingly, census records for Robeson County from the year 1910 identified those same families as “Cherokee,” but with the word “Croatan” stamped over the written word “Cherokee.”³ Exhibit 1.
- Unlike the Cherokee, the Choctaw, the Creek, the Seminole, the Shawnee, and many other established Tribal Nations with aboriginal lands in the South and East, the United States never identified the Lumbee as as a tribe or even Indian and never sought to remove them from their claimed homelands when Indian removal was U.S. policy.

¹ Congressional Record-House (Oct. 28, 1993), at 26545, available at <https://www.congress.gov/103/crecb/1993/10/28/GPO-CRECB-1993-pt18-7-1.pdf>.

² Hearing on H.R. 898, To Provide For Recognition of the Lumbee Tribe of North Carolina, Committee on Resources, House of Representatives, Apr. 1, 2004, p. 66 (Statement of Dr. Jack Campisi).

³ Notably, Dr. Jack Campisi, the Lumbee group’s expert who authored the group’s petition for federal recognition to the OFA, has testified to this Committee that “[t]he federal census records are by far the best source of evidence concerning the Lumbee community.” Testimony of Dr. Jack Campisi to the Senate Committee on Indian Affairs on S. 420 (Sept. 17, 2003) p. 3.

- The Lumbees submitted a petition for federal recognition to what is now the Office of Federal Acknowledgment (OFA) in 1987. No determination has been made regarding the Lumbees' OFA petition.
- In accordance with the most recent Department of the Interior Solicitor's M-Opinion on the matter, the Lumbees are eligible to seek federal recognition through the OFA process. Exhibit 2.

The foregoing facts are incontrovertible. Moreover, these facts (1) cast doubt on the validity of the Lumbees' claim that they descend from a historic tribe, and (2) illustrate why Congress should defer to the OFA to determine the merits of the Lumbees' claims.

Defects in Lumbee Tribal Identity Claims

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. Although the Lumbees have sought federal recognition under the assumed identities of four different "tribes,"⁴ they have yet to produce evidence demonstrating descent from a historic tribe. In 1955, a Lumbee leader testified to the House of Representatives that the Lumbees are an "admixture of seven different tribes of Indians, including the Cherokee, Tuscarora, Hatteras, Pamli and Croatan."⁵ To try to trace the Lumbees' claimed identities is dizzying. We strongly believe that this bill would undermine the integrity of existing federally recognized Indian tribes due to the real problems the Lumbee group has in demonstrating that it is a tribe, including its inability to trace the genealogy of its roughly 60,000 members to a historic tribe.

Furthermore, even the Lumbees acknowledge that they cannot identify their origins. In 1953, a Lumbee leader recognized that:

The first white settlers found a large tribe of Indians living on the Lumbee River in what is now Robeson County—a mixture of colonial blood with Indian blood, not only [Raleigh's] colony; but, with other colonies following and with many tribes of Indians; hence, we haven't any right to be called any one of the various tribal names⁶

Although they have since changed their position, the historical fact remains—Lumbee leaders seventy years ago acknowledged the group's lack of descent from a historical tribe.

Lumbee's Self-Identification as "Croatan" Indians

In 2003, the Lumbees' own hired expert (Dr. Jack Campisi) stated in his testimony before this Committee that the Lumbee sought federal services from the Congress as "Croatan Indians" in the 1880s and early 1900s. However, in 1993, the House Resources Committee's Report regarding the then-pending Lumbee recognition bill contained the following relating to the history of the Lumbee group and 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 inter-

⁴ One such assumed identity is Siouan, which is an Indigenous language group—not a historic tribe.

⁵ S. Rep. No. 110-409 (2008), p. 4 (quoting Statement of Rev. D.F. Lowery of Pembroke, North Carolina before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, U.S. House of Representatives, Hrg. on H.R. 4656 Relating to the Lumbee Indians of North Carolina, Jul. 22, 1955).

⁶ Congressional Record—House (Oct. 28, 1993), at 26544, available at <https://www.congress.gov/103/crec/Fb/1993/10/28/GPO-CRECB-1993-pt18-7-1.pdf>.

married 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.⁷

Lumbee’s Self-Identification as “Cherokee” Indians

In 2015, the Secretary of the Interior informed this Committee that “[l]ong before historians began to study the origin of these people they claimed to be of Cherokee descent. In fact, they have always claimed that they were originally a part of the Cherokee Tribe and that they gave up their tribal relation after they had participated with the white man in the war against the Tuscaroras.”⁸

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. Although the Lumbee group now claims the Cherokee identity was pushed upon them, there is significant evidence throughout history of the Lumbee group and its “members” affirmatively asserting Cherokee identity.

As the Lumbee group’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, 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,” but this effort failed as well.⁹ The Eastern Band has, since the early 1900s when the Lumbee group sought formal recognition as Cherokee, consistently and strongly opposed these efforts of the Lumbees to be recognized as a tribe.

Additionally, from 1914 to 1916, several Lumbee individuals petitioned the United States Commissioner on Indian Affairs for admittance to the Carlisle Indian School in Pennsylvania. W.H. Oxendine claimed to be “an Indian of the Cherokee Tribe of Eastern N.C. in Robeson County.”¹⁰ In James Oxendine’s application to Carlisle, his mother, Charity, listed herself as being 3/4 Cherokee.¹¹ In his 1916 response to Lumbee applications to Carlisle, School Superintendent O.H. Lipps wrote to the Commissioner on Indian Affairs:

These applications have been consistently turned down for the reason that we have been advised by the office that the status of the Indians of Robeson County is undetermined and that it is a question to be decided by Congress and, also, for the further reason that we understand Supervisor Charles F. Pierce some years ago made a very thorough investigation into the claims of these Indians for recognition by the Government and it was his opinion that it would be a great mistake for the Government to step in and assume guardianship over them even to the extent of giving them school privileges in Government schools.¹²

Questions surrounding the Lumbee group’s claims are not a recent phenomenon. Even in 1916, it was openly discussed and understood that the Lumbee group’s claims of Indian ancestry were highly suspicious.

⁷*Id.* at 26543.

⁸Letter from the Secretary of the Interior Transmitting, in Response to a Senate Resolution of June 30, 1914, a Report on the Condition and Tribal Rights of the Indians of Robeson and Adjoining Counties of North Carolina, S. Doc. No. 677, at 121 (1915).

⁹*Id.* Ms. Arlinda Locklear, in her testimony before the Senate Indian Affairs Committee in 2003, 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” (Sept. 17, 2003) p. 4.

¹⁰Request for Enrollment from Robeson County Cherokee (Nov. 11, 1914), available at https://carlisleindian.dickinson.edu/sites/default/files/docs-documents/NARA_RG75_CCF_b028_f06_119133.pdf.

¹¹James Oxendine Student File (1911), available at https://carlisleindian.dickinson.edu/sites/default/files/docsephemera/NARA_1327_b003_f0117.pdf.

¹²View of Oscar H. Lipps on Pupils Attending Non-Government School (Feb. 12, 1916), p. 1, available at https://carlisleindian.dickinson.edu/sites/default/files/docs-documents/NARA_RG75_CCF_b029_f013_16293.pdf.

Lumbee's Self-Identification as "Siouan" Indians

According to the Lumbees, the Lumbee group sought federal recognition as "Siouan" Indians in 1924. Further, in the 1930s, for purposes of the Indian Reorganization Act, the Lumbees self-designated themselves as the "Siouan Indian Community of Lumber River."¹³ 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.¹⁴ Absent from this 1956 Act was any affirmation by Congress that recognized the Lumbees as descendants of specific historic tribes, entitled to a government-to-government relationship; rather, the Act refers to the Lumbees as a group that relies "on tribal legend" to trace their origin.¹⁵

The Lumbees' Tenuous Efforts to Link Themselves to the Cheraw Tribe

The federal recognition criteria require that the membership of a petitioning group consist of "individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity)."¹⁶ The regulations define "historical" in this context as "before 1900."¹⁷ The origin and ties of the Lumbee group to a historical tribe have been the subject of uncertainty not only among experts in the area but also among the Lumbee themselves.

Experts at the Bureau of Indian Affairs (BIA) 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 recognize the Lumbee group. Regarding the Lumbee group's petition for federal recognition, the Director testified to a "major deficiency" that "the Lumbee have not documented their descent from a historic tribe."¹⁸

The Director also testified that the 18th century documents used by the Lumbee group to support its claim that it primarily descends from a community of Cheraws living on Drowning Creek in North Carolina in the 1730s needed extensive analysis corroborated by other documentation.¹⁹

In his September 17, 2003 testimony before this Committee, Lumbee expert Dr. Jack Campisi relied on a report by Dr. John R. Swanton of the Bureau of Ethnology to conclude "in the early 1930s that the Lumbees are descended [from] predominantly Cheraw Indians." 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."²⁰

Furthermore, an Acting Deputy Assistant Secretary, Indian Affairs, has 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.²¹

In her 2003 testimony before this Committee, legal counsel to the Lumbee, Arlinda Locklear, admitted that these concerns continue today. "Department staff

¹³*Id.* at 9.

¹⁴*Id.* at 9–10.

¹⁵70 Stat. 254.

¹⁶25 C.F.R. § 83.11(e).

¹⁷*Id.* at 83.1.

¹⁸Statement 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 (Aug. 1, 1991) p. 3–5.

¹⁹*Id.*

²⁰Congressional Record-House (Oct. 28, 1993), at 26544, available at <https://www.congress.gov/103/crecb/1993/10/28/GPO-CRECB-1993-pt18-7-1.pdf>.

²¹To Provide Federal Recognition for the Lumbee Tribe of North Carolina: Hearing Before the House Committee on Interior and Insular Affairs on H.R. 2335, 101st Cong. 25–27 (1989).

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.”²²

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 group to meet the recognition criteria. The Lumbee group claims more than 60,000 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 census workers as “Indian.”

House Resources Committee members 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 “Indian” customs or cultural appurtenance such as dances, songs, or tribal religion. One of the groups consultant anthropologists, Dr. Jack Campisi, noted this lack of Indian cultural appurtenances in a hearing colloquy with then—Congressman Ben Nighthorse Campbell:

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

Dr. Campisi: No.

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

Dr. Campisi: No. Those things were gone before the end of the 18th Century.

This absence of cultural appurtenances in part identify the Lumbee as part of what sociologist Brewton Berry has termed the “marginal Indian groups.” As Berry notes:

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

These characteristics . . . point out that this is a case replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand fully. Needless to say, if those [Members of Congress] charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or even knowledge—in this area, how will the balance of our Members appropriately exercise those judgments as they will be called upon to do when this legislation reaches the floor?²³

It must also be noted that, due to the absence of their own culture, the Lumbee group has and continues to engage in heavy appropriation of cultures from legitimate Tribal Nations.

OFA’s Unique and Exclusive Capability to Determine the Merits of Lumbee’s Claims

The government-to-government relationship between a Tribal Nation and the United States begins at the point where each recognizes the sovereignty of the other. For this reason, it is crucial that the federal government have in place a credible, non-politicized process for determining which Tribal Nations it recognizes. The National Congress of American Indians (NCAI) expressed its support for such a process by resolution in 1977. Exhibit 3. In Spring of 1978, NCAI issued a Declaration of Principles on Tribal Recognition by the U.S. Government. Exhibit 4. NCAI declared: “There must be a valid and consistent set of criteria applied to every group which petitions for recognition. The criteria must be based on ethnological, historical, legal and political evidence.” *Id.* NCAI further declared that only those tribes

²² “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” (Sept. 17, 2003) p. 4 n.1.

²³ Congressional Record-House (Oct. 28, 1993), at 26545, available at <https://www.congress.gov/103/crecb/1993/10/28/GPO-CRECB-1993-pt18-7-1.pdf>.

or groups who satisfy such criteria may be recognized. *Id.* In large part due to pressure from NCAI, the Department of the Interior established the OFA and the federal recognition process (known as the “Part 83 process”) in Fall of 1978 to ensure that federal recognition determinations are made with rigorous scrutiny and based on factual and historical evidence, “free from the eddies and currents of partisan politics and influence.”²⁴

The Part 83 process requires the OFA to apply and consider seven mandatory criteria to evaluate a group’s petition for federal recognition. The purpose of these seven criteria is to prevent the recognition—and the rights, benefits, and duties that come with it—of groups that are not truly Tribal Nations entitled to government-to-government relationships with the United States.

As former Congressman and Chair of the House Natural Resources Committee George Miller has explained about the role of Congress and tribal recognition,

Properly done, the process of recognition requires an evaluation of complex and often ambiguous data and issues of ethnohistory, cultural anthropology, and genealogy. Not only do we lack that expertise, but there are precious few members of this Committee with any more than the most superficial knowledge on the subject at all. Such a decision is 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 of us 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?²⁵

Congress does not have the expertise to determine whether a modern group descends from a historical tribe (or tribes), and whether the group is comprised of persons of Indian ancestry from that historical tribe (or tribes), and would base its recognition decision on politics and emotions rather than merit. In fact, as was pointed out by a Member of the House with respect to a previous Lumbee recognition bill, “[a] single, powerful member in the majority party is perfectly capable of moving a recognition bill through this body with little reference to its actual merits.”²⁶ The rights, benefits, and duties that accompany federal recognition must not be conveyed lightly, as doing so would have devastating consequences within and beyond Indian country. This is why it is imperative that the claims of groups like the Lumbee be vetted by the highly skilled, qualified, and experienced historians, anthropologists, and genealogists at the OFA who have the dedicated time and resources to properly evaluate them. There are simply too many unknowns and inconsistencies resulting in too many looming questions about the Lumbees’ claims to leave determination of those claims to the political whims of Congress.

Concerns of Eastern Band and Other Legitimate, Federally Recognized Indian Tribes

The integrity of the federal recognition process would be jeopardized by allowing political motivations to substitute for research and critical analysis of neutral, third-party experts if Congress recognizes the Lumbee group by legislation. Furthermore, the government-to-government relationship legitimate tribes hold with the United States would be diluted if groups that cannot demonstrate descent from a historical tribe(s) are federally recognized and vested with the sovereign rights of Tribal Nations. The OFA process protects established Tribal Nations that have treaty and trust relations with the United States and living languages and cultures from fraudulent or unmerited claims of tribal identity.

As historian and genealogist Jean Kelly explains:

Allowing Federal recognition for a group without clear antecedents of previous historical tribe(s) would dramatically redefine the standards for receiving Federal recognition, almost to the point of being meaningless. Such low standards would pave the way for groups with little to no evidence of Native ancestry to claim the cultures and identities of legitimate tribes and assume legal rights over their sacred places and ancestral remains under the Native American Graves Protection and Repatriation Act (NAGPRA). Imbuing such groups with

²⁴ H.R. Rep. No. 103–621, at 17 (1994).

²⁵ *Id.* at 16–17.

