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HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

S. 724, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS RESTORATION ACT OF 2007

S. 514, MUSKOGEE NATION OF FLORIDA FEDERAL RECOGNITION ACT

S. 1058, GRAND RIVER BANDS OF OTTAWA INDIANS OF MICHIGAN REFERRAL ACT

H.R. 1294, THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2007

SEPTEMBER 25, 2008

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THURSDAY, SEPTEMBER 25, 2008

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

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. The Committee will come to order. This is a hearing of the Indian Affairs Committee. We are going to be considering four pieces of legislation today to provide Federal recognition to certain tribes in Virginia, Montana, Michigan, and Florida.

I thank my colleagues for being here and we have three elected officials who are here to begin the testimony as witnesses today.

The Committee has held two hearings to examine the Federal acknowledgment process. The four bills that we have before us would provide Federal recognition to nine Tribal groups who have partitions currently pending before the Administration.

I think it is quite clear the process for acknowledgment is broken. These things take an unbelievably long time. We have had a lot of testimony about that. The costs are borne by the petitioning group, with no assistance from the Federal Government. The acknowledgment process has limited resources, limited staff, and limited funding.

I will make some other comments about this in a few minutes. We have three elected officials here, including Governor Kaine, Congressman Moran, and Senator Webb. I would like to take their testimony and then we will break and come to the business meeting, which should just take us five minutes, and then we will have the other witnesses. That will be, I think, more convenient for the three of you. We very much appreciate your attendance and your desire to testify on behalf of legislation pending.

Would that be satisfactory with you?

Senator MURKOWSKI. Absolutely. Thank you.

The CHAIRMAN. Senator Barrasso is on the phone; he has a portion of this business meeting. I think that is the way we will handle it.

Governor Kaine, welcome to the Committee. We thank you for being here today with your colleagues.

Governor Kaine. Thank you, Mr. Chairman.

The CHAIRMAN. The full statement of all three will be made a part of the permanent record, and we would recognize you, then our colleague Senator Webb, and then Congressman Moran.

Governor Kaine. Excellent.

STATEMENT OF HON. TIMOTHY M. KAINE, GOVERNOR, COMMONWEALTH OF VIRGINIA

Governor Kaine. Thank you, Mr. Chairman and members of the Committee. The testimony has been filed, so I will just summarize a couple of points.

I first want to begin by thanking my Virginia colleagues here, Senator Webb and Congressman Moran, for their great advocacy on behalf of the Virginia tribes.

Beginning in 1607, English settlers in Virginia began to interact with these great tribes of Virginia, and these stories are known to virtually all Americans, the stories of Pocahontas and Chief Powhatan, John Smith, John Rolfe, and others. It is not an exaggeration to say that the Jamestown Settlement that was the first English settlement in the New World would not have survived had it not been forbearance and actual assistance of these tribes to the English who settled in 1607.

Yet, despite the fact that these stories of the interaction between English and these tribes are among the best known in our collective history, none of the Virginia tribes are among the 560-plus Federal tribes that have been recognized. I think there are two basic reasons for that. It seems like a kind of disharmony. I think there are two basic reasons why these tribes have not been recognized.

First, they made peace and began to integrate into society in 1677. Before there was the United States of America, their treaties were with England. So England has recognized these tribes since 1677. But because they didn't enter into treaties with the United States Government, that has been a reason that they haven't been recognized. And I don't think, in retrospect, they should be penalized for having early decided to begin peaceful relations with the settlers who are our ancestors.

The second reason is a more sinister reason. Beginning in the 1920s—and the Committee is well aware of these facts from earlier hearings, I know, and testimony—there was a practitioner, really, a promoter of the Eugenics movement in Virginia who became head of the State Bureau of Records, a guy by the name of Walter Plecker. Plecker ran this bureau under this fiat. The decision was made that all Virginians had to be identified either as white or colored.

So the Indians, who had maintained their identity for these hundreds of years, were required to change their identity on all official documents to colored. If they did not, they were subject to criminal penalties, and many were actually imprisoned because of this. If members of Virginia Indian tribes wanted to marry as Indians, they had to leave the State to do so.

So there was, for a period of 40 years, until this matter was struck down by the courts in the 1960s, an official State policy, sadly, to the shame of our Commonwealth, that systematically denied members of these Indian tribes their rightful ability to claim

their heritage, and that has made the documentation for some of these tribes very difficult.

To my way of understanding, and I am not a historian, but those are the two reasons why these tribes have never been recognized: they laid down arms and made peace in the 1670s and then their collective heritage was denied by Commonwealth policy during the 1900s.

Beginning the 1980s, Virginia realized we need to clean the air and do the right thing, so these tribes have been recognized by the Commonwealth of Virginia, beginning in 1983. But we are strongly of the notion that neither of those two reasons should be an obstacle to these tribes in obtaining recognition today.