²⁶ *Id.* at 17

the legal authorities to act as sovereigns would have significant consequences for communities across America.”²⁷

Passage of the bill would set a dangerous precedent, encouraging countless groups with entirely baseless claims to seek federal recognition from Congress. As former Congressman Walter B. Jones stated in a hearing on the 2004 iteration of the Lumbee recognition bill, “if we start passing private bills to recognize [the Lumbee group], 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 [other groups seeking recognition]?”²⁸

The Eastern Band’s opposition to this bill is driven by the threat Congressional recognition of the Lumbee group would pose to tribal sovereignty, the government-to-government relationship between Tribal Nations and the United States, Indigenous and tribal identity, and access to vital federal resources intended for legitimate Tribal Nations across Indian country—not the threat on the Eastern Band’s gaming operations. Robeson County, the Lumbees’ claimed homelands, is located approximately 225 miles away from the Eastern Band’s casino in Cherokee, North Carolina, and approximately 260 miles away from its casino in Murphy, North Carolina, as the crow flies. It takes over five and six hours, respectively, to drive from Pembroke, Robeson County, to the Eastern Band’s casinos. If the Lumbees were federally recognized and permitted to engage in Indian gaming, impacts of such activity on the Eastern Band’s gaming enterprises would be nominal. The Lumbees pose no threat to the Eastern Band from a gaming perspective, and gaming revenues are irrelevant to the Eastern Band’s opposition to this bill.

Drastically Underestimated Cost of Lumbee Recognition- Harm to Existing Tribes and Waste of Taxpayer Money

Congress has been egregiously misled regarding the cost of Lumbee recognition. The most recent cost estimate prepared by the Congressional Budget Office (CBO) for Lumbee recognition (Exhibit 6), which was prepared in 2022 for H.R. 2758 (Lumbee Recognition Act), glaringly underestimated the price tag for taxpayers on recognition of the Lumbee. Specifically, the CBO cost estimate for H.R. 2758 contains the following deficiencies:

- Estimated BIA costs for H.R. 2758 (\$116M) are 28 percent lower than estimated BIA costs in the previously prepared CBO cost estimate for Lumbee recognition (\$160M), which was for the period from 2012 to 2016. See Exhibit 7. That BIA costs would have decreased by 28 percent over the roughly ten-year gap between the two cost estimates, and following an increase in the Lumbee population, defies all logic.
- In 2018, the Government Accountability Office issued a report demonstrating that Indian Health Service (IHS) spending for 2017 amounted to \$4,078 per user.²⁹ This figure, \$4,078, was again used by IHS in a fact sheet based on 2022 data.³⁰ However, the cost estimate for H.R. 2758 applies a per user figure of just \$1,700—which is even smaller than the per user figure applied in the previously prepared CBO cost estimate for Lumbee recognition for the 2012–2016 period. Again, for costs to decrease over the course of a decade, while inflation and the Lumbee population continued to grow, defies logic. Moreover, there is no justification for the CBO using a smaller per-user cost figure than IHS uses.
- Although the cost estimate for H.R. 2758 indicates that it is for the period 2023–2027 (a five-year period), it actually only attributes costs to the bill for the years 2024–2027 (a four-year period). Outlays for 2023 are estimated at \$0. Moreover, without explanation, outlays for 2024 are estimated at roughly half of the amounts estimated for years 2025, 2026, and 2027. Exhibit 8.
- Estimated IHS costs do not include the cost of developing necessary healthcare infrastructure, such as hospitals and clinics, to service the sizeable population of Lumbee service recipients.
- The CBO cost estimate accounts only for IHS and BIA costs. However, if recognized, the Lumbees would become eligible for significant funds from multitude

²⁷ Jean Kelley, M.A., “Analysis of Lumbee Historical and Genealogical Claims,” 2024, at 17–18, attached as Exhibit 5.

²⁸ H.R. Hrg. 108–90 (2004), p. 5–6.

²⁹ “Indian Health Service: Spending Levels and Characteristics of IHS and Three Other Federal Health Care Programs,” GAO–19–74R, available at <https://www.gao.gov/products/gao-19-74r>.

³⁰ IHS Fact Sheet, available at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/factsheets/IHSProfile.pdf.

of federal funding sources outside of these two agencies. These other funds are not accounted for in the H.R. 2758 CBO cost estimate. Estimated costs for other agencies that would provide services or benefits to the Lumbees as Indians, if recognized, must be included for the CBO cost estimate to be accurate and comprehensive. Exhibit 8.

The impact of Lumbee recognition on appropriations to other Indian tribes would be unprecedented in the history of federal acknowledgment. Accounting for the above—identified flaws with the previous CBO cost estimate, the Eastern Band estimates the cost of Lumbee recognition to be in the billions of dollars. Accordingly, this bill would have a huge, negative impact on the budgets of BIA and IHS and would decrease even further the sorely needed funds Indian people receive as a result of treaties and trust obligations of the United States to Indians and tribes. This Committee and the Congress should not support this legislation for emotional or political reasons, particularly without being absolutely certain that this group constitutes a recognizable Indian tribe in accordance with the objective criteria at the OFA, which it cannot.

Conclusion

If this Committee and the Congress choose to pass this legislation, the consequences will be dramatic for existing federally recognized tribes. First and foremost, politics will have won a decided victory over sound policy. The notion of “taking the politics out of federal recognition” will have suffered its most severe setback in history.

With federal recognition 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 groups possessing such rights were haphazardly afforded them. That is, the sovereign status of federally recognized tribes is currently under attack, with opponents arguing that tribes should be treated as little more than racial groups, devoid of treaty rights and a government-to-government relationship with the United States. Accordingly, federal recognition of tribes should be able to withstand the scrutiny of the federal courts that are responsible for interpreting the laws that uphold the United States’ trust obligations.

*The attachment exhibits to this prepared statement have been retained in the Committee files.

The CHAIRMAN. Chief Hicks, thank you very much.
Chief Barnes, welcome.

STATEMENT OF HON. BEN BARNES, CHIEF, SHAWNEE TRIBE

Mr. BARNES. [Greeting in Native tongue.] Ben Barnes, [phrase in Native tongue].

Senator Committee on Indian Affairs, Madam Chair Murkowski, Vice Chairman Schatz, Senator Mullin, other Senators of the Committee, niyaawe for inviting me.

My name is Ben Barnes, Chief of the Shawnee Tribe and Chair of the United Indian Nations of Oklahoma, serving the 38 federally-recognized tribal nations in Oklahoma. I also serve as the Chair of the National Native American Boarding School Healing Coalition.

Let me begin with a truth that our elders teach us. Sovereignty is the inheritance of tribal survival, not the reward for claiming it. Our nations exist because our ancestors endured forced removal, warfare, termination policies, and the boarding school system.

Federal recognition does not make a tribe. It acknowledges a people who never ceased to exist.

When the United States forced my people from Ohio, through Kentucky and Missouri, to Kansas, and finally to Oklahoma, we did not reinvent ourselves at each river we came to. We remained

Shawnee. We carried our ceremonies in secret. We kept our language alive in whispers. Our government lived in the hearts of our people, even when the United States wished it would vanish.

Nationhood is not a label to be chosen, but an identity carried through generations of removal, loss, and resistance. I have seen what happens when identity becomes something someone can simply declare.

Across every homeland we were forced through, Ohio, Missouri, Kentucky, Kansas, there are now groups calling themselves Shawnee who do not speak our language, they hold no Shawnee ceremonies, they appear nowhere in our historical rolls or records, and they have no documented Shawnee ancestors or ties to our community.

The first time one of those groups opened a bank account using the name "Shawnee," I learned a hard lesson: if identity becomes self-proclamation instead of a documented history, sovereignty becomes a sand castle waiting for the tide.

That is why we are here, to defend a sovereignty paid for in blood, land, and the children.

Now, turning to the matter before this Committee. For years, this group has moved from identity to identity, the Lost Colony, Croatan, Cherokee, Cheraw, Siouan, Lumbee, changing claims but never producing documentation to support any of them. And so, the United Indian Nations of Oklahoma turned to a respected historian and genealogist to examine the record.

That research did not attempt to define who the Lumbee are. It simply asked a single question: can the Lumbee's tribal claims be verified by historical and genealogical evidence? The resounding answer was no.

The expert found no demonstrated descent from a historical tribal nation, no continuous tribal government before the mid-20th century, no ancestral indigenous language community, and census records showing ancestors identified as free persons under British and American law, but never as a tribal polity.

Those findings do not come from emotion or politics. They come from archives, from documents, and history.

Now I must speak from a sacred place, the place where grief and memory live in our communities. As chair of the National Native American Boarding School Healing Coalition, I have carried the names of Native children who never came home. I have walked the ground where they lie without markers. I have sat with survivors who still flinch when they hear their Native languages because it only brought punishment.

The Lumbee have invoked Indian boarding school history to claim indigeneity. But the record tells another story. Nine individuals now held up in Lumbee narratives attempted to enroll at the Carlisle Indian Industrial School. Carlisle rejected them because they did not meet the Federal definition of Indian. They were only admitted after claiming, falsely, to be Cherokee.

An independent genealogical review shows not one of the nine had Native ancestry. Yet their descendants now identify as Lumbee, and Lumbee leadership presents that episode as proof of tribal status. That is not survivorship. That is borrowing our pan to manufacture political identity.

Our children's trauma is not a credential. Our unmarked graves are not a strategy. Our ancestors' suffering is not a political accessory. To allow trauma to be impersonated is to betray the memory of the children and denigrate oneself.

There is a path established to Federal recognition, the Office of Federal Acknowledgment. It exists to examine history, continuity, and nationhood. It is open to the Lumbee. They have been told they may use it. They refused.

The truth is simple. People confident in their history do not avoid the place where history is examined.

So, I close where I began, with sovereignty. Tribal nations pre-date the United States. Federal recognition does not create us, it acknowledges us.

If Congress replaces documented history with political momentum, if identity becomes a matter of assertion rather than continuity, then this body will not be recognizing tribes, it will be manufacturing them. And once that begins, sovereignty will not be defined by history, but by votes.

Niyaawe, [phrase in Native tongue]. I welcome your questions.
[The prepared statement of Mr. Barnes follows:]

PREPARED STATEMENT OF HON. BEN BARNES, CHIEF, SHAWNEE TRIBE

Chairwoman Murkowski, Vice-Chairman Schatz, Members of the Senate Committee on Indian Affairs, niyaawe, thank you for inviting me to testify on this important subject. My name is Ben Barnes. I serve as Chief of the Shawnee Tribe and Chair of the United Indian Nations of Oklahoma, representing the Tribal Nations now based in the state of Oklahoma. I also serve as Chair of the Board of the National Native American Boarding School Healing Coalition.

Let me begin with a truth our elders have taught us: Sovereignty is the inheritance of tribal survival. The Shawnee Tribe and other sovereign tribal nations from across Oklahoma and the United States continue to exist today despite federal policies and actions intended to end our existence as both humans and as separate sovereigns. Important for the subject of this hearing today, federal recognition of groups claiming to be tribes—sovereignty is not and cannot be created by Congress as a reward for simply claiming to be a tribe.

The Shawnee Tribe and other tribal nations exist today because our ancestors endured forced removal, warfare, termination policies, and the boarding school system. We entered into treaties with the United States as a consequence of these policies and actions. Federal acknowledgment of a group cannot create a tribe. Federal recognition does not make a tribe. It acknowledges a tribal sovereign that pre-existed the creation of the United States.

To understand our perspective, it is essential to remember: In Indian Country, tribal identity and individual identity as a tribal citizen is not formed by modern circumstance—it is proven by history and continuity. When the United States forced my Shawnee people from Ohio, through Kentucky and Missouri, to Kansas, and finally to Oklahoma, we did not reinvent ourselves at each river we came to. We remained Shawnee. We carried our ceremonies in secret. We kept our language alive in whispers. Our culture and our government lived in the hearts of our people, even when the United States wished it would vanish.

That is what nationhood looks like—not a label chosen to meet a moment, but an identity carried through generations of removal, loss, and resistance. I have seen what happens when identity becomes something someone can simply declare. Across every homeland we were forced through—Ohio, Kentucky, Missouri, and Kansas—there are now groups calling themselves Shawnee who:

- Do not speak our language,
- Practice no Shawnee ceremonies,
- Appear nowhere in our historical rolls or records, and
- Have no documented Shawnee ancestors or ties to our community. None.

The first time one of those groups opened a bank account using the name “Shawnee,” I learned a hard lesson: If identity becomes self-proclamation instead of docu-

mented history, tribal sovereignty becomes a sandcastle waiting for the tide. That is why I am here—we are here—to defend a sovereignty paid for in blood, land, and the lives of our ancestors, not a construct of modern paperwork.

Now, turning to the matter before this Committee: For years, this group claiming to be a tribal sovereign has shifted from one identity to another—the Lost Colony of Roanoke, Croatan, Cherokee, Cheraw, “Siouan,” Lumbee—changing claims but never producing documentation to support any of them. The so-titled “Lumbee Fairness Act” promotes this shifting tribal identity, prohibiting the Department of the Interior through the Office of Federal Acknowledgment from taking a close look at the Lumbee group’s vague claims of tribal and individual identity.

Out of concern for the integrity of tribal recognition and sovereignty, the United Indian Nations of Oklahoma turned to a respected historian and genealogist to examine the record. That research did not attempt to define who the Lumbee are. It simply asked a single question: *Can the Lumbee’s tribal claims be verified by historical and genealogical evidence?*

The answer was a resounding no. The expert found:

- No demonstrated descent from a historic tribal nation
- No continuous tribal government before the mid-20th century
- No ancestral Indigenous language
- Census records showing ancestors identified as free persons under British and American law, never as a tribal polity

Those findings do not come from emotion or politics. They come from the Lumbee’s own petition for federal acknowledgment before the Office of Federal Acknowledgment, as well as archives, documents, and history. I attach our expert’s reports to this written testimony for your review.*

Tribal nations based in Oklahoma care deeply about this issue, and understandably so. Oklahoma is the final homeland for many tribal nations that once occupied in lands across the country. It was the destination for negotiated and forcible removal. Tribal pretendianism—groups falsely claiming to tribal nations and falsely claiming sovereignty and rights to bury our ancestors and practice religious ceremonies that do not belong to them and claim lands and falsely claiming to be Indian—is a modern phenomenon. Literally hundreds of groups falsely claiming to be tribes, many of them treaty-based tribes now based in Oklahoma, have sprung up across the country.

Now I must speak from a sacred place—the place where grief and memory live in our communities. As Chair of the National Native American Boarding School Healing Coalition, I have carried in my heart the names of Shawnee and other Native children who never came home from federal boarding schools. I have walked and prayed on the ground where they lie without markers. I have been in rooms where Shawnee children lived and slept in the Shawnee Indian Mission Manual Labor Boarding School in Kansas and were prohibited from seeing their parents who came to visit them. I have sat with Indian boarding school survivors who still flinch when they hear their own language because it once brought punishment.

The Lumbee have invoked Indian boarding school history to claim Indigeneity. But the record tells another story. Nine individuals now touted in Lumbee narratives attempted to enroll at the Carlisle Indian Industrial School. Carlisle rejected them because they did not meet the federal definition of Indian. They were only admitted after claiming—falsely—to be Cherokee. And independent genealogical review shows not one of the nine had Native ancestry. Yet their descendants now identify as Lumbee, and Lumbee leadership presents that episode as proof of tribal status.

That is not survivorship.

That is stealing our pain to manufacture political support.

Our children’s trauma is not a credential.

Our unmarked graves are not a strategy.

Our ancestors’ suffering is not a political accessory.

To allow trauma to be impersonated is to betray the memory of our children and denigrate oneself.

There is an established path to federal recognition—the Office of Federal Acknowledgment at the Department of the Interior. The OFA protects my Tribe and other established tribes from false claims of tribal and individual identity that, unfortunately, we have seen over and over with the Lumbee. The OFA exists to exam-

*The Executive Summary: Analysis of Lumbee Historical and Genealogical Claims By Jean M. Kelley, M. A. has been retained in the Committee files.

ine history, continuity, and nationhood. The Solicitor of the Interior has made clear in a reasoned opinion that the OFA process is open to the Lumbee. They have been told they may use it. They filed a petition for federal acknowledgment in the OFA but now refuse to complete the process, choosing politics and emotion over facts.

The truth is simple: People confident in their history and ancestry do not avoid the place where history and genealogy are examined. So, I close where I began—with sovereignty. Tribal nations pre-date the United States. Federal recognition does not create us—it acknowledges us. If Congress replaces documented history with politics, asking which elected officials want it and abandoning the difficult merits questions at issue here, if identity becomes a matter of assertion rather than continuity, then this body will not be recognizing tribes—it will be manufacturing them. And once that begins, sovereignty will be defined not by history, but by votes. Niyaaawe. I welcome your questions.

The CHAIRMAN. Chief, thank you very much. Thank each of you for your testimony here today, and for the opportunity to now engage in a round of questions.

I am going to defer my questions to Senator Markwayne Mullin from Oklahoma. You may begin.

Senator MULLIN. Thank you so much.

Chief Barnes, how was the Shawnee Tribe recognized?

Mr. BARNES. We had a separation from the Cherokee Nation in the year 2000. As I said, we were under the authority of Cherokee Nation as citizens.

Senator MULLIN. How were you recognized? Which path did you choose for recognition?

Mr. BARNES. We had a path of recognition to separate us from the Cherokee Nation. And that was established by an act of Congress.

Senator MULLIN. Act of Congress. How many paths of recognition is there for a tribe to go through?

Mr. BARNES. You have an act of Congress, you have an OFA process.

Senator MULLIN. And you chose to go through Congress because?

Mr. BARNES. We had an OFA review. We came down to a document that was signed by Fred Huffman in the 1960s. And if our continuity of government, it hinged upon that government being continuous. So as part of our separation, our separation was not identifying us as a tribe. It was separating our tribe from the Cherokee Nation. We relate to the Oklahoma—

Senator MULLIN. But you asked for recognition through Congress, right?

Mr. BARNES. That was how our process happened, yes, sir.

Senator MULLIN. Do you believe the Lumbees are Natives?

Mr. BARNES. It is not what I believe, sir. I have no belief in the matter. My matter is in the OFA. I believe in the process. I believe that the OFA process exists whenever the—

Senator MULLIN. But isn't there two ways to be recognized, right? Congress has the authority to recognize, right?

Mr. BARNES. I agree, yes.

Senator MULLIN. Okay.

Chief Hicks, do you believe the Lumbees are Natives?

Mr. HICKS. I think there is potentially Native descent. It doesn't make them a tribe.

Senator MULLIN. Why did North Carolina recognize them, then, in 1985?

Mr. HICKS. North Carolina, to my understanding, has different standards for the recognition. I am not sure today that the Lumbee could pass the standards that have been put in place by the State of North Carolina.

Senator MULLIN. Did the Federal Government recognize them in 1956?

Mr. HICKS. To my understanding, and my conclusion of the 1956 Acts is, simply recognize the name of those who self-proclaimed Indian in a five-county area in eastern North Carolina.

Senator MULLIN. Did the Federal Government recognize them as a tribe in 1956? That is my question.

Mr. HICKS. I don't believe so, not in my conclusion.

Senator MULLIN. So do you believe there are two paths for recognition and Congress has a right to recognize them?

Mr. HICKS. I do agree with that, yes.

Senator MULLIN. Now, you raise concerns that it was the cost, is that correct?

Mr. HICKS. Yes, that was part of my testimony.

Senator MULLIN. So if it is the cost, should the Federal Government not recognize any more tribes coming in?

Mr. HICKS. That wasn't the point of the cost. I think it needs to be—

Senator MULLIN. Well, it is, because when you are raising cost, you are raising the cost that it would be to recognize the Lumbee Tribe. Because I do believe they are Native. I have been accused of not being Native, and I always laugh, and I say, I can't control who my ancestors loved. But I still live on the same allotment of land where my family stopped walking. Because I am Cherokee, and I am proud to be Cherokee, and my family has been there since 1840. But yet I have been accused, because I may not look full Native.

And I have a problem when someone starts saying that, I actually take it a little personally. And Chief, there is actually a split between Cherokee Nation and the Eastern Band, would you agree?

Mr. HICKS. What is your question?

Senator MULLIN. There was a split between Cherokee Nation and the Eastern Band. Cherokee Nation, my ancestors, we walked, and the Eastern Band stayed back. Correct?

Mr. HICKS. That is correct.

Senator MULLIN. But you were federally recognized. Shouldn't you be recognized underneath Cherokee Nation at that point?

Mr. HICKS. I mean, if you look at—

Senator MULLIN. Because we are all descendants, Cherokee Nation.

Mr. HICKS. Do I get to respond?

Senator MULLIN. Sure.

Mr. HICKS. So, if you look at the history of recognition, obviously, the OFA was not established until 1978. The government stopped doing treaties in 1871. The Cherokees, without question, was an established government. If you look at the—

Senator MULLIN. I know the history of the recognition. I get that. My point is that you are saying that the Lumbees, that they are or aren't descendants of the Eastern Band or Cherokee Nation, really, because Cherokee, so it would be your descendants of Cher-

okee Nation, in my opinion. But you are saying that they should be recognized because they should be part of you, but you should be part of Cherokee Nation.

It doesn't make any sense to me, because you are complaining about cost, you are complaining about their path to recognition. You are complaining that they may or may not be Native because they don't have the heritage behind it.

And I am saying, well, they were recognized in 1885. The cost shouldn't matter, because if that is the cost, we shouldn't allow any more tribes to come in, we should stop enrollment, because we have a Federal obligation as Congress, a treaty obligation, a Constitutional obligation to have oversight of the tribes.

We have the authority to be able to recognize tribes, without question. And it just seems like this argument continues to go through because of, my opinion, of the territory dispute. That is my opinion. Because you can't look over there and say they are not Native. I mean, turn around, look. And you are telling me they are not Native?

Mr. HICKS. I have seen the crowd.

Senator MULLIN. Okay, and you are saying that that is not Native faces?

Mr. HICKS. That is not for me to determine. That is for the OFA process.

Senator MULLIN. I know, but we are determining it.

Mr. HICKS. That is an OFA process.

Senator MULLIN. And that is why I support recognizing them. Because my fight up here has been always for Native Americans. I was shocked, when I got up here, when I first got to Congress, it was just Tom Cole and I were the only Natives in Congress at the time. I am in the Senate, I am the only Native American in the Senate now.

And I hate when we fight among ourselves. Because we should all be in the same boat rowing the same direction. If we are Native, then we were wronged a long time ago by the United States. And we have been fighting for recognition for a long time.

And when we have in-house fighting, it causes Congress sometimes to have an impasse. I think you know that. This happens all the time. Lot of times it has to do with gaming. And all we are saying is, the Lumbees have a right to be recognized just like you have the right to be recognized.

Mr. HICKS. We don't disagree with that, as long as it is through the OFA process.

Senator MULLIN. But if they have two options, why is it your opinion that they choose the one to go through Congress?

Mr. HICKS. Because that is why this department is established, is for evidence and—

Senator MULLIN. But there is clearly two paths. And I appreciate the paths they took.

Chair, thank you for the extra time. Thank you for allowing me to go first. And for the record, that has already been established by Interior, they do support this process and they support the Lumbees becoming recognized. And I to also support the Lumbees being recognized.

The CHAIRMAN. Thank you, Senator Mullin.

Senator Schatz?

Senator SCHATZ. Thank you, Chair, and thank you to the testifiers.

Just a couple of thoughts before I ask Professor Locklear a couple of questions. I think it is really important to assume good faith here. What I have heard is a kind of concerning series of accusations about bad faith. And I am trying to go back to 1888 and imagine that the Lumbee people, whatever they were calling themselves, whatever language they were using at the time, say, you know what, why don't we pretend we are a Tribe and petition the Federal Government? If this is a conspiracy, it is a longstanding kind of odd, counterintuitive conspiracy.

The more likely explanation is what the Department of Interior said about 90 years ago, 100 years ago, when they explicitly said, we are not going to recognize this Tribe because the census is too large. Because we can't afford to absorb the cost of delivering services.

By the way, I think that is a valid concern for Congressional appropriators, right, if we are to recognize Lumbee, the rolls just increase, the total number of people in Indian Country went up, which means IHS, BIE, BIA and all those services are going to have to increase by the percentage that the rolls increase.

That is a real issue. It is just not a reason not to grant recognition.

The reason I am animated about this is that I don't know whether Native Hawaiians are ever going to come back to this Congress and seek recognition. But I remember, I was not here, but I remember when Danny Akaka, Chairman of this Committee, tried to get recognition. And the arguments were, do you know how many people that is? Do you know how much that is going to cost? And then, well, they are not Indians.

And so I don't take it as personally as Senator Mullin, but I do take it personally.

And I will just say one other thing. You can go through the administrative process or you can not. But the Constitution vests not just the Congress but this Committee with this authority.

So it may be that you think we should have gone, or these folks should have gone through the administrative process. Fair enough. But that is not a meaningful obstacle to consideration of Lumbee recognition.

Professor Locklear, I want to give you an opportunity to again, respectfully, rebut some of the claims made by opponents of this legislation. Three things: Lumbee has used different names for themselves; that they have no language; and that they do not descend from an historic tribe. Could you address those three assertions?

Ms. LOCKLEAR. With pleasure, Senator, and thank you for the question.

First of all, with regard to the name, and why it came about, the Lumbee children in 1884 were not able to go to school. Our children could not read or write. We were not allowed to attend either white or African American schools.

In 1885, our leaders sought recognition from the State of North Carolina for the purpose of establishing schools for our children.

We prevailed, with the assistance of a Mr. McMillan in the House, who deemed himself to be an amateur historian at the time. Mr. McMillan chose the name Croatan for our people, but in his legislation, he did important things. He established a government-to-government relationship, he allowed the creation of an independent school system run by the tribe, limited to tribal children, and taught by members of the tribe.

To my knowledge, no other tribe in the United States can claim that history. So, beginning in 1885, we controlled our own school system until the 1970s, when a Federal district court ruled that the State of North Carolina must desegregate its school system.

We thought we were exempt from that, because after all, we are an Indian tribe. But the judge told our parents, you must bus your children, because this is a racial classification, because you are not federally recognized.

Senator SCHATZ. Okay, and to the language?

Ms. LOCKLEAR. Yes. There is no requirement in either Supreme Court or other Federal court authority or the acknowledgement regulations that our opponents so warmly embrace that require the presence of a language.

Senator SCHATZ. Yes, a lot of these things, it seems to me are, they are historical facts, and they are, they happened because of United States Federal Government policy. We lost language because of Federal policy. People lost a land base because of United States Federal Government policy.

And it is not surprising that the Department of Interior repeatedly rejected the claims of the Lumbee people, because the Department of Interior, the idea that we should accept the precedent of the Department of Interior from generations back when I think there is unanimous bipartisan agreement that the whole purpose of this Committee is to reverse all of those policies, termination and assimilation.

And to use that as a proof point against recognition I find to be not compelling.

Now, there are criteria that we are to use to determine whether or not to recognize Lumbee. But the idea that, well, DOI didn't do it in 1930, or they don't have their own language, well, there are, frankly, we work a fair amount on language revitalization, and there are a lot of tribes that have very few Native speakers left or none.

So none of this is disqualifying, because frankly, many, many Native people across the Country have experienced that.

I did not expect to get so exercised, but I appreciate your testimony.

Ms. LOCKLEAR. If I may?

Senator SCHATZ. With the Chair's permission.

The CHAIRMAN. Go ahead.

Ms. LOCKLEAR. Thank you. One final fact on the language point that I think is important. Vine Deloria, when he testified in 1988, made note of the fact that he had not only personal knowledge of the Lumbee Tribe but also family knowledge of the Lumbee Tribe, because his aunt, Ella Cara Deloria, had gone down to the community, who was a noted linguist, for the purpose of studying the remnants that remained of tribal languages. And she made note in

1940 that those remnants existed and her purpose was to establish a dictionary.

She did not complete that work because she was not able to get funding. They were not interested in our community, to do so.

The CHAIRMAN. Thank you, Vice Chairman.

Chief Hicks, I want to direct this to you, because you have made very clear that on behalf of the Eastern Band, that you think that the Lumbee should go through the Office of Federal Acknowledgement, through the administrative process rather than come for recognition through Congress. Maybe it is accurate that the administrative route is perhaps more costly, harder to do, subjective. Maybe we need to look at that in terms of whether greater oversight is needed there.

But as Senator Mullin has indicated, there are two tracks, two routes that you can proceed through for recognition. I almost find it curious that Federal recognition is ultimately about a political relationship between a sovereign tribe and a Federal Government. It just seems somewhat curious that we actually set up a process where that decision can be delegated entirely to administrative state.

But I am not going to ask you to resolve that question for me. What I want to turn to is in your written testimony, you claim that the Lumbee situation is uniquely beyond Congress' capacity to understand and evaluate. Can you explain why you feel it is unique in some ways, separate from other tribes that have gained recognition through Congress? Because again, we have this process, it has been repeatedly exercised in terms of its Constitutional authority to gain tribes.

So if you can cite to what you feel are some of the unique aspects as to why Congress should not be the avenue here.

Mr. HICKS. Thank you, Chairlady, for that question. I think if you look at the gaps that have been clearly identified by historians, by researchers, related to the history, these are aspects that I feel need expertise. They need genealogists. They need historians that do this on a daily basis.

Unfortunately, Congressional staff don't always have the expertise to really dig into the subject matter documents or the church records or court records, things of that nature, to really relate back to what is necessary as we feel to prove what you are saying is substantiation.

So again, I think as you look at that setup and that structure, OFA is better suited to make these determinations.

The CHAIRMAN. How do you respond then to Ms. Locklear's statement that she made early on that given the number of Congressional hearings here in the Senate, in the House, that this issue of Federal recognition that Lumbee is seeking has not established quite a voluminous Congressional record with which to be able to turn to?

Mr. HICKS. I truly believe that if the Lumbee group would go through the OFA process, they would get the answer that they are looking for, wherever that answer falls. As you think about it, this issue of well over a century old. And it continues to come back to the same conclusion: there are too many gaps in the genealogy,

there are too many gaps in the history, there is no treaty relationships. Lumbee does not have a sister tribe in Oklahoma.

There are so many things here that need to be evaluated. That is the importance of why it needs to go through the OFA process.

The CHAIRMAN. Ms. Locklear, let me turn to you. You have testified that Congressional recognition is needed to correct what you have termed an injustice. Beyond that, you have some practical differences between recognition through Congress and recognition from the Federal acknowledgement process. You have the ability to take land into trust, particularly in the post-Carcieri world here.

Can you speak to some of these practical differences between the legislative and administrative recognition and whether you think those are drivers for this legislation?

Ms. LOCKLEAR. Absolutely, they are. Let me summarize with just a few points.

First of all, I think it is important to put this controversy in some general history. As the Special Indian Agent reported in 1915, in the O.M. McPherson report, there is a history of 300 years of hostility between the Cherokees to the west and the ancestors of the Lumbee people, including the Cheraw, the Hatteras, and related Siouan-speaking people. I think it is important to understand that context.