Virginians consider this a matter of fundamental justice and really an acknowledgment of the fact that we would not be the modern Virginia we were had these tribes not essentially supported, in those early years, the settlement at Jamestown Island. Relationships were uneasy, but there were a number of times where, had it not been for the support of these tribes, that Jamestown Settlement experiment would have ended, as had earlier experiments in Virginia.

I will just conclude and tell a story. This has been a matter of real passion for me. I mentioned in my inaugural address wanting to finally turn the chapter and acknowledge these Indian tribes, but about a year after I was inaugurated in Williamsburg, I went to England on the commemoration of the sailing of the three ships that came to Jamestown Island in December of 1606, 400 years later I was in England, and my wife and I and my kids paid a visit to St. George Parish in Gravesend, which is where Pocahontas is buried.

Pocahontas married the English tobacco planter, John Rolfe, went to England for a time, was presented at court, and then was getting ready to come back to Virginia, but when she was on the ship going down the Thames, became ill, was taken ashore and died in this little tiny community Gravesend, at the mouth of the Thames, where it empties into the English Channel.

The English in that parish have taken care of her memory in exquisite way. There is a beautiful statute of Pocahontas outdoors; the chapel is dedicated to her; there are inscriptions of Pocahontas, she is buried underneath the chapel; and the English have cared for her in amazing ways. But as I was sitting in this chapel, thinking about her journey and this legacy of the American Indians in Virginia, I looked on either side of the alter there are two stain glass windows, and one is a stained glass window of Rebecca, which was Pocahontas' baptismal name; the other window was Ruth. And I looked at that and I was trying to remember from my history whether there was a Ruth in the Pocahontas story, and it suddenly struck me, no, there wasn't; it is the Old Testament Ruth from the Book of Ruth.

I am sure you remember those great powerful words from the King James Bible. Naomi moved to a strange land and went with her husband and her sons, and her sons then married women from that strange land, Moab, foreign women. Her husband and sons died, so then Naomi is in this strange land with these daughters from the land and she decides to move back to Judea. And when

she decides to move back, her daughters-in-law want to go back with her. She says, no, stay here, marry again, have more kids; and one of the daughters, Orpha, stays, but Ruth says, no—and these are the beautiful words: whither thou goest, I will go. Whither thou lodgest, I will dwell. Your people shall be my people. Your God shall be my God; and when you die, so there I will die and I will be buried.

It is a great story, and obviously the Ruth window is in that chapel to signify the union not just of John Rolfe and Pocahontas, but the union of these Virginia Indians and these English settlers, and it strikes me that that is a fitting story about the union of these Virginia Indian tribes and Virginia. They have become part of us; they have been in our schools, they have worked in our fields, worked in our factories, served in all of our wars from the Revolution to the current day; they laid down arms and made peace with those who came to Virginia beginning in the 1670s.

And it just strikes me that that is worth something, that that has a value, and that there ought to be an acknowledgment of these hundreds of years of living peacefully; and this is something that Virginians—not just Virginia Indians, but Virginians—very, very much want to do.

Britain has recognized these tribes since 1670 and Virginia finally realized we needed to do it in the 1980s we got onboard and recognized these tribes, and it is our earnest, earnest hope that the Federal Government will recognize them as well. Thank you, Mr. Chairman.

[The prepared statement of Governor Kaine follows:]

PREPARED STATEMENT OF HON. TIMOTHY M. KAINE, GOVERNOR, COMMONWEALTH OF VIRGINIA

Thank you for the opportunity to speak with you today in support of Federal Recognition for Virginia's Native American Tribes. We are proud of Virginia's Native Tribes and the contribution their communities have made to our Commonwealth and the Nation.

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

As a part of my Inaugural Address on January 14, 2006 at the Colonial Capital in Williamsburg, Virginia, I stated:

> "Our Virginia might not exist today were it not for the generosity extended to those first settlers by the native Virginia tribes living in this region. Without the hospitality of Chief Powhatan . . . those in Jamestown would have perished. . . And, we should use this historic time to help those who first helped us by working with the Federal Government to see that Virginia's native Indian tribes are finally recognized."

Almost immediately after first landing at Jamestown in 1607, the early English settlers and explorers came into contact with the Virginia Tribes living throughout Eastern Virginia. While the relationship between the Native Tribes and the English settlers was not always easy, there can be little doubt that had it not been for accommodations on both sides, the settlement would not have survived. Indeed, Virginia's Native American Tribes played an integral role in helping the settlers survive those first harsh winters.

One year after the 400th anniversary of the first permanent English Settlement at Jamestown, it is especially tragic that these tribes still have not received equal status with the 562 other Federally Recognized Tribes in the United States.

How can we commemorate their history and not recognize their existence? Now is the time to reconcile history. Let us, once and for all, honor their heritage. A heritage, I might add, that has been sorely tested by centuries of racial hostility and state-sanctioned coercive actions.

The eight Virginia Tribes—the Chickahominy, Eastern Chickahominy, Mattaponi, Monacan Indian Nation, Nansemond, Pamunkey, Rappahannock and the Upper Mattaponi—are unique. Unlike most tribes that obtained federal recognition when they signed peace treaties with the Federal Government, tribes in Virginia signed their peace treaties with the British Monarchy.

- Most notable among these was the Treaty of 1677 between Virginia's Tribes and Charles the II—well before the establishment of the United States. This treaty has been recognized by the Commonwealth of Virginia every year for the past 331 years when the Governor of Virginia accepts tribute from the Tribes in a ceremony now celebrated at the State Capitol.

However, while the Virginia Tribes have received official recognition from the Commonwealth of Virginia, acknowledgement and officially recognized status from the federal government has been considerably more difficult due to systematic mistreatment over the past century.

Recent History of Tribal Recognition Issue in Virginia

For 34 years, from 1912 to 1946, Walter Ashby Plecker, at the Virginia Bureau of Vital Statistics, led an effort to actively destroy vital records and evidence of Indian existence in the Commonwealth.

This practice was supported when the eugenics movement was endorsed by Virginia Universities and the Virginia General Assembly enacted the Racial Integrity Act in 1924—a race based statue that forced all segments of the population to be registered at birth in one of two categories "white" or "colored". From that point on no reference was allowed for other ethnic distinctions and no reference was allowed for Indian Tribal peoples in Virginia. Members of Virginia's Tribes were denied their identities as Native peoples.

Essentially, Virginia declared, by law and the systematic altering of key documents, that there were no Indians in the Commonwealth as of 1924. The passage of these race based statutes in Virginia made it criminal for Native peoples to claim their Indian Heritage. For instance, married couples were denied marriage certificates or even forbidden to obtain the release of their newborn child from a hospital until they changed their ethnicity on the state record to read "colored."

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

The Racial Integrity Act was not struck down by the Federal Courts until 1967.

From 1983–1989 each Tribe gained official Recognition in the Commonwealth of Virginia.

In 1997, then Governor George Allen signed legislation acknowledging the "paper genocide" of Indians in Virginia. This legislation provided that state records be corrected that had been deliberately altered to list Virginia Indians on official state documents as "colored." In 1999, the Virginia General Assembly adopted a resolution calling upon Congress to enact legislation recognizing the Virginia Tribes.

Each of the tribes have also petitioned the U.S. Department of Interior and the Bureau of Indian Affairs (BIA) for official recognition under the process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe." The Virginia Tribes have also submitted letters of intent and partial documentation to petition for Federal acknowledgment.

Unfortunately, these applications have been denied as incomplete. Without proper records and complete documentation the Tribes cannot fulfill the requirements of the BIA process.

Helen Rountree, noted anthropologist and expert on Native-Americans in Virginia, has spent her life documenting the Virginia Tribes. Through her thorough analysis and research the Commonwealth of Virginia was provided with sufficient authentication to officially recognize these tribes. I believe that that research should also be sufficient to address the damage of the Racial Integrity Act era and meet the BIA's criteria.

Need for Congressional Action

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

Six of the Tribes first came to Congress seeking recognition in 1999. They joined together to request Congressional action on their application for Federal Acknowledgement through the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act" (this year it is H.R. 1294).

The six Tribes view Federal recognition as a basic issue of equality with the other 562 tribes.

Under the United States Constitution Indian Commerce Clause, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. *I believe that the Tribes' situation clearly distinguishes them as excellent candidates for Congressional action.*

Under H.R. 1294, the six Tribes would finally, and at long last, be granted federal recognition. At the same time, I feel that the safeguards provided in this legislation would address some Virginians' concerns about Class III style gaming in the Commonwealth. Indeed, this legislation would give both the Governor and the General Assembly strict control over any possibility of the development of Indian Gaming.

I commend the committee for giving its time and attention to the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. I would like to especially thank Chairman Byron Dorgan (D–ND) for his leadership on this important issue.

I would also like to thank Senator Jim Webb (D–VA) for his important work on behalf of the native peoples of Virginia and his testimony today. I am also heartened by the bipartisan Virginia Delegation support for H.R. 1294 and thank Representatives Jim Moran (D–VA), Tom Davis (R–VA), and Bobby Scott (D–VA) for their original co-sponsorship of the legislation.

It is time for these Virginia native peoples to be recognized by their own country. Recognition of the Tribes of Virginia is long overdue.

Congress has the power to recognize these Tribes. It has exercised this power in the past, and it should exercise this power again with respect to our Virginia Tribes. Our recent commemoration of the 400 years of modern Virginia history will be incomplete without successful Federal recognition of these Virginia Tribes.

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

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

The CHAIRMAN. Governor, thank you very much for your eloquent testimony. We appreciate you being at the Committee today.