As to the other issue, so, as a practical matter, because of that, only Congress could resolve it forever. We have been at this for more than 100 years now. I guarantee you that were the tribe to go through the acknowledgement process and succeed, as I am confident we would, there would be a lawsuit filed by the Eastern Band of Cherokee to try and set that administrative agency decision aside.

That would not resolve it. There is only one way to finally resolve it, and that is through a conclusive act of Congress that extends full benefits and services.

As you also implied, there is a problem with the Carcieri issue, which relates to eligibility of newly-recognized tribes to receive land into trust and thereby we treat it like all other federally-recognized tribes. Because of that 2009 Supreme Court decision that we call Carcieri, the only way to resolve the eligibility of the Lumbee for that process is through an act of Congress. Only Congress can clearly indicate that it considers the 1934 date to be insignificant, and whatever may arise out of the Carcieri decision, notwithstanding those terms, the tribe is nonetheless eligible for the land-into-trust process.

Finally, if there is going to be a special addressing of the cost factor, we don't think it is necessary, which I am happy to expand on, but only Congress can do that as well. Congress is the one who appropriate the money, and if there needs to be more money for the Lumbee services, Congress can do that.

We think the existing processes for appropriations will protect the presently-recognized tribes. Both the BIA and IHS processes provide that only through the appropriation of additional funding that pays for those services will the Lumbee members receive those services at the end of the day. So federally-recognized tribes now are protected.

That being the case, if they believe there should be an increase in Federal funding for the IHS and the BIA, again, that is a political decision to be made by the Congress. So we think for all of those factors, one final one, if I may.

Only one other time in history has the Congress put an Indian tribe in the same position that it put the Lumbee Tribe in 1956. And that was with the Ysleta del Sur Pueblo of Texas. Congress passed a statute in 1968 for that tribe, which was at the time federally recognized, which basically said, we transfer any responsibility we have for this tribe to the State of Texas, and we are going to impose termination language upon the tribe.

In the legislative history of that act, it specifically says that 1968 Act, which then referred to the Natives as Tiwas of Texas, was modeled upon the 1956 Lumbee Act, the only other time Congress has done that. And Congress fixed that problem in 1987, by passing legislation to recognize fully the Ysleta del Sur Pueblo of Texas.

Now, if Congress does the same for us, there are no other tribes in that position. And that is what makes it fair and just, as well as the only appropriate and fully dispositive way to finally and conclusively resolve these issues.

The CHAIRMAN. Senator Cortez Masto?

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you. I appreciate the comments from everyone, and the uniqueness of the hearing today.

Ms. Locklear, let me ask you this. There are two ways to process, ways to get this recognition, we have talked about that. One is through Congress, you have talked about that.

Ms. LOCKLEAR. Yes.

Senator CORTEZ MASTO. And then the other is through the DOI and the Office of Federal Acknowledgement.

Am I hearing today that we should eliminate the Office of Federal Acknowledgement and just rely on Congress to do this in the future?

Ms. LOCKLEAR. Not at all.

Senator CORTEZ MASTO. So do you have any concerns with the Office of Federal Acknowledgement and how the process plays out?

Ms. LOCKLEAR. Historically, we have. And we have expressed those, along with other non-federally-recognized tribes in various forums.

Senator CORTEZ MASTO. I am saying now, right now. Not historically, now. We are here now, and we need to address this. Are there any concerns that you have with the office right now?

Ms. LOCKLEAR. It has greatly improved as a result of the changed regulations in 2015.

Senator CORTEZ MASTO. Okay, so can I just say, Chairman Lowery, what is to stop you? It sounds like you have the support of the administration, you have the support of DOI. What is to stop you from going through that process now and getting what you are seeking, to go through an evidence-based process to address some of the concerns that we have heard from the other tribe?

Mr. LOWERY. Yes, ma'am. Although there have been changes to the BIA process, we still do not know if it is going to take 20, 30

years just like it already does. I don't want my people waiting another 30 years to go through the process. And then once there has been a rendering done by BIA, there will be opponents who can then bring forth a lawsuit.

And I have no doubt that Eastern Band of Cherokee 30 years from now would bring forth a lawsuit that would take us into another 10 to 20 years. And then 50 years from now, my grandson will be sitting here doing the same thing.

Senator CORTEZ MASTO. So the concern is that there would be a lawsuit to any decision that was made by OFA?

Mr. LOWERY. Absolutely. And the concern is how many decades is it going to take. So I think Congress really needs to take a look at the BIA process. I don't know any other government program that takes 20 to 30 years to come to a conclusion.

Senator CORTEZ MASTO. Ms. Locklear, let me ask you, does the process, is that part of the problem, do we need to look at the OFA and say, this process is taking 30 years, that is too long? Do we need to address this in Congress?

Ms. LOCKLEAR. Frankly, that may be the case, Senator.

Senator CORTEZ MASTO. Is that true?

Ms. LOCKLEAR. At this point, we don't have enough experience with how the new regulations will be administered to give a full answer to that question.

Senator CORTEZ MASTO. So there are new regulations now that the tribe has not gone through, so you don't know how long it would take, is that right?

Ms. LOCKLEAR. That is correct.

Senator CORTEZ MASTO. So let me ask you both, Chief Hicks and Chief Barnes, you talked about this. Let me just say, I understand the two ways to do this. One is through Congress, you have to get the votes, through the members of Congress. No guarantee you are going to get that.

But there is also an evidence-based approach. I am not in a position to look out into the audience and, like some of my colleagues, to say who is a member and who isn't. Just like I am not in a position, and I don't think I should be looking out in my community and saying, just because you have brown skin, you are undocumented.

So there has to be an evidence-based approach. That is why it was created in Congress. But if it is not working, I would want to know. Because that is not fair. But we need to hear that conversation. So let me ask both Chief Barnes, as well as Chief Hicks, talk to me about this evidence-based approach, and why it is so important that the administration have a process like this.

Mr. BARNES. If I may, Senator, and thank you for that question. I will give you an example of one that did take a considerably shorter time, Little Shell Tribe. Little Shell was denied at OFA, and then they went through Congressional process.

Indian Country decried that and said, no, you got this one wrong. The Chippewas came together and said, no, you got this one wrong, this one is a tribal nation, and historically, because of a technicality on Little Shell, Little Shell is a tribal nation.

So this is one of those instances where the OFA process, even though it is flawed, and I don't know of any Federal institution

that is perfect at this time, even though the OFA is not perfect, it still yielded some results on behalf of Little Shell, which ultimately did tribal nations come together and say, on their behalf, look at the evidence. And this technicality should not keep Little Shell from being a tribe.

All we ask is they follow the same path as Little Shell. Go through the OFA process.

Senator CORTEZ MASTO. Okay. Chief Hicks, anything else to add to the process?

Mr. HICKS. Yes, I do feel, as I responded earlier, is that the OFA is without question, uniquely equipped to critically evaluate all the related criteria. And there are several criteria that come into play, based on the claims. Having skilled, highly-skilled and professionally experienced folks to do that I think is critical.

But I do want to just respond to the other question around the OFA process. We have supported, openly supported, the expedited approach for this group to go through this process. And in more than one scenario.

And we still feel that there is an opportunity to not extend this 20 or 30 years, that it is something well short of that, to do this evaluation properly and to get the answer that is being sought in a timely manner.

And again, publicly, we support that. And we think that it is a good decision.

Senator CORTEZ MASTO. So you would support, if they were to go through that process, you would work with them to say, this needs to be expedited by the administration, we want something in a timely fashion?

Mr. HICKS. Without question.

Senator CORTEZ MASTO. Let me stop there. I know my time is up. Madam Chairwoman, thank you.

The CHAIRMAN. Thank you, Senator.

I just have a couple more questions here this afternoon. I will probably direct this to you, Chairman Lowery.

It is pretty clear that a tribe's authority to basically determine to define its membership is really central to its existence as an independent political community. The legislation that Senator Tillis has introduced directs the Secretary of Interior to verify the Lumbee Tribe's roll for service delivery purposes.

The verification is limited to confirming documentary proof that members meet the criteria established in the Tribe's constitution that was adopted November of 2001.

So a couple of questions for you this afternoon. Right now, as it stands, what is required for enrollment in the Lumbee Tribe?

Mr. LOWERY. Yes, ma'am, thank you for the question, Senator. We have a base roll, we have a couple of base rolls. One is the 1900 census and one is the 1910 census. The reason those are our base rolls is because this is the first time that the Federal Government, in the standard census process, actually identified American Indians.

So you have to be able to trace your lineage directly back to the 1900 or the 1910 census. If you do not have an ancestor that was documented by a Federal census as an American Indian, you cannot be a member of our tribe.

Also, you have to maintain contact. We are very big on, if you do not live at home, you have to come back home. You have to come back to the homelands.

The CHAIRMAN. What does that mean, when you say maintain contact? Come back for like an annual meeting, or what specifically?

Mr. LOWERY. Well, we have it where you have to come back every seven to eight years. So you have to come back, you have to visit, you have to maintain a relationship with your people. You cannot become, you cannot go and get your citizenship and then leave out and never come back home. We require our citizens to come back and to maintain contact with their tribal community.

The CHAIRMAN. And at this moment, how many do you currently have enrolled?

Mr. LOWERY. We have just over 60,000 enrolled citizens of Lumbee Tribe of North Carolina.

The CHAIRMAN. And then the source documents for enrollment are the two that you have just described?

Mr. LOWERY. Yes, ma'am.

The CHAIRMAN. You have to be able to trace back to just those two?

Mr. LOWERY. Yes, ma'am.

The CHAIRMAN. Okay. And then this one is probably directed to you, Ms. Locklear. There has been a fair amount of discussion today about the various names over the course of a century. It wasn't until later that the Lumbee officially adopted their name.

Because the point has been kind of disputed by witnesses today, and made a little bit of an issue, can you state for the Committee record today which historical tribe or tribes the Lumbee Tribe descends from?

Ms. LOCKLEAR. I can, and I can do so based on the record that has been developed by this Committee. There are two principal sources for that, the O.M. McPherson report from 1915, which identifies the ancestry of the tribe as the Coastal North Carolina Tribes, Siouan-speaking related tribes, including the Cheraw, the Hatteras and others.

In addition, you had the testimony of John Swanton, the pre-eminent anthropologist in the field, in 1934, who testified that in his view, the tribe descended principally from the Cheraw and related Siouan-speaking tribes. That has been the consistent theory.

As a result of that theory, the Lumbee people became dissatisfied with the name that the State of North Carolina had imposed upon them in the various State laws that recognized the tribe, first Croatan, then Indians of Robeson County, and then Cherokees of Robeson County.

As a result of that pressure from the Lumbee Tribe, in 1952 the State of North Carolina conducted a referendum among our member and said, which name do you choose to go by? And we overwhelmingly, almost unanimously chose the name Lumbee, which as I indicated earlier, we had used informally since at least the 1920s.

That is important too, though, because it shows the link between the current Lumbee Tribe and the Cheraw community. The Lumbee Tribe resides around Lumber River. Lumber River was

named that in 1809 by the State of North Carolina. Previously, it was known as Drowning Creek. And the first reported map of the area, in 1724, by John Herbert, identifies the Cheraw residing around Drowning Creek.

We have been there ever since. It is the same community, regardless of the name.

Let me say in one final point, that again, the administrative process that our opponents so embrace, specifically provides that if there is an entity, a collective entity that has existed for at least 50 years, which is plainly the case at Lumbee, since 1885 and the school records and the Federal census records that show it, that entity can be recognized, and I am quoting here, "notwithstanding any absence of or changes in name."

It is not the name. It is the Indian people that you are recognizing.

The CHAIRMAN. Final question I will direct to you, Chief Hicks. The issue of cost has also been raised here at this hearing today. You noted that estimates from CBO are a little bit all over the board, may not be entirely accurate here.

Can you clarify for the Committee what factors you think might be contributing to these differing cost estimates? I agree with my colleague from Oklahoma that, while cost should not influence a level of recognition of tribal status, it is something that, I am dual-hatted, I am not only chairman of the authorizing committee, I am also chairman of the appropriating committee. So I can't help but want to try to understand some of the financial implications of this.

Can you, if you are able, try to clarify a little bit about why we got such a broad range of estimates that are out there?

Mr. HICKS. I think, as was brought up by both Senators around that question, we have had a third party take a look at the prior CBO score. One of the things that was flawed in that score was typically CBO does a five-year financial score. In that particular scenario, they only included four years for some reason.

In addition to, we are fairly certain that all of the Federal agencies, whether it is IHS, whether it is BIA, BIE, amongst others, were not adequately included in that number. Because if you go back to the prior two CBO scores, one of those was close to double in years prior to this prior CBO score. I think it was around 21, 22, what I have in my notes.

But again, we think there were flaws in that particular score. The estimates that we think over a five-year period is probably in the range of \$2 billion to \$2.3 billion, over a five-year period, if all agencies are included.

The CHAIRMAN. Thank you.

Senator Schatz?

Senator SCHATZ. Thanks to everybody for testifying. I just want to make one final point.

I know we have kind of gone around and around on this. But I think I speak for every member of the Senate on this particular question. You can think we should defer to the administration, but we don't have to. Article 1, Section 1 of the Constitution gives us this authority.

Now, there is a statute that also delegates this authority to the administration. But it does not require that recognition go through

an administrative process. You can think we are unwise for not kicking it to the administration. But you cannot say that we are not permitted to recognize a Tribe. That is a Constitutional obligation and authority of the Congress, but specifically the Senate Committee on Indian Affairs.

So if you want to make the argument that we need to build a historical record and that you trust this agency within an agency more than you trust us, that is fine. That is fair. But this is still our authority. And we clearly intend to exercise it.

Senator CORTEZ MASTO. Madam Chair, can I respond to that, as a member of the Senate?

The CHAIRMAN. Yes, go ahead.

Senator CORTEZ MASTO. I am sorry, but I did not hear anybody saying that we don't have that authority. I think it was very clear that people recognize there is a dual track here. And the question is, Lumbee has chosen one path, and they are asking us as members of Congress to support that path.

And there is another side that is saying, no, there is an evidence-based path. That is what is before us. I did not hear from anybody, nor have I heard that somehow they are preventing us as members of Congress from doing our jobs.

So I do, as a member, I don't want you speaking for me, I do recognize both sides of that.

Senator SCHATZ. Senator Cortez Masto, I don't think anybody said that directly today. But I will say that some of the organizations that have been steadfastly opposed to Lumbee recognition have actually made advertisements about circumventing the administrative process and undermining the Tribal recognition process by going to Congress.

So that is what I was speaking to. I know it was sort of obliquely referred to, and you were suggesting that we were going to, of that it would be better if we go through the administrative process. My own view is that this is a Congressional authority, that the DOI has screwed this up for generation after generation, and that is time for us to make a choice.

The CHAIRMAN. I want to thank the members of the Committee. I want to thank those who have come to testify today. I appreciate your helping us continue to build out this record.

Members may submit additional questions for the record, if they choose. The hearing record will be kept open for two more weeks.

I also want to thank those who have attended. We are a pretty small committee on most days. And we don't have to go into a big committee room like this. But I think those who have joined today are evidence of the interest in this as an issue and I think your presence is important to us as well.