Next we will hear from Senator Jim Webb.

STATEMENT OF HON. JIM WEBB, U.S. SENATOR FROM VIRGINIA

Senator WEBB. Thank you, Mr. Chairman, Senator Murkowski, Senator Tester. I do appreciate your willingness to hold this hearing so late in the Congress, and I am really pleased to be joined here by Governor Kaine. There is not a whole lot on the persuasion side that I could add to what he just said. I am also pleased to be here with Congressman Jim Moran, who has been a long-time supporter of this proposition.

This is not a new issue for your Committee.

First of all, I have a longer piece of testimony that I would ask be submitted for the record.

The CHAIRMAN. Without objection.

Senator WEBB. And I understand the reluctance from Congress to grant this type of recognition, as opposed to the usual BIA administrative process. I just want to assure you that I have not taken this issue lightly, that I agree in principle that Congress generally should not be determining whether or not native tribes deserve Federal recognition, but this is a fairly unique situation, as Governor Kaine laid out.

I spent a good bit of time, over several months, asking hard questions about these particular issues and the issue of lineal descent and record-keeping and the miscegenation laws in Virginia, and many barriers that were placed against these particular tribes that you don't really see in the cases that you have coming before you.

For those reasons, I became a strong proponent that this sort of recognition should be given and should be given by the Congress. It is almost impossible—it is not just lengthy, it is almost impos-

sible for this particular situation to be solved through the regular BIA process, and that is the reason that I joined my colleagues several months ago in urging this legislation be passed and that is the reason that I am here today.

Thank you, Mr. Chairman.

[The prepared statement of Senator Webb follows:]

PREPARED STATEMENT OF HON. JIM WEBB, U.S. SENATOR FROM VIRGINIA

Thank you, Mr. Chairman and members of the Committee. I am honored to be here today to show my strong support for the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007" (H.R. 1294). I am pleased to be joined by Virginia Governor Tim Kaine and Congressman Jim Moran, both of whom have been strong advocates for Virginia's Native American Tribes. I would also like to acknowledge and thank the Chief's of the six Virginia tribes and all the members present here today.

I appreciate your willingness to hold this hearing. This is not a new issue for this Committee and you have heard support for these six Virginia tribes from many individuals throughout the 15 years since they began seeking federal recognition. These six tribes are the Chickahominy, Chickahominy Indian Tribe Eastern Division, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond Indian Tribe.

I am here today to urge the Committee to approve legislation recognizing the six Virginia tribes that began the administrative recognition process so long ago. The tribes covered by this bill gained state recognition in the Commonwealth of Virginia between 1983 and 1989. I believe it is appropriate for them to finally receive the federal recognition that has been denied for far too long.

Mr. Chairman, I understand the reluctance from Congress to grant any Native American tribe federal recognition through legislation rather than through the BIA administrative process. I have not taken this issue lightly, and agree in principle that Congress generally should not have to determine whether or not Native American tribes deserve federal recognition.

Earlier this year the BIA's Office of Federal Acknowledgment came out with new guidelines on implementing the criteria to determine federal recognition. While I applaud improvements to the process, this still does not change the impact that racially hostile laws formerly in effect in Virginia had on these tribes' ability to meet the BIA's seven established recognition criteria.

Virginia's unique history and its harsh policies of the past have created a barrier for Virginia's Native American Tribes to meet the BIA criteria, even with the new guidelines. Many Western tribes experienced government neglect during the 20th century, but Virginia's story was different.

First, Virginia passed "race laws" in 1705, which regulated the activity of Virginia Indians. In 1924, Virginia passed the Racial Integrity Law, and the Virginia Bureau of Vital Statistics went so far as to eliminate an individual's identity as a Native American on many birth, death and marriage certificates. The elimination of racial identity records had a harmful impact on Virginia's tribes, when they began seeking Federal recognition.

Second, Virginia tribes signed a treaty with England, predating the practices of most tribes that signed a treaty with the Federal Government.

For these reasons, I strongly believe that recognition for these six Virginia tribes is justified based on principles of dignity and fairness. As I mentioned, I have spent several months examining this issue in great detail, including the rich history and culture of Virginia's tribes. My staff and I asked a number of tough questions, and great care and deliberation were put into arriving at this conclusion. After meeting with leaders of Virginia's Indian tribes and months of thorough investigation of the facts, I concluded that legislative action is needed for recognition of Virginia's tribes. Congressional hearings and reports over the last several Congresses demonstrate the ancestry and status of these tribes.

On May 2007, the House overwhelming passed the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, with bipartisan support. This bill has advanced further this year than it has in the past several Congresses with the strong support and tireless efforts of Congressman Jim Moran. Virginia Governor Tim Kaine and the Virginia legislature support federal recognition for these tribes. I look forward to working with my colleagues in the Senate, especially those on the Indian Affairs Committee, to push for passage of this important bill. Congress has

exercised its power to recognize tribes in the past and I ask you to use this power to grant federal recognition to these six Virginia tribes.