Know that this Committee takes very seriously, as the Vice Chairman has said, our role and our responsibility when it comes to Federal recognition of our tribes, and ensuring that the sovereignty that they have is recognized Congress, by the administration and the responsibilities that we have.

I want to thank everyone for the testimony that you have presented in a way that I think has been respectful, which is very important to the debate, the dialogue, the discussion. Because I know that it can be contentious. And I know that oftentimes, issues like

these pit neighbor-to-neighbor, community against community. And that is hard, and particularly when you have been living with it for decades, if not over a century.

So, I respect the way that you have come to be before the Senate Committee on Indian Affairs today, and your contributions.

With that, the Committee stands adjourned.

[Whereupon, at 3:58 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF DR. FREDERICK E. HOXIE

Good afternoon Chairwoman Murkowski, Vice Chairman Schatz and members of the Committee on Indian Affairs. This statement is made not as an expert in Lumbee history, but as a veteran historian who has taught and written about Federal Indian law and policy for more than four decades and who, through that activity, has had the opportunity to work with and consult for a number of tribal nations, government agencies and cultural institutions.

Among these are the Cheyenne River Sioux Tribe, the U.S. Department of Justice, this very Committee, and the Smithsonian Institution. I retired in 2016 from the University of Illinois, Urbana-Champaign, where I was Swanlund Professor of History, Law and American Indian Studies. That wordy academic title underscores the breadth of my background and experience. Over the past forty years I have taught hundreds of undergraduates, law students and graduate students in history, anthropology, and Native Studies, while publishing a dozen books on Native History, and serving as a consultant to several government agencies as well as tribes engaged in litigation over issues of jurisdiction and treaty interpretation.

In 1990, the Secretary of the Smithsonian Institution appointed me a founding trustee of the National Museum of the American Indian—an institution that existed only on paper when I first came aboard. In 2013 I was elected to the American Academy of Arts and Sciences. My statement is informed by the specific research done on the Lumbee Tribe's history and community by other notable experts in the field, in particular that of Dr. Jack Campisi (author of the Lumbee Tribe's petition for Federal acknowledgment), Dr. Karen Blue (author of the Smithsonian Handbook of North American Indians chapter on the Lumbee Tribe), Dr. Raymond Fogelson (deceased, editor of South East Volume, Smithsonian Handbook of North American Indians), and the eminent Dr. William Sturtevant (deceased, general editor of the Smithsonian Handbook of North American Indians).

I ask you to consider three important aspects of the decision before you with regard to this legislation. First, I want to explain the importance and significance of extending Federal recognition to the Lumbee Tribe. When Congress approves the Lumbee Fairness Act it will finally place relations between this tribe and the United States on a firm and fair footing. That is admirable and important—and long overdue—but that is only part of the story. By approving S. 107 Congress will also be fulfilling once again its unique responsibility as the architect of the modern legal edifice that reconciles Native tribes and American democracy.

Second, I want to underscore the significance of the written case the Lumbees have developed in their campaign to secure Federal recognition, a case that conforms to the scholarly literature on the tribe and which is beyond dispute in the academic community.

And third, I want to place the decision to recognize the Lumbee Tribe in the broader context of recent Federal Indian policy—a policy, I might add, that represents an island of bipartisanship in a contentious political world.

It is important to understand why the passage of S. 107 is significant in the long history of Federal Indian policy. The basic foundation of this policy was framed in 1789 during the first session of the first U.S. Congress. In that year—the first year of George Washington's presidency—it was not clear what the official basis for relations between indigenous people and the United States would be. The recently-ratified Federal Constitution had provided that Congress would “regulate commerce with foreign nations, and among the several states, and with the Indian tribes,” but it had not indicated the form that regulation would take. Similarly, the new charter had granted the President the right to “make treaties” but had not specified if the colonial tradition of Indian treaty-making would continue or, if that tradition would be a Federal responsibility or somehow shared with the states. The Constitution was also silent on the issue of whether or not future Indian treaties would have the same status as agreements with powers outside the nation's borders.

President Washington and Congress immediately addressed these issues by proposing that a series of agreements recently reached with a group of hostile Ohio tribes be ratified as international treaties. For Washington, it was essential that the central government sanction and guarantee these agreements. Washington understood that the delicate situation in Ohio (British troops still occupied Detroit) required the formation of a stable alliance between western Indians and the Americans.

At the same time, the President knew that local politicians and real estate developers were eager to destabilize the situation in Ohio by making private deals with compliant chiefs and then encouraging settlers to invade tribal lands. A weak Federal presence would encourage instability (and weakness) on our borders while allowing local disputes to proliferate and increase the chances of violence.

Washington and his Secretary of War, Henry Knox, urged Congress to assert Federal supremacy over Indian treaty-making and to insist that action by the Congress alone would determine U.S. Indian policy. The President insisted that such an approach would ensure that "our national proceedings. . . [would] become uniform and directed by fixed and stable principles."¹ It seemed to Washington that our government would be well served by a "fixed and stable" policy overseen by Congress. Washington was a practical man, so "fixed principles" appealed to his sense of order. But Washington was also the hero of the Revolution, the leader of the world's first, most ambitious constitutional democracy. So he urged Congress to act according to "fixed principles" in order to make clear that our democratic republic would be a place where stable justice trumped opportunism and the rule of law took precedence over the arbitrary exercise of brute power. "The time has arrived," Henry Knox wrote, "when it is highly expedient that a liberal system of justice should be adopted for the various Indian tribes within the limits of the United States."² These arguments galvanized Congress. Within a year, it had enacted Washington and Knox's program, ratifying treaties with tribes, initiating new agreements, and passing the first Trade and Intercourse Acts which established Federal ground rules for Indian-white relations throughout the nation.

Today it is commonplace that many treaties have been violated and many Federal actions have been misguided or fallen short of their goals. No one argues that U.S. policy has been perfect. But as we reflect on our failings, we should not forget the significance of the actions Congress took more than 230 years ago. Through its legislation, Congress made clear that despite the fact that Indian people were for the most part not citizens and had not been part of "We the People," who established the United States Constitution, they would be included within the new nation's emerging legal structure. Our legal structures would not banish or consign them to the machinations of powerful land speculators or ambitious state politicians.

Congress's decision to include Indian peoples in our national governmental structure through Federal legislation was made to ensure that indigenous people would be served, like all Americans, by a "liberal system of justice." This fundamental commitment underlies the entire history of our Indian policy. It is the principle that has caused Congress and the courts to hear complaints arising from treaty violations and, indeed, to authorize special tribunals to hear disputes over unfair land seizures or to investigate a vast array of contentious issues arising from relations between Native communities and their American neighbors. It is also the basis on which Congress has acted to repair the harm inflicted on Native groups by U.S. expansion and to support tribal communities. You will recall that even the extension of national citizenship to American Indians in 1924 provided that their new status would not deprive Native Americans of any rights they had to "tribal or other property."³ "Fixed principles," and a "liberal system of justice" have therefore been watchwords of Federal policy from the days of our founding.

Formal treaty making with Indian tribes ended in 1871, but the Congress has not retreated from its central role in insuring that a "liberal system of justice" informs relations between tribes and the United States. The issue of recognition offers an instance in which you as legislators must act—as Washington urged your predecessors to act—to link the Lumbee Tribe permanently to the United States through a legal relationship based on mutual respect and Federal action. This recognition legislation is completely congruent with the hundreds of other decisions Congress has made over the past two centuries to connect the United States to indigenous peoples by incorporating them into a stable and just governmental structure.

¹ Linda Grant Depauw, Editor, *Senate Executive Journal and Related Documents* (Baltimore: John Hopkins Press, 1974), I, p.41.

² *American State Papers: Indian Affairs*, 13–14.

³ 43 U.S. Statutes, 253.

Historically, recognition has been an idiosyncratic process. Tribes such as those confronting American expansion in Ohio in 1789 were instantly recognized by treaty or statute. Others, particularly smaller groups living in isolated communities in the East, were frequently bypassed and ignored. Many of those tribes later sought recognition because that legal status would be a sign of their humanity and an act of respect. Recognition was also welcome because it signaled that federal power would be used to protect them from hostile outsiders and ensure that they, like their neighbors, could enjoy life in America under a "liberal system of justice."

By approving S. 107, the Congress will not only respond to more than a century of formal petitions from the Lumbee Tribe, but it will demonstrate once again that the United States is fulfilling Washington's charge that the nation act according to "fixed and stable principles" in its dealings with indigenous people.

I would also like to point out that the Lumbee's written petitions filed over many years demonstrate that the tribe deserves this congressional action that will formally connect it to the United States and incorporate the tribe within the legal structure of Federal Indian policy. This is firmly corroborated by the history written by Dr. Jack Campisi appearing in the Tribe's petition for Federal acknowledgment and the consistent and supportive view of other historians and anthropologists. Dr. Campisi makes clear that Indian people, identified early on as Cheraw, were present in what became Robeson County three centuries ago. Moreover, despite the fact that the Tribe's indigenous ancestors have been described by different names, there can be no doubt that an Indian community has occupied this part of eastern North Carolina continuously since John Herbert produced his map of the area in 1725. The group has been undeniably present.

It has also been continuously present. Lumbee families can trace their histories back to the Indians who lived along Drowning Creek at the time of the American Revolution. The Lumbee Tribe has insisted on its Native identity in the face of hostility and indifference, petitioning when possible, rising up in armed resistance when necessary, and always speaking with a Native voice and as members of an ongoing Native entity.

The Tribe's recognition petitions and Dr. Campisi's history also underscore that the Lumbees have been a self-governing community. Obviously, because of the nature of their history they were never called upon, like other tribes, to confront an advancing American military column or treaty delegation. They were not commanded to produce "leaders" as other groups were. Located in an isolated part of one of the original thirteen colonies, the Lumbees faced myriad local adversaries who encroached on their lands and resources but who could be kept at bay by diplomacy, adaptation and, when necessary, tactical retreat. Over the past two centuries, the community came to organize its own extensive religious institutions, operate its own school system (capped by the first Native American university in the United States), and routinely represent itself before state and federal legislatures.

Dr. Campisi's research on behalf of Lumbee recognition in the 1980s and his history presented here have not been challenged. A large group of Indians are permanent residents of Robeson County. They have been a cohesive community for centuries and they have developed a series of unique tribal institutions that have served their membership brilliantly despite the constraints imposed by their unusual historical experience. That history, as well as the petitions they have brought the Congress today, present legislators with the task of reconciling this indigenous community with our modern, democratic nation state. The historical record is both clear and beyond reasonable dispute. Congress has no honorable alternative but to act in response. The Lumbees' petitions might be ignored—no one is forcing you to act—but even if you fail to act positively on this legislation, the Lumbee history will not be rewritten and the Lumbee Tribe will not surrender its identity.

It is also useful to consider S. 107 in the context of the history of tribal recognition. In the past, the recognition of individual tribes was a product of happenstance—tribes with diplomatic or military dealings with the United States (usually in moments of conflict) got "recognized," while others who did not become the objects of territorial expansion—such as those who were geographically isolated (as in Alaska) or who inhabited isolated enclaves in "settled" areas—did not. Over time, these unrecognized groups, particularly large ones like the Lumbees, became increasingly vocal, demanding equal access to Federal assistance in the areas of education, economic development and health care, as well as Federal protection from hostile outsiders. The Lumbees gained state recognition in 1885 and began petitioning the Federal government for assistance three years later. These petitions continued into the 1950s when first the state, and then the Federal government acknowledged the Tribe under the name "Lumbees," even though the Department of Interior opposed extending services to it.

Nothing has changed in the historical record of the Tribe over the past fifty years. The current legislation is not prompted by the release of new documents or the discovery of new historical information.

S. 107 is instead the product of Lumbee persistence—now a central feature of their history—and shifting attitudes among the public and Federal policymakers. As recently as the 1960s, tribes were viewed as artifacts of the past, relics of a traditional way of life that would soon disappear. For many in the Department of the Interior, tribes were anachronistic institutions whose principal function was to receive wasteful federal appropriations. In the 1950s, many politicians and prominent officials in the Bureau of Indian Affairs came to embrace this unfortunate idea and called for the adoption of a new policy goal: the termination of the Federal government's relationship with tribes. Led by Commissioner of Indian Affairs Dillon S. Meyer, and politicians such as Utah Senator Arthur Watkins, the terminationists succeeded in the 1950s and 1960s in winning passage of a congressional resolution endorsing their goal. They also managed to secure legislation that severed the Federal government's relationship with several tribes, most prominently the Menominees of Wisconsin and the Klamath Tribe in Oregon. This policy also found voice in the 1956 Lumbee Act with its termination language, added at the request of the Department of the Interior.

Opposition to termination arose quickly. Tribal leaders called to arms by the leaders of the National Congress of American Indians (NCAI) were particularly outspoken. They argued that the new policy goal represented a betrayal of the United States' commitment to the "settled principles" that had been the stated basis for federal policy since 1789. The most effective protests occurred at unprecedented inter-tribal gatherings in Washington, D.C. in 1954 and in Chicago in 1961. Never before had so many tribal leaders gathered to express themselves with one voice. As these protests proliferated, they inspired the leaders of major tribes and the representatives of unrecognized groups, to speak out. Among the latter were Lacey Maynor of the Lumbees, and his daughter, Helen Schierbeck, both of whom became leading opponents of termination.

While tribal protests blunted the momentum of termination during the 1950s and 1960s, that policy goal was not entirely abandoned until 1970 when President Richard Nixon issued a "Special Message on Indian Affairs" that called on Congress to "break decisively with the past" by adopting a policy of "self-determination" rooted in what the President described as the "solemn obligations which have been entered into by the United States . . . [and] which carry immense moral and legal force." Nixon's statement reflected a bipartisan commitment to this new approach. His "Special Message" stated flatly that termination was wrong and could not succeed. By focusing on "self-determination," Nixon declared, the United States would now turn "from the question of whether the Federal government has a responsibility to Indians to the question of how that responsibility can best be fulfilled."⁴

Historians are often the first to point out that major "turning points" are often little more than midpoints between other "turning points," but Nixon's 1970 declaration—which itself drew wide, bipartisan support—marked the start of a period in which there was a broad consensus that fulfilling the "solemn obligations" of the United States to Native peoples should be carried out through policies that were respectful of tribal traditions, supportive of tribal governments, and sensitive to the vast diversity among Native tribes. After 1970, tribes would no longer be viewed as inconvenient anachronisms, but would become active partners in the administration of Federal policy. Remarkably, despite political differences that have continued over funding levels, the extent to which federal officials should impose themselves in local conflicts, and how far the powers of tribal governments might reach, there has been little dissent from the idea that tribal governments should be central partners in the administration of Federal policy, or from the expectation that tribes will be permanent features of the governmental landscape. Tribes are essential institutions in Indian education, health care, economic development, social welfare and resource management. As Nixon predicted, Federal agencies no longer debate whether to work in partnership with tribes, but how to do so.

Lumbee recognition should be understood in the context of this history of recent policy. The Lumbee Tribe seeks to link itself to the United States through the "settled principles" of law and mutual respect. The historical record provides a justification for this linkage that is both persuasive and widely-accepted within the scholarly community. And despite the deep political divisions of our time, effective tribal governments are universally recognized as key to the implementation of federal policy and the future of indigenous peoples within the United States. This context makes a compelling case for positive action on S. 107.