Last year, we celebrated the 400th Anniversary of Jamestown—America's first colony. After 400 years since the founding of Jamestown, these six tribes deserve to join our nation's other 562 federally-recognized tribes.

Thank you Mr. Chairman and members of this Committee. I respectfully request that this Committee pass this bill as soon as possible.

The CHAIRMAN. Senator Webb, thank you very much.

Finally, we will hear from Congressman Moran.

STATEMENT OF HON. JAMES P. MORAN, U.S. REPRESENTATIVE FROM VIRGINIA

Mr. MORAN. Thank you very much, Senator. I really appreciate my two friends, Governor Kaine and Senator Webb, testifying on this.

I also greatly respect your position, Mr. Chairman, that the legislative process is not the ideal way to determine the legitimacy of Native American Tribes, but our point is there really is a uniqueness here with these Virginia tribes. First of all, most Native American Tribes gained their recognition when they signed an agreement with the United States Government.

When they signed these peace treaties, that established their legitimacy. These tribes signed their peace treaties with the King of England; the principal one was in 1667 with Charles II. It has been recognized for 332 years both in Virginia and in England. So there is a uniqueness because they date all the way back, as both the Governor and Senator have said, to when the English settlers arrived on the shores of Virginia.

We were hoping we could get this done by the 400th anniversary of Jamestown. We missed it, but we can't give up on it. But the second reason goes to a very shameful part of Virginia's history. There was a paper genocide that occurred. The officials in Virginia deliberately expunged the records, they destroyed the official records and most of the private records. I have a statement that gets into the whole thing, but, basically, a lot of Virginia's ruling elite claim to be blood descendants of Pocahontas, and in their view that meant that no one else in Virginia could make a claim that they were Native American or a descendant of Pocahontas because to do so would mean that Virginia's ruling elite would have to be classified as all other non-whites were, which was—and this was the law—the inferior Negroid race." This was what it was about.

And with enormous hypocrisy, Virginia's ruling elite pushed policies, got them passed, and it culminated with the Racial Integrity Act of 1924, and in Orwellian fashion they destroyed the State and local courthouse records, and that really has meant that it has been almost impossible for these tribes to establish their legitimacy because the courthouse records just aren't there anymore.

I think any of the tribes would be hard-pressed to show that they have endured the same kind of thing that has happened to these Native American Tribes. It wasn't until 1967 that that law was taken off the book. Granted, this is Virginia's problem. I think it is pretty clear Virginia has come a long way, and we may even go even further in November——

[Laughter.]

Mr. MORAN. —but this is something we have got to rectify. We have got to rectify this, Mr. Chairman. It really is unique. These tribes are so deserving; they are good people. We have even got language in the bill that says that they can't gamble. I mean, this is such tight language, I can't believe that they have accepted it, but that is the reality. This is about their pride and about their heritage and what they leave as a legacy to their children and grandchildren.

So that is why we are here and we really hope that we can get this bill into law. Thank you.

[The prepared statement of Mr. Moran follows:]

PREPARED STATEMENT OF HON. JAMES P. MORAN, U.S. REPRESENTATIVE FROM VIRGINIA

Good afternoon and thank you, Mr. Chairman and Members of the Committee.

I appreciate your willingness to hold this hearing and to provide me and my colleagues from Virginia with an opportunity to testify. My message is straightforward and simple: Congress must grant Virginia's historic tribes federal recognition. It can and it should do so. It has the authority, and there is precedent. Doing so will also help right a wrong, a grave injustice, that has been perpetrated for centuries.

Last year marked the 400th anniversary of the first permanent English settlement in the New World at Jamestown. The forefathers of the tribal leaders who are in this room today were the first to welcome the English, and during the first few years of settlement, ensured their survival. As was the case for most Native American tribes, as the settlement prospered and grew, the tribes suffered. Those who resisted quickly became subdued, were pushed off their historic lands, and, up through much of the 20th Century, were denied full rights as U.S. citizens.

Despite their devastating loss of land and population, the Virginia Indians survived, preserving their heritage and their identity. Their story of survival doesn't span just one century, it spans four centuries of racial hostility and coercive state and state-sanctioned actions.

The Virginia tribes' history, however, diverges from that of most Native Americans in two unique ways. The first explains why the Virginia tribes were never recognized by the Federal Government; the second explains why congressional action is needed today.

First, unlike most tribes that resisted encroachment and obtained federal recognition when they signed peace treaties with the Federal Government, Virginia's tribes signed their peace treaties with the Kings of England. Most notable among these was the Treaty of 1677 with Charles II. This Thanksgiving, the Virginia tribes will fulfill their commitment to that treaty, as they have every year for the past 332 years, by providing Virginia Governor Tim Kaine with game and produce as tribute in a ceremony at the State Capitol. This may be the longest celebrated treaty in the United States.