⁴*Public Papers of the Presidents of the United States: Richard Nixon, 1970, 564–7; 575–6.*

PREPARED STATEMENT OF HON. JIM OWLE, CHAIRMAN, EASTERN BAND OF CHEROKEE
INDIANS TRIBAL COUNCIL

Chairman Murkowski, Vice Chair Schatz, and Members of the Committee:

On behalf of the Eastern Band of Cherokee Indians (Eastern Band), I want to thank the Committee for holding a serious discussion on federal recognition and for allowing the presentation of historical and documentary evidence regarding the Lumbee group. I also want to acknowledge the excellent testimony provided by Principal Chief Michell Hicks, whose clear presentation of the issues reflects the gravity with which the Eastern Band approaches this matter. I add my voice today in full support of his testimony and to further underscore the principles that guide our position.

For too long, this debate has been driven by political narratives, assumptions about appearance, and misunderstandings about Cherokee history—when what Indian Country deserves is clarity, accuracy, and respect for tribal sovereignty.

The Eastern Band of Cherokee Indians is one of the three federally recognized Cherokee tribes, with a continuous documented history, a land base, a government, and a treaty relationship with the United States. I offer this testimony to reinforce the record and to ensure that the Committee's understanding of our history and our concerns is complete and firmly grounded in fact.

The Eastern Band's Responsibility in This Discussion

During the hearing, there were suggestions—implicitly and explicitly—that the Eastern Band is somehow obstructing recognition or casting ourselves as the antagonist in this debate. That portrayal is simply false.

Our position is rooted in a principle every tribe depends on: Federal recognition must be based on evidence.

The Eastern Band welcomes any group that can demonstrate, through the same standards applied to every other tribe, that it meets the criteria for federal acknowledgment. We do not oppose communities. We oppose lowering the standards that protect all of Indian Country.

The record concerning the Lumbee is not ambiguous. The historical, genealogical, and governmental documentation has been reviewed for decades, and where evidence is required, the Lumbee claims are inconsistent, unsupported, or directly contradicted.

Federal recognition is not an act of generosity. It is not a political favor. It is one of the most significant legal determinations the United States can make. Every tribal nation's sovereignty depends on the integrity of that determination.

That is why the Eastern Band speaks—not in rivalry or animosity, but in defense of a process that protects every tribal nation.

Cherokee History and the Status of the Eastern Band

Several comments during the hearing mischaracterized Cherokee history and the relationship between our tribal nations. The Eastern Band and the Cherokee Nation share ancestors, but we are distinct, sovereign governments with separate and well-documented histories.

The Eastern Band did not break away from the Cherokee Nation. Our ancestors remained in, returned to, or fought to stay in our homelands after the Treaty of New Echota and the Trail of Tears. These families reorganized under their own leadership, purchased land, and maintained continuous political existence in the western region of present-day North Carolina. Congress recognized the Eastern Band based on this continuous history—because it existed, plainly and demonstrably, in the record.

The Eastern Band is not subordinate to any other Cherokee tribe, nor derivative of another tribe's recognition. We honor our shared Cherokee origin while maintaining our own sovereignty, as the United States has long acknowledged.

The Eastern Band takes care to represent Cherokee history faithfully. We expect the same rigor when discussing the history of any group seeking federal recognition.

Why Appearance Cannot Replace Evidence

One of the most alarming moments in the hearing occurred when a Member of the Senate instructed tribal leaders to look at people seated in the audience and judge whether they “look Native.” The Senator then stated that he supports recognition because he sees “Native faces.”

That moment demonstrates precisely why the acknowledgment regulations were created.

Indian identity is not determined by appearance.

It is not based on skin tone, facial features, or a lawmaker's intuition.

The use of physical appearance to judge who is or is not Native is a relic of ignorance and racial profiling in a period of deep bias against non-white individuals. It has been proven to have no value in determining tribal identity. Reducing Native identity to skin tone or facial features would drag Indian Country back to an era when federal agents and anthropologists measured noses, cheekbones, and skin color in a misguided attempt to declare who was “Indian enough.” Those practices were never grounded in truth, were thoroughly discredited long ago, and have no place in modern federal decision-making.

The United States established a merit-based process at the strong urging of the tribal nations through the National Congress of American Indians because tribal identity must rest on continuous community, continuous political authority, descent from a historical tribe, and documentary evidence connecting the present to the past.

These are not technicalities. These are the safeguards that protect every sovereign tribal nation from flawed decisions based on politics, personal impressions, and stereotypes.

Requiring evidence is not disrespect. It is respect—respect for all tribes, for the government-to-government relationship, for the law, and for the truth.

Congressional Authority and the Question Before This Committee

Throughout the hearing, much emphasis was placed on Congress’ authority to recognize tribes. The Eastern Band does not and has never disputed that authority. Congress has exercised it before and has the power to do so again.

The question is not whether Congress can recognize a group. The question is whether Congress should recognize a group when the evidence does not support that conclusion.

The Lumbee have no identifiable historical tribe they can demonstrate descent from, no continuous community, no continuous political leadership across time, and a documentary record overwhelmingly inconsistent with tribal existence.

Statements made in the hearing that the Lumbee were “recognized” in 1885 are also incorrect. The North Carolina legislature in 1885 acknowledged a name—“Crotan Indians”—based solely on self-identification in a single county. State action of that kind cannot create federal recognition, cannot establish tribal continuity, and cannot substitute for historical documentation.

The Office of Federal Acknowledgment (OFA) exists for precisely these circumstances: when claims, documents, and histories must be tested by experts with the training, methodology, and objective standards. If a group meets those standards, it deserves recognition.

To legislate recognition in the absence of evidence would set a precedent that risks the sovereignty of every federally recognized tribe and undermines the credibility of the acknowledgment process that Indian Country and the government-to-government relationship depend on.

The Cost Debate: The Issue Is Not Dollars—It Is Responsibility

During the hearing, some suggested that concerns raised by the Eastern Band relate to how much it would cost to recognize another tribe. That is not the issue.

The issue is not the cost of fulfilling the United States’ obligations to Tribal Nations. The issue is whether more than \$2 billion in federal resources will be diverted away from legitimate tribes still dealing with the generational consequences of federal efforts to eradicate them—and instead sent to a group that has not demonstrated Native ancestry, let alone descent from a historic tribe.

Trust obligations are not discretionary. They are rooted in treaties, land cessions, removal, forced assimilation, and decades of federal policy designed to destroy Native nations. Every dollar appropriated for Indian Country exists because of those real, documented histories.

And even today, those dollars are not enough. Tribes across the country continue to struggle with the compounded impacts of those historic harms—underfunded healthcare, chronic infrastructure deficits, housing shortages, and the ongoing work of cultural and language revitalization, among others. Redirecting billions in federal Indian programs to a group that cannot meet the basic evidentiary requirements of tribal existence is not a matter of compassion. It is a matter of justice, responsibility, and the integrity of federal obligations to tribes whose ancestors endured the full force of federal policies aimed at their dispossession, destruction, and eradication.

If the Lumbee wish to access federal trust resources, they must first demonstrate—through a merit-based process and evidentiary criteria—that they are, in fact, a tribal nation.

Conclusion

The Eastern Band of Cherokee Indians stands for truth, fairness, and the protection of sovereignty across Indian Country. This debate is not about emotion, rivalry, or political convenience. It is about whether federal recognition remains grounded in evidence, history, and law.

If any group believes it meets the federal criteria, the OFA process is open to them. If they are a tribe, the process will show it. If they meet the same criteria, we will welcome them wholeheartedly.

But Congress must not replace proof with politics. Native identity is not a matter of appearance. It is not a matter of sympathy. It is not a matter of state legislation. It is a matter of history, evidence, and the sovereign-to-sovereign relationships that define tribal nations.

Thank you for allowing me to submit this testimony. I am honored to join Principal Chief Hicks in presenting the Eastern Band's unified position, and we remain committed to working with all Members of this Committee to defend tribal sovereignty, uphold the integrity of the acknowledgment process, preserve the trust and treaty-based government-to-government relationship between tribes and the United States, and ensure that future generations inherit a system rooted in truth.

Sgi. Thank you.

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to provide this statement for the record on S. 107, the Lumbee Fairness Act.

The Lumbee Tribe of North Carolina, recognized by the State of North Carolina since 1885, has sought federal recognition for more than a century. In 1956, Congress enacted the Lumbee Act, which identified the "Lumbee Indians of North Carolina" by name. The Act also contained language regarding the Lumbee Tribe's eligibility for full federal benefits and services that has been interpreted as creating a statutory barrier to full participation in federal programs and services benefitting a federally recognized Indian tribe, and as precluding the Lumbee Tribe from pursuing federal acknowledgment through the Department of the Interior's (Department) administrative process under 25 C.F.R. Part 83.

On January 23, 2025, President Trump issued a Presidential Memorandum to the Secretary of the Interior declaring that it is the policy of the United States to support the full federal recognition of the Lumbee Tribe, including the authority to access full federal benefits and services. The Memorandum directed the Secretary of the Interior to review all applicable authorities, in consultation with the Lumbee Tribe, and submit to the President a plan to assist the Lumbee Tribe in obtaining full federal recognition through legislation or other available mechanisms. The Lumbee Tribe's leadership has continued to express to the Department their strong preference for federal recognition through an act of Congress over judicial action or the Part 83 process.

Federal recognition is a formal act by the United States government confirming a tribe's existence as a distinct political entity and establishing a government-to-government relationship between the tribe and the federal government. Through federal recognition, the United States recognizes tribal sovereignty with a tribe exercising its rights of self-determination and self-governance over its peoples and community.

Since 1978, the Office of Federal Acknowledgment (OFA) has administered the Part 83 process, and it has been recognized for being thorough in its petition review. To date, the Department has granted eighteen petitions and denied thirty-four petitions for federal acknowledgment. Courts have unanimously upheld the Department's authority to acknowledge tribes through the Part 83 process. In the past, Congress has legislated federal recognition of Indian tribes in unique statutory circumstances without undermining OFA's regulatory role. For example, Congress has legislated to restore federal recognition to tribes previously subject to legislation terminating their relationship with the federal government. Legislative recognition of the Lumbee Tribe would not alter the availability or integrity of the Part 83 process for other groups. S. 107 is a case-specific resolution that addresses the unique statutory circumstances created by the 1956 Lumbee Act.

S. 107 would amend the 1956 Lumbee Act to extend federal recognition to the Lumbee Tribe and make the members of Lumbee Tribe eligible for all services and benefits provided by the federal government to Indian tribes. Recognition of the Lumbee Tribe through S. 107 does not diminish the rights or status of currently federally recognized Indian tribes. The bill also authorizes the Department to acquire trust land for the benefit of the Lumbee Tribe within Robeson County, North Caro-

lina under 25 C.F.R. Part 151, designates a service area for delivery of federal services and benefits, and clarifies the extent of the State of North Carolina's criminal and civil jurisdiction over lands occupied by the Lumbee Tribe. These latter provisions would not be addressed in any Part 83 determination by the Department.

The Department is committed to upholding its trust and treaty responsibilities to all Indian tribes and continues to strengthen tribal sovereignty across Indian Country. The Department supports S. 107 as the most direct means to resolve ambiguities in the 1956 Lumbee Act and federally recognize the Lumbee Tribe of North Carolina.

The Department appreciates the opportunity to provide this statement for the record on S. 107, the Lumbee Fairness Act, and would welcome the opportunity to work with the Sponsor and Committee on ensuring effective implementation of the bill.

SHAWNEE TRIBE
November 19, 2025

Hon. Lisa Murkowski, Chairman;
Hon. Brian Schatz, Vice Chairman,
Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, D.C.

RE: HISTORY OF THE RECOGNITION OF THE SHAWNEE TRIBE

Dear Chairman Murkowski and Vice Chairman Shatz,

On behalf of the Shawnee Tribe, thank you once again for holding a substantive hearing to examine S. 107, the "Lumbee Fairness Act." I write to supplement the record for the hearing conducted on November 5, 2025 hearing and to provide a fuller response to Senator Mullin's question regarding the Shawnee Tribe's federal recognition and why legislation was the appropriate—and only—path in our case, but not in the case of the Lumbee group.

The Shawnee Tribe's path to federal recognition differs fundamentally from the Lumbee situation for one simple reason: there was—and still is—no process at the Office of Federal Acknowledgment (OFA) for separating one federally recognized tribe from another. This gap in federal law arose from unique historical circumstances created by federal policy—not from any uncertainty about the Shawnee Tribe's identity or existence. Because the OFA lacked jurisdiction to address a situation in which a long-recognized Tribal Nation had been placed within another Nation's federal framework, legislation was the only lawful way to correct that structural problem.

Even so, Congress did not act without scrutiny. The Senate Committee on Indian Affairs (SCIA) reviewed the Shawnee Tribe's history using the same seven mandatory criteria that the OFA applies, including the requirement for a 1960s-era document demonstrating continuity of political authority. This Committee examined Shawnee treaties, federal correspondence, agency reports, and internal governance records. The conclusion was unequivocal: the Shawnee Tribe had always existed as a distinct Tribal Nation with continuous leadership, community, and political life.

The roots of this situation lie in the removal policies of the 19th century. The Shawnee people were forced from their eastern homelands through Ohio, Missouri, and Kansas. The ancestors of today's Shawnee Tribe—known historically as the "Loyal Shawnee" or "Cherokee Shawnee"—entered the 1869 Shawnee-Cherokee Agreement, approved by President Grant under the 1866 Cherokee Treaty. That agreement relocated the Shawnee onto unoccupied lands within Cherokee Nation territory, but it did not dissolve the Shawnee Tribe. Our people maintained their own government, language, religious and ceremonial life, and membership rolls. At no point did the United States question who the Shawnee were or whether our treaties remained binding.

Congress formally recognized these truths in the year 2000 when it passed the Shawnee Tribe Status Act (S. 3019), "[t]o clarify the Federal relationship to the Shawnee Tribe as a distinct Indian tribe, to clarify the status of the members of the Shawnee Tribe, and for other purposes." This was not a "federal acknowledgment," as that term is used in the law, but a clarification of a fact that had been true since long before the Shawnee moved onto Cherokee Nation lands in 1869. There was never any question that the citizens of the Shawnee Tribe were Indians descended from the historic Shawnee Tribe, whose treaties with the United States remain in effect. Congress simply expressed in statute the continued existence of the historic Shawnee Tribe through its present citizens.

This history stands in stark contrast to the Lumbee situation. The Shawnee case required legislation because OFA had no authority to address a unique federal anomaly involving two already-recognized Tribal Nations. The Lumbee case requires the opposite: a full evidentiary review by OFA, because their historical, genealogical, and political claims contain unresolved questions that only the federal acknowledgment process can answer.

For the Shawnee, legislation corrected a federal structural problem. For the Lumbee, legislation would bypass the only process capable of establishing the truth. Niyaawe.

HON. BEN BARNES, CHIEF

NOVEMBER 10, 2025

Dear Senator(s)

My name is Celestine Wilson, and I am from Brooklyn, New York. I am a descendant of the first-contact tribes of Cherokee, Catawba, Rappahannock and Arawak peoples. I also have family connections to relatives who have descended from the Lumbee people. Because of these ties, I have witnessed firsthand how the Lumbee story stretches far beyond North Carolina's borders and into communities in South Carolina, Tennessee, and across the country.

The Lumbee are Urban American Indians with a continuous verifiable heritage: their land ties, their families, their language, and their lineal descendants remain intact. They deserve the opportunity to honor their ancestry and identity without being marginalized or disenfranchised.