In the intervening years between 1677 and the birth of this nation, however, these six tribes were dispossessed of most of their land. They were never in a position to negotiate with and receive recognition from our nascent federal government. Two years ago, the English government reaffirmed its recognition of the Virginia tribes hosting them at ceremonies in England. Sadly, as we concluded the 400th anniversary of Jamestown, these same Virginia tribes remain unrecognized by our Federal Government. This is a travesty this Committee can correct.

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

With great hypocrisy, Virginia's ruling elite pushed policies that culminated with the enactment of the Racial Integrity Act of 1924. This act directed state officials, and zealots like Walter Plecker, to destroy state and local courthouse records and

reclassify in Orwellian fashion all non-whites as "colored." It targeted Native Americans with a vengeance, denying Native Americans in Virginia their identity.

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

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

It wasn't until 1997, when Governor George Allen signed legislation directing state agencies to correct state records, that the tribes were given the opportunity to correct official state documents that had deliberately been altered to list them as "colored." The law allows living members of the tribes to correct their records, but the law cannot correct the damage done to past generations or to recover documents that were purposely destroyed during the "Plecker era."

In 1999, the Virginia General Assembly adopted a resolution calling upon Congress to enact legislation recognizing the Virginia tribes. I am pleased to have honored that request, and beginning in 2000 and in subsequent sessions, Virginia's Senators and I have introduced legislation to recognize the Virginia tribes.

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

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

To underscore this point, the legislation I introduced, as approved by the House, includes restrictive language that would prevent the tribes from engaging in gaming on their federal land even if everyone else in Virginia were allowed to engage in Class III casino-type gaming. I remain puzzled that objections are still being raised that these tribes could somehow engage in gaming given the restrictive language that is now a part of this bill. Nevertheless, I remain willing and ready to work with you and my fellow Senate colleagues to find the right equation that is respectful of tribal sovereignty and rights and meets Members' concerns about this issue.

The Senate Indian Affairs Committee, when it was chaired by Senator Ben Nighthorse Campbell in 2004, reported out a Virginia tribal recognition bill. At a hearing before this committee in 2006, Senator John McCain said that these tribes deserve recognition. Mr. Chairman, the Virginia tribes have waited too long, have come too far, to see their recognition bill die with the 110th Session of Congress. I also note that legislation to grant federal recognition to the North Carolina Lumbee tribe has been approved by this Committee.

In the name of justice, I urge you to move this bill through Committee. And if we must adjourn before action on it is complete, I ask that you to make it your first priority in the next Congress.

Thank you.

The CHAIRMAN. Congressman Moran, thank you very much.

I want to make a very brief comment before we excuse our witnesses. Senator Webb has been aggressively irritating on this subject for a long while,——

Senator WEBB. Thank you.

[Laughter.]

The CHAIRMAN. —as you know, on behalf of the interests and passion he has. He has been pushing and pushing very, very hard.

I know that some have raised a question why are we holding a hearing this close to the end of the legislative session, and I want to explain to you why we are doing this. We have spent an enormous amount of time this year to get Indian health care out of the United States Senate, the first time in 17 years. We did that. It was very hard; it took a lot of the Committee's time. The Indian housing bill went through this Committee and the United States Senate. Also, we have spent much of the year working on a new groundbreaking piece of legislation on Indian law enforcement.

So we have not done all we would like to do in other areas, and I scheduled this hearing, with the cooperation of Senator Murkowski, even though we are near the end of the session, so that, hopefully, in the first quarter when we get back next year, this Committee will take action and make decisions.

It is not a secret that I would prefer that the recognition process at Interior be a workable process. I recognize, however, that it is a process that is broken, and I believe it is appropriate for this Committee to make decisions case-by-case in matters where equity would require the Committee to proceed. We have had congressional recognition in the past for some. You make a very persuasive and strong case. I know how strongly you feel about this. Senator Warner has asked that a statement that he has submitted be included for the record, which we will do by consent.

But I want to thank you and thank members of your tribes and others who will testify today. Our purpose today is to continue and hopefully finalize the hearing records, and when we come back in a very few short months, begin to make the decisions that I want the Committee—and I know Senator Murkowski and Senator Tester feel as I do—to make. So let me thank you very much for your courtesy to come here today. Thank you.

I want to call to the dais: Helen Rountree, Ron Yob, Ann Tucker, and John Sinclair. If they would come up to the witness table.

Let me thank all of you for being here.

Senator Murkowski, I did not give a full opening statement. Let me make a comment and just a couple of words, and if you wish to make a comment.

I indicated that the acknowledgment process at the Federal level is largely broken. We have hearings on it. I do think that we have tribal leaders who come to Washington, D.C. frustrated and exhausted after decades of work, believing that they have made progress and, yet, receiving no answer.