Despite President Trump's directive on January 23, 2025, calling for the advancement of Lumbee recognition, the Lumbee people continue to face unequal and disparaging treatment. I respectfully ask that this Committee fully support the Lumbee Fairness Act and ensure that the Lumbee receive the recognition and rights they have long been owed.

Thank you,

CELESTINE WILSON

Dear Members of the Senate Committee on Indian Affairs,

On behalf of myself, Claudia Anderson, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Mattaponi grandmothers, Sarah Veney, and her daughter Rachel Veney, sued for their freedom and won. My Veney ancestors exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. I urge Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

CLAUDIA ANDERSON

COALITION OF LARGE TRIBES (COLT)
November 4, 2025

Hon. Lisa Murkowski, Chairman;
Hon. Brian Schatz, Vice Chairman,
Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, D.C.

Dear Chairman Murkowski and Vice Chairman Schatz:

I am writing this letter as Chairman of the Coalition of Large Tribes (COLT). As you know, for a Tribe to be a member of COLT, the tribe must govern a land base of 100,000 acres or more. Of the 574 Federally recognized tribes, only 52 Tribes

meet these criteria and those 52 tribes govern 95 percent of the land and resources. Simply put, COLT is the leading voice for Large Land Base tribes nationwide.

I write to respectfully urge you carefully consider funding additional Indian Country appropriations if the Committee advances the Lumbee Fairness Act (S.107), which would extend federal acknowledgment as a tribal nation to the Lumbee group in North Carolina and circumvent the Office of Federal Acknowledgment administrative process at the U.S. Department of the Interior. *See Resolution: 08-16-2022, # 01-2022 (NN-Twin Arrows)*, “Resolution in Opposition to Federal or State Recognition of the ‘Lumbee Tribe,’ ‘MOWA Band of Choctaw,’ or Any Other Group Claiming to be a Tribal Nation that Seeks to Circumvent of the Department of the Interior’s Office of Federal Acknowledgment (OFA) Process.”

We would also like to remind the Committee that Senator Tillis grotesquely maligned tribal leaders in his November 21, 2024 floor remarks with respect to S. 2088/H.R. 3371—Wounded Knee Massacre Memorial and Sacred Site Act, which he blocked, creating significant tensions between COLT tribes and Lumbee leaders.¹ Senator Tillis’ statement on the floor expressing his disagreement with Lakota tribal leaders as grounds to block dignity for Wounded Knee families was wholly inappropriate. Likewise, Lumbees’ subsequent support for his behavior is repellent. That is simply not how tribes behave—countenancing a massacre and withholding justice for women and children as political convenience. Even knowing this, and while COLT’s supports the longstanding policy and clear rules implemented by OFA, we also understand the specific history of the Lumbees, including that their state recognition since 1885, the 1956 Lumbee Act (enacted at the height of the Termination Era), and their longtime operation of tribal services, such as education from 1885, make them uniquely positioned for consideration for recognition by Congress.

COLT requests that you closely analyze the cost of Lumbee recognition to taxpayers, and if you vote affirmatively on S. 107, that you also recommend appropriate funding additions to accompany what would become the fifth or sixth largest tribe in the country by population, rather than leaving such findings to the next Appropriations cycle.

We have seen evidence that the cost of Lumbee recognition has been underestimated by approximately \$2 billion by the Congressional Budget Office, including significant departures from CBO scores done contemporaneously for Little Shell and the Virginia tribes. This includes the CBO score going down while the Lumbee population has gone up. But we have also seen evidence that underestimate may not be accurate, inasmuch as the Lumbees already receive Indian Education, HUD and LIHEAP funds and would not need new appropriations for those programs. We also understand that the Lumbees’ need for BIA services might be much more limited because they do not have a reservation or trust lands to administer. Further, we recognize that a newly-recognized Tribe is not eligible for many programs until Congress appropriates funding.

Yet, while some of the differences in CBO scoring may be explained by the Lumbees’ unique circumstances and their successful efforts to inform the CBO, that is cold comfort to COLT member tribes’ citizens to whom the United States already grossly underfunds its solemn Treaty obligations including healthcare, food and nutrition, and economic development and who see the potential for a new tribe of perhaps 60,000 or more citizens to strain those scarce resources even more, with a current CBO score of \$1,275,000,000 for just BIA and IHS over five years. These num-

¹Wounded Knee is a stain on the dignity of Congress and a point of extreme dishonor for the United States. On December 29, 1890, unarmed men, women and children were massacred at Wounded Knee. In the words of General Nelson Miles, on whose orders the Seventh Cavalry pursued ailing Chief Spotted Elk and his people across the frozen Plains and Badlands, his soldiers’ actions constituted: “the most abominable criminal military blunder and a horrible massacre of women and children.” [DeMontravel, 1998, pp. 211–212]. Miles acknowledged, “Every day we hear of poor women, little girls and boys and children found dead and frozen to the ground, or crawling over the prairie, for a distance of one hundred miles north and south.” [p. 206]. Testifying before the Commission on Indian Affairs in 1920, Miles said he “regarded the whole affair as most unjustifiable and worthy of the severest condemnation.” [National Park Service].—Less than a year after the Massacre, General Miles wrote in a letter dated November 20, 1891: “Wholesale massacre occurred and I have never heard of a more brutal, cold-blooded massacre than that at Wounded Knee. About two hundred women and children were killed and wounded with little children on their backs, and small children powder-burned by the men who killed them being so near as to burn the flesh and clothing with the powder of their guns and nursing babes with five bullet holes through them.” [Letter to Baird]—Nonetheless, 20 U.S. soldiers were awarded Medals of Honor for their murderous, terrorist actions at Wounded Knee. Medals of Honor are awarded in the name of Congress. For a decade, COLT and sister tribal organizations have been pursuing legislation to remove the stain the Wounded Knee Medals of Honor visit on America, as well as last Congress’ S.2088/H.R. 3371—Wounded Knee Massacre Memorial and Sacred Site Act.

bers are simply staggering to COLT tribes' citizens when our tribes govern land bases the size of some states with far fewer resources in very rural places. We look to the Committee to check all the math and ensure that our Treaty obligations are fulfilled irrespective of what other policy choices Congress might make with respect to recognition of a new and very large tribe.

Very respectfully,

J. GARRET RENVILLE, CHAIRMAN

HOUSE COMMITTEE ON APPROPRIATIONS
November 5, 2025

Hon. Lisa Murkowski, Chairman;
Hon. Brian Schatz, Vice Chairman,
Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, D.C.

Dear Chairman Murkowski and Vice Chairman Schatz,

I wish to express my strong opposition to legislation that would allow the Lumbee group in North Carolina to bypass the established federal recognition process through the U.S. Department of the Interior.

I am honored to represent North Carolina's 11th District, which includes the aboriginal and modern-day homeland of the Eastern Band of Cherokee Indians. This Tribal Nation is a cornerstone of our state's heritage, rich with culture, language, and sovereignty that is a treasure to the State of North Carolina and the United States. The Eastern Band Cherokees are the descendants of those who courageously fought to remain in their ancestral homeland when the federal government sought to forcibly relocate them along the Trail of Tears. The story of the Eastern Band of Cherokee Indians is a profoundly American story, one of resilience, perseverance, and hope. It is out of respect for their legacy and for all federally recognized tribes, that I oppose efforts to circumvent the fair and rigorous process established for federal recognition.

Today, a number of groups, such as the Lumbees, with no verifiable indigenous ancestry falsely claim Cherokee history, language, and culture as their own. The Lumbee group has sought federal acknowledgment for over a century, and Congress has repeatedly chosen not to act on Lumbee recognition due to concerns about the merits of their claims. The Lumbee Tribe does not identify with any specific historical tribe from which it claims descent and has not provided genealogical evidence to substantiate such lineage. Additionally, they do not have reservation land, a tribal language, or a single treaty with the United States.

For nearly half a century, the Department of the Interior has carried out a merit-based process sanctioned by Congress to make these recognition determinations. The Office of Federal Acknowledgment (OFA) process exists to safeguard both Indian country and the public by ensuring that groups seeking this recognition can demonstrate verified descent and meet historical criteria.

As a member of the House Appropriations Committee, we have funded the Indian Health Service and other essential priorities for our tribal communities in the recently approved FY26 bill. However, if the overall tribal population eligible for these services were to expand by more than 55,000 individuals, many of whom lack verified Native ancestry, it would place an unsustainable strain on already limited resources. I am deeply concerned that such an expansion would dilute the critical support intended for federally recognized tribes and make it increasingly difficult for appropriations to keep pace with genuine need.

If the Lumbee group's case for federal recognition had merit, they would follow the established OF A process, as required by law. Instead, they have repeatedly sought special consideration from Congress and the Administration, despite credible opposition by dozens of federally recognized tribes.

I urge this Committee to ensure that the Lumbee group's claims are evaluated by qualified experts through the proper administrative process. Granting federal recognition to any group without rigorous scrutiny undermines the integrity of the recognition process and the responsibility owed to federally recognized tribes. We must keep politics out of tribal recognition and ensure that such decisions are based on merit and evidence, not political pressure or unverified ancestry claims.

Sincerely,

CHUCK EDWARDS, MEMBER OF CONGRESS

DISTRICT HEIGHTS, MD.

Dear Members of The Senate on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in Support of The Lumbee Fairness Act and the full Federal Recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump signed an Executive Order on November 12, 2020, in support of the recognition for The Lumbee Indians, acknowledging their continuous historical presence, cultural Identity, fairness, deca, education, and have access to their OK Heritage and Governmental Organization. This Executive action reinforced what scholars, state officials, and generations of Lumbee descendants have a long maintained that The Lumbees are an Indigenous Nation whose Heritage, language and Governance merit the same Federal rights and protections as other Federally Recognized Tribes.

I have Lumbee Ancestors Locklear, Cox, Cumbo, Revel to name a few Surnames that are kin to the Lumbees and Tuscarora Ancestors. Historical kinship of the Lumbee people Systematic Misclassification and exclusion from Federal Protection and Recognition. The Lumbee Fairness Act is justice for a decades long of inaccessibility to Indian health, education and have access to their artifacts. Many Misclassified American Indians like myself have inaccessibility to Healthcare. We are asking at Urban Indian Heritage Society, that The Senate Committee on Indian Affairs and Congress pass this legislation.

Thank you for your Consideration,

DAVITA M. CARTER

Greetings to the U.S. Senate Committee on Indian Affairs,

My name is Dr. Nolan L. Fontaine. This testimony is in regard to S. 107—the Lumbee Fairness Act. I am requesting that this be sent to Congress for immediate action.

The Lumbee only continue to flourish and grow in numbers and representation across state lines. They have the land and lineage and they deserve all the liberties and privileges that other tribes receive. In the past, and even currently, the Lumbee experience paper genocide and misclassification. This must end full stop.

Specifically, the Lumbee should be able to partake in Indian Health Service, Indian Education and any other federally-protected activities whenever and wherever they are in these United States. We applaud Senator Tillis for his steadfastness with advancing this bill for Lumbees in North Carolina.

However, we know that as the traditional Cheraw people, they were transient. They lived within the enclaves of both North and South Carolina. It is imperative, now that the Lumbee inhabit all fifty (50) states and DC, as Urban Indians, that they have accessibility to aforementioned federal programs with no bureaucratic red-tape to delay their progress. This needs to be resolved this 119th Congress.

Thank you for your attention to this serious matter within Indian Country.

Respectfully Submitted,

DR. NOLAN L. FONTAINE

Dear Members of the Senate Committee on Indian Affairs,

I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order of November 12, 2020, underscored the importance of advancing recognition for the Lumbee people, affirming their enduring historical presence, cultural identity, and organized governance. This action reaffirmed what scholars, state leaders, and generations of Lumbee descendants have consistently upheld—that the Lumbee are a sovereign Indigenous nation whose heritage, language, and government warrant the same federal acknowledgment, rights, and protections as those afforded to other federally recognized tribes.

Thank you,

FRANCINE ANDERSON

STATE OF NORTH CAROLINA—OFFICE OF THE GOVERNOR

October 31, 2025

Hon. John Thune, Majority Leader;

Hon. Charles Schumer, Minority Leader,
U.S. Senate,
Washington, DC.

Dear Majority Leader Thune and Minority Leader Schumer:

I am writing to express my support for full federal recognition of the Lumbee Tribe of North Carolina. Full federal recognition would allow members access to the health care, education, housing, child care, and disaster relief benefits afforded other tribes. These benefits would in turn create economic opportunities for the tribe and the surrounding community.

The history of the Lumbee Tribe in North Carolina long predates the history of the State of North Carolina itself. The State of North Carolina granted the Lumbee Tribe official recognition in 1885, and the tribe began seeking federal recognition shortly thereafter. However, the Lumbee Act of 1956 specifically denied the Lumbee the services and benefits that every other federally recognized tribe receives, hindering the tribe's efforts.

Some form of legislation to provide federal recognition to the Lumbee has passed the House of Representatives nine times since 1974 but has never succeeded in the Senate, including the most recent legislation, which the House passed on September 9, 2025. The history of the Lumbee Tribe and of the State of North Carolina are intertwined; so, too, are our futures. Therefore, I request that the Senate pass legislation to confer the benefits of full federal recognition to the Lumbee Tribe.

Sincerely,

HON. JOSH STEIN, GOVERNOR

URBAN INDIAN HERITAGE SOCIETY/FIRST TRIBE

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society/First Tribe, I respectfully submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina.

President Donald J. Trump's Executive Order reaffirmed the need to advance recognition of the Lumbee people as a federally recognized tribe, meeting the established Congressional standards and criteria for approval.

As a registered Urban Indian of Mvskoke, Cherokee, and Seminole lineage, I and we recognize that the Lumbee have endured centuries of historical misclassification and administrative neglect. In my capacity as an Elder of the Urban Indian Heritage Society, we have also submitted a petition bearing over 10,000 verified signatures, many of which are from individuals of Lumbee descent.

The Lumbee Fairness Act represents a long-overdue step toward restoring justice and rightful recognition. We respectfully urge Congress to act decisively and grant the Lumbee Nation the federal acknowledgment they have long deserved.

Respectfully submitted,

ISHMAEL A. BEY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

Respectfully submitted,

JASMINE "GATOR" HUMPHRIES

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental or-

ganization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

Respectfully submitted,

JOSHUAH GRANT

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee of Indian Affairs,

On the behalf of the Urban Indian Heritage Society, I submit this testimony in support of the Lumbee Fairness Act and the Full Federal Recognition of the Lumbee tribe of North Carolina. President Donald J Trump signed an executive order on November 12th, 2020 in support of the recognition for the Lumbee Indians, acknowledging their continuous historical presence, cultural identity, and government organizations. This executive action reinforced what scholars, State officials and generations of Lumbee descendants have long maintained that the Lumbee are an Indigenous Nation whose Heritage, language and governance merit the same Federal rights and protections as other Federally recognized tribes.

In addition to my testimony a I would like to add that many other Indigenous descendants where misclassified just like the Lumbee. My Powhatan family was affected by Walter Pleckers 1929 Racial Integrity Act which indicated that my family had to become Negro or colored instead of Identifying as American Indian. I kindly urge you to allow the Lumbees of their much overdue justice they deserve.