My preference is always to use the process that exists at Interior. I recognize that that is not always possible. I recognize the process itself is broken. So even as we are working with the Department of Interior, we are holding these hearings with several tribes that have come to us whose circumstances are different and unusual so we can consider action in the first quarter of next year.

I just wanted to make that point.

Senator Murkowski?

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

Senator MURKOWSKI. Well, Mr. Chairman, just to follow up, I think we do recognize that the process is too slow, it is too cumbersome to recognize that you would have three decades, perhaps more, working to seek recognition. It is full-time employment for the lawyers, but not really a resolution to those that are seeking the redress, and we must find a better way to provide for this.

We do recognize there has been a push in this direction with the Department of Interior publishing the additional guidance and directions, but we continue to hear that even with a recognition process that is more streamlined, perhaps more efficient, in an effort to improve the time line experiences, we still continue to hear from so many that the current administrative recognition process is insufficient, and we recognize this. We appreciate that it is excessively drawn out; it does have uneven application of the regulatory criteria.

So, as the Chairman has noted, when it is not working within the agency, sometimes there must be a redress through the legislative process, and that is why we have those of you assembled before us here today. I know that this has been the second visit for some of you. We appreciate that. Again, we do want to do what we can from the legislative process to help advance, and having this hearing today puts clearly on the record the situation that so many of you have been in the midst of for so long. So I appreciate your time and your very diligent efforts and your willingness to come before the Committee this afternoon.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski, thank you very much.

Senator Tester?

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Yes, thank you, Mr. Chairman. You know, I guess we have been here before, and you folks have been here many, many times before. The Department of Interior isn't doing their job on this particular issue, it is quite obvious to me. You know, we have been through five Administrations, going on six, and, quite honestly, I have said this many times, they need to make a decision and tell you yes or no, instead of just demanding paperwork.

I remember the last time you were here, John Sinclair, and you talked about the mountains of paperwork and the mountains of paperwork, and how this has become a generational thing now. Your father did this, probably your grandfather before him. But the truth is that the system is broken badly, and I don't know if it is because people in the agency aren't committed to make it work or if we have to develop something new, but it is not working. I agree with the Chairman that an act of Congress is not the way to get this job done, although, if we have to, we will. So we will go forward.

I have a meeting I have to run to, but I really want to thank John Sinclair, the Chairman of the Little Shell Tribe in Montana, for his efforts and his commitment to this cause and his people, and appreciate your being here today and appreciate all you have gone through, because, quite frankly, I know it hasn't been easy for you. This bill that we are going to hear about today is sponsored by myself and Senator Baucus and Representative Rehberg, so we are all on the same sheet in Montana over this. It was in the State legislature when they passed resolution after resolution, encouraging the Federal Government to give the Little Shell recognition.

So, with that, thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester, thank you very much.

Let me call on John Sinclair, who is President of the Little Shell Tribe of Chippewa Indians of Montana. President Sinclair, welcome. You may proceed.

And let me just say for all four of you that your entire statements will be made a part of the permanent record. You may summarize.

STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Mr. SINCLAIR. Thank you. Good afternoon, Chairman Dorgan and members of the Committee. On behalf of myself and the Little Shell Tribe of Montana, I extend a special greeting and heartfelt thanks to Senator Tester for his continued friendship and support of the Little Shell Tribe. I am accompanied by a tribal attorney in the Federal recognition process, Kim Godschalk. To the Committee, I express the Tribe's and my own appreciation for the opportunity to tell our story, a story that shows that justice and good policy behind Senator Tester's bill to recognize Little Shell Tribe, S. 724.

In 1892, our leader, Chief Little Shell, rejected the terms of a Federal agreement that settled many Chippewas on reservations. Our people, who had fallen the buffalo herds into Montana, were left with no reservation and no means of subsistence, as the buffalo herds had largely died out. Because our ancestors had no reservation home and were so poor, they became known as the trash can Indiana or the landless Indians of Montana.

In 1908, Congress first appropriate funds to acquire land for the landless Indians of Montana, which included our ancestors. Congress appropriated money for this purpose several more times. After the Indian Reorganization Act was passed in 1934, the Department of Interior also promised a reservation home for the Little Shell people. But money was too short and our people never got the homeland they so often promised to us. So the tribe never received the service and benefits our people so badly need, service and benefits that our brothers, who accepted reservation life according to the terms of the 1892 agreement, have long enjoyed.

Because we were landless, we were viewed as unrecognized when the Department of Interior set up their federally acknowledgment process in 1978. We hoped, however, that this process would be the answer, but we were wrong. We have been in this process now for 30 years, and there is no certain end in sight. We have been caught in a bureaucratic twilight zone.

Let me just give you a few dates to give you a flavor of what the Little Shell Tribe has been through with this process.