The Lumbee Fairness Act is justice for a decades long inaccessability to lto Federal Recognition and Protections. The Lumbees need access to health services, education, and protections as a Sovereign Nation. We are asking at Urban Indian Heritage Society, that the Senate Committee on Indian Affairs and Congress Pass this Legislation. Many misclassified American Indians like myself have inaccessability to healthcare. We hope and pray that you consider this, and pass this Act.

Thank you for your consideration,

KENNETH BROWN II

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Lumbee grandfather, Thomas Taylor, and our Tuscarora-Lumbee ancestors, exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

KYRUS "LEFTFOOTEDBLACKWOLF" FULLER WILLIAMS

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an In-

Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

LLOYD A CARTY

Dear Members of the Senate Committee on Indian Affairs,

I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Mattaponi grandmothers, Sarah Veney, and her daughter Rachel Veney, sued for their freedom and won. My Veney ancestors exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. I urge Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

MARTIA ANDERSON

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Sincerely,

NEKEISHA "INDIGO SUNFLOWER" STANFIELD

Dear Honorable Members of the Senate Committee on Indian Affairs,

My name is Pamela, and I am writing to express my full support for the Lumbee Fairness Act and the long-overdue federal recognition of the Lumbee people. This issue is deeply personal to my family. My uncle, Johnny Chavis, is Lumbee and Catawba Indian, and our bloodline reflects generations of Indigenous identity that has survived despite misclassification, political neglect, and systemic erasure. I am also a granddaughter of Powhatan ancestry, a reminder that our Indigenous roots run deep across the Southeast and Mid-Atlantic.

For more than a century, the Lumbee people have been denied full rights, resources, and recognition that other tribes receive as a matter of fairness and law. Federal recognition would not only strengthen one of the largest American Indian communities in the United States but would also correct a longstanding injustice that has harmed Lumbee families for decades. My relatives, my ancestors, and

countless Lumbee descendants deserve the same respect, protections, and opportunities afforded to all federally recognized tribes.

I ask the Committee to support and advance the Lumbee Fairness Act without delay. Recognition is not a gift; it is a rightful acknowledgment of a people who have always existed, endured, and contributed to this nation.

Thank you for your attention and your continued service.

Respectfully,

PAMELA HALL

Good Afternoon,

I'm writing to you today to share my testimony to appeal the Lumbee Fairness Act. I am Chief Robert Wayne Brooks, the son of Paul Brooks, one of the Original 22 descendants of Tuscarora Indians determined to be one-half degree or more blood quantum by the Bureau of Indian Affairs in 1936. Under the Reorganization Act from 1934, we are listed as the Siouan Indian Community of Lumber River. During this time the state of NC voted against the act due to political friction without all parties present. In 2006, a petition was filed with the Department of Interior for land to be placed in Trust for the Original 22.

The Siouan Indians of Lumber River were incorporated in September 2013 and organized with by-laws in place.

At this time, we ask that you consider the below information prior to making a decision on the Lumbee Fairness Act:

- The Lumbees have attempted numerous times to self-identify and claim ties to multiple tribes in the past.
- The Lumbees lack the genelocial ties to indigenous individuals in North Carolina
- The Lumbees are attempting to acquire Tuscarora land that is placed in a Trust back in mid 1930s

Let me know if you have additional questions.

Thank you,

CHIEF ROBERT WAYNE BROOKS

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Lumbee grandfather, Aaron Locklear, and our Tuscarora-Lumbee ancestors, exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

TANISHA "PHOENIX MOON" WEST

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental or-

ganization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Lumbee and our Tuscarora-Lumbee ancestors, the Harper's, Spruill's and Browns of Kinston, Snow Hill and little Washington, NC exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Respectfully submitted,

TARYN VENISHA SPRUIELL-ADKINS

URBAN INDIAN HERITAGE SOCIETY

Greetings to Chair Murkowski and Vice-Chair Schatz,

From the traditional Eastern Woodlands, we send ancestral greetings. On behalf of the Lumbee Tribe, we are writing this communique to express the direct action to move the Lumbee Fairness Act to legislation within THIS 119th Congress.

We are Urban Indian Heritage Society. We are an organization that researches and documents the epistemologies of American Indians and their lineal descendants.

We are avid observers of U.S. Senate Committee on Indian Affairs. Alas, even after President Trump's Executive Memorandum, the Lumbee continue to face disparate treatment and institutional inter-tribal retribution rooted in disenfranchisement. We demand that this changes immediately and that all benefits & fairness be extended to the Lumbee and their families.

Sen. Cortez-Masto discussed during the hearing two (2) pathways forward—the administrative path through the Office of Federal Acknowledgment or the legislative path where this committee refers this senate bill to Congress. The Lumbee deserve a quick redress of their grievances. Let's spare the bureaucratic rigmarole & get this done!

Be on the right side of history.

Happy America 250!

URBAN INDIAN HERITAGE SOCIETY

Dear Members of the Senate Committee on Indian Affairs,

On behalf of the Urban Indian Heritage Society, I submit this testimony in strong support of the Lumbee Fairness Act and the full federal recognition of the Lumbee Tribe of North Carolina. President Donald J. Trump's Executive Order on November 12, 2020, affirmed the need to advance recognition for the Lumbee people, acknowledging their continuous historical presence, cultural identity, and governmental organization. This executive action reinforced what scholars, state officials, and generations of Lumbee descendants have long maintained—that the Lumbee are an Indigenous nation whose heritage, language, and governance merit the same federal rights and protections as other recognized tribes.

My own Cherokee grandfather Sam Hendrix passed down history about our ancestors some to have been Lumbee and to always stay connected, exemplify the deep historical continuity, kinship networks, and enduring survival of our people through centuries of systemic misclassification and exclusion. The Lumbee Fairness Act represents not only justice long delayed but a necessary step toward correcting decades of inequity in access to health, education, and sovereignty protections. The Urban Indian Heritage Society urges Congress to act without delay to pass this legislation, thereby honoring both the promise of federal trust responsibility and the self-determination of the Lumbee people.

Submitted by,

WILLIAM ANDERSON

UTE INDIAN TRIBE
November 26, 2025

Hon. Lisa Murkowski, Chairwoman,
Senate Committee on Indian Affairs,

Hart Senate Office Building,
Washington, D.C.

RE: OPPOSITION TO S. 107, THE LUMBEE FAIRNESS ACT

Dear Chairwoman Murkowski:

We are duly elected officials of federally recognized large land-based treaty tribes of the United States. As such we are independent sovereign Nations with inherent sovereign authority: each of which can prove a unique government-to-government relationship with the United States.

For decades now this status and this government-to-government relationship have been challenged, and we have withstood and defeated those challenges at great and often painful cost. We have done so under the closest scrutiny as a group of Indians can face in the federal courts, from each of the three branches of state government, from the various agencies of the United States, and from private entities. Some of us have faced challenges to our sovereign status and legal rights, from foreign governmental powers. Yet again, we have prevailed because we can unquestionably prove who we are, what our legal and factual status is, and what our relationship with the United States of America is based upon. Even this Committee has faced questions as to why we are much more than racial groups of Indians, and why we are entitled to a unique status and receive unique preferences under federal law.

In short, we have all been able to prove, without doubt, that we are not only the direct descendants of treaty signers, but we are also individual tribal nations whose members have continued to interact both socially and politically as citizens of a single independent, sovereign tribal nation from treaty times until the present.

I write to you and your colleagues on the Senate Committee on Indian Affairs on behalf of my Tribe to voice my concerns and opposition to S. 107, also known as the Lumbee Fairness Act ("Act"). Tribal recognition is the inherent right of tribes to self-govern, to establish their own laws that govern membership, laws, religion, and community. To be a federally recognized tribe inherently includes tribal sovereignty and creates a federal trust responsibility, which must be guarded at all costs.

Given the significance of federal recognition, my Tribe must oppose the Lumbee Fairness Act. The recognition of Indian tribes, and thus tribal sovereignty, is one of the United States' most solemn and important obligations. Federal recognition of a tribe establishes a special and unique government-to-government relationship between the Federal government and an Indian tribe and creates significant legal rights, responsibilities, and commitments.

To begin, the Tribe supports the federal recognition of Indian tribes. However, the Tribe does not believe that federal recognition should be subject to the legislative process and Congressional politics. Partisan politics can prevent a deserving tribe from being recognized or it can recognize an undeserving group with no indigenous ties as a federally recognized tribe. Congress can create problems when it tries to act on federal acknowledgement and tribal membership.

In one example, in 1954, Congress passed the Ute Partition Act (UPA), which authorized 490 Tribal members known as "mixed-bloods" to vote to terminate their Tribal status and relationship with the federal government. In the UPA, Congress took action attempting to determine Tribal membership of the "mixed-bloods," and the problems are still being dealt with by the Ute Indian Tribe as the unrecognized descendants of these members still attempt to interfere with Tribal governance. These problems were wholly preventable problems. The Lumbee Fairness Act has no standards or minimum requirements for federal recognition, and it requires the Secretary of Interior to acquire trust lands without any explanation. Congress does not have the staff, expertise, resources, or equipment to manage the recognition of Indian tribes equitably.

Congress recognized this problem in 1975 when it created the American Indian Policy Review Commission ("Commission") to bring fairness and legitimacy to the federal recognition process. Created from the recommendations of the Commission, Congress delegated the DOI—Office of Federal Acknowledgment (OFA) the management and regulation of federal recognition. OFA uses expert anthropologists, genealogists, historians, and attorneys to evaluate whether a petitioning group comprises descendants from a historical Indian tribe that has maintained existence to earn federal recognition. This structured process shields decisions from political influence or undue pressure and ensures equity, transparency, and consistency.

Similar to the UPA experience, the Lumbee Fairness Act attempts to circumvent the OFA process and politicize tribal, federal recognition. The Act simply amends the Lumbee Act, Pub. L. 84-570, to grant the Tribe full Federal recognition without having gone through the extensive findings that the OFA process would entail. The Lumbee Act relied on "tribal legend" and that "these people" are "proud of their her-

itage” as the basis of its findings to acknowledge the Lumbee Tribe. These findings are not up to the same rigor and analysis that the OFA process would analyze the Lumbee Tribe under.

It is our fear that the moment any group of Indians, claiming to be a “Tribe,” cannot meet these standards under that level of scrutiny, every other federally recognized tribe in the United States is endangered. For this reason, we are forced to oppose the Congressional and/or Executive Order recognition of the group calling itself the Lumbee Indian Tribe.

The processes employed by the Office of Federal Acknowledgement are far superior to anything that Congress can offer at this time. The assertions made by the group calling itself the Lumbee Indian Tribe must be scrutinized by experts and not automatically be taken at face value by the Members of this Committee or by the Congress as a whole. To do otherwise endangers us and every other federally recognized tribe in the United States.

On Behalf of the Ute Tribal Business Committee:

SHAUN CHAPOOSE, BUSINESS COMMITTEE CHAIRMAN

The following list of resolutions and letters from Federally Recognized Tribes and Tribal entities that support Lumbee recognition have been retained in the Committee files.

- Catawba Indian Nation
- Tunica-Biloxi Tribe of Louisiana
- Oneida Nation of Wisconsin
- Pascua Yaqui Tribe
- Mashantucket Pequot Tribal Nation
- Chief Kevin Brown of the Pamunkey Indian Tribe
- Rappahannock Tribe of Virginia
- Chickahominy Indian Tribe of Virginia
- Chippewa Cree Tribe of the Rocky Boy's Reservation
- The Blackfoot Confederacy Chiefs
- Hopi Tribe Chairman: Timothy L. Nuvangyaoma-
- The Mashpee Wampanoag Tribe
- The Wampanoag Tribe of Gay Head Aquinnah
- Chief of the Choctaw Nation of Oklahoma
- The Narragansett Indian Tribe
- A resolution from the Midwest Alliance of Sovereign Tribes
- The Native American Indian Association of Tennessee
- The Native American House Alliance
- Baltimore American Indian Center
- Prominent NCAA Men's Basketball Head Coaches—Kelvin Sampson and John Calapari

The following list of additional resolutions and letters have been retained in the Committee files.

Kenaitze Indian Tribe—Resolution No. 2025–37—Opposing Federal legislation that would circumvent the Department of the Interior's Office of Federal Acknowledgement (OFA) process

2022 Winter Convention—Tulalip, Washington—RESOLUTION #2022 46—Opposition to Federal or State Recognition of the Groups Claiming to be a Tribal Nations that Seek to Circumvent the Department of the Interior's Office of Federal Acknowledgement (OFA) Process

INTER-TRIBAL COUNCIL OF NORTH EASTERN OKLAHOMA#2022–5—Opposition to federal or state recognition of the “Lumbee Tribe,” “MOWA Band of Choctaw,” or any other group claiming to be a tribal nation that seeks to circumvent of the Department of the Interior's Office of Federal Acknowledgment (OFA) process

Coalition of Large Tribes (COLT)—Resolution No. 08–16–2022 RESOLUTION #01–2022 Resolution in support of the “Opposition to federal or state recognition of the ‘Lumbee Tribe,’ ‘MOWA Band of Choctaw,’ or any other group claiming to be a tribal nation that seeks to circumvent of the Department of the Interior's Office of Federal Acknowledgment (OFA) process” and COLT opposition letter to “Lumbee Fairness Act,” S. 521 and H.R. 1101 (Dec. 14, 2024

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES—A Resolution Opposing Federal or State Recognition of Groups that Claim to be Tribal Nations by Circumventing the Office of Federal Acknowledgement Resolution No. 22–14

TRI-COUNCIL OF THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS THE EASTERN BAND OF CHEROKEE INDIANS AND CHEROKEE NA-

TION—Resolution # 3-22—A RESOLUTION OPPOSING FEDERAL OR STATE RECOGNITION OF GROUPS THAT CLAIM TO BE TRIBAL NATIONS AND SEEK TO AVOID OR CIRCUMVENT THE DEPARTMENT OF INTERIOR'S OFFICE OF FEDERAL ACKNOWLEDGEMENT PROCESS

BLACKFEET NATION—Resolution No. 133-2023—Resolution in support of the “Opposition to federal or state recognition of the “Lumbee Tribe,” “MOW A Band of Choctaw,” or any other group claiming to be a tribal nation that seeks to circumvent the Department of the Interior’s Office of Federal Recognition Process.

GREAT PLAINS TRIBAL CHAIRMAN’S ASSOCIATION March 8, 2022 letter to Please Preserve the Integrity of the Federal Acknowledgement Process

Opposition to the “Lumbee Recognition Act” (S. 1364) letter on behalf of the United Indian Nations of Oklahoma, Kansas, and Texas (UINOKT) 12/16/2021

GREAT PLAINS TRIBAL ASSOCIATION, INC.—letter asking acknowledgment as a Tribal Nation to the Lumbees in North Carolina and circumvent the Office of Federal Acknowledgment (OFA) administrative process at the U.S. Department of the Interior. December 4, 2020

Eastern Band of Cherokee Indians/Shawnee Tribe letter requesting that you defer consideration of groups seeking federal acknowledgment to the Department of the Interior’s Office of Federal Acknowledgment (OFA). March 10, 2022

FORT SILL—CHIRICAHUA—WARM SPRING—APACHE TRIBE letter Opposing the “Lumbee Recognition Act” (S. 1364) January 5, 2022

Fort Belknap Indian Community—letter Opposing the “Lumbee Recognition Act” (S. 1364) December 16, 2021