In 1978, the Tribe first notified the BIA of our intent to petition for acknowledgment and spent the next 14 years collecting documents, doing genealogies, participating in technical assistance meetings with the BIA, and responding to numerous requests for yet more documents.

In 1995, the BIA finally declared the Tribe's petition was ready for active consideration.

In 1997, the BIA began active consideration of the Tribe's petition for recognition.

In 2000, the BIA issued its proposed finding on the Tribe's petition for recognition.

In 2005, the BIA told the Tribe to expect the last stage, the final determination on the Tribe's petition, in February of 2007. This was extended to the end of 2008 and recently extended again until January 28, 2009.

So 30 years after the Tribe began this process we are still waiting for the BIA to complete the process, and we have no faith that this most recent extension will be the last one. But it gets worse.

In 2000, the BIA issued a favorable proposed finding on the Tribe's petition. In other words, the BIA concluded in 2000 that the Tribe had met all the criteria for recognition under the regulations, and yet the Bureau asked for more documents, which we provided, and still we wait. In the meantime, we have lost a whole generation of Little Shell people, including recently my own father, who fought for recognition as President of the Tribe, just as I do now.

Mr. Chairman, this is why the Little Shell Tribe needs Congress to step in. End the process and enact special legislation to recognize the Little Shell Tribe. Enactment of S. 724 is good, responsible Indian policy. After all, the BIA itself has said that the Little Shell Tribe meets the criteria for recognition, and it said so nearly eight years ago now. Justice to the Little Shell people requires the enactment of S. 724. We have endured all these generations without the Federal status, reservation, and service that our Indian brothers in Montana have long enjoyed. It is time the Little Shell people received the same Federal status.

I would like to end on this point. Every government in Montana knows the Little Shell people and agrees that justice requires recognition of the Tribe. The State of Montana and all local governments support S. 724, and all recognized tribal governments in the State support recognition of the Little Shell Tribe. Congress deals every day with difficult issues. This is not one of them. On behalf of the Little Shell people, I implore the Committee to move Senator Tester's bill forward. Thank you.

[The prepared statement of Mr. Sinclair follows:]

PREPARED STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Chairman Dorgan, Vice Chairman Murkowski, our good friend Senator Jon Tester, and honorable members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify in support of S. 724, a bill that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana and the United States, and address related issues.

My name is John Sinclair and I have the honor of serving as President of the Little Shell Tribe. I follow in the footsteps of my father and grandfather in that honor and appear before you today in the same work at which they labored—the long effort to confirm federal recognition of the Little Shell Tribe. S. 724, introduced by our tireless champion Senator Tester, would accomplish this long sought goal for the Tribe. I urge the committee to act favorably on S. 724. The bill is consistent with Congress' and the Department of the Interior's historical commitments to acknowledge our people and establish a land base for them. This bill is necessary since our experience with the acknowledgment process administered by the Office of Federal Acknowledgment, Bureau of Indian Affairs, shows that the Department either cannot or will not bring that process to conclusion. And the terms of S. 724 show it to be a reasonable approach that would address, and thereby expedite, issues related to confirmation of the Tribe's federal status.

The History of the Little Shell Tribe

The Little Shell Tribe of Chippewa Indians is the successor in interest to the Pembina Band of Chippewa Indians in North Dakota. We were buffalo hunters who lived and hunted around the Red River and the Turtle Mountains in North Dakota in the early 1800s. The Pembina Band was recognized by the United States in an 1863 treaty that was ratified by the Senate. See Treaty of October 2, 1863, 13 Stat. 667. After the treaty, some members of the Pembina Band settled on reservations in Minnesota but our ancestors followed the buffalo herds into western North Dakota and Montana, eventually settling in Montana and in the Turtle Mountains of North Dakota.

In 1892, the United States authorized the creation of a commission to negotiate for a cession of land from the Turtle Mountain Chippewa and provide for their removal. Chief Little Shell and his followers walked out on the negotiations and refused to accept the terms of the eventual agreement. Some of Little Shell's followers moved to Montana and joined with other members of the Pembina Band who had settled in Montana; our collective Pembina ancestors came to be known as the "Little Shell Band." When our traditional means of livelihood died with the buffalo herds, our ancestors were left to eke out an existence in a number of shantytowns across Montana. We became known as "the trash-can Indian," or "the landless Indians." Forced to live in communities which did not welcome us, our people faced severe racism and discrimination throughout Montana, some of which continues today.

For one hundred years now, Congress has known of and attempted to address the plight of the Little Shell people. In 1908, Congress first appropriated funds to settle our people on a land base. 35 Stat. 84. Congress appropriated funds again in 1914 and, again, every year thereafter until 1925—all to provide a reservation land base on which to settle the "homeless Indians in the State of Montana." The acquisition was never made and the Tribe never recognized.

In the 1920s, newspaper articles chronicled the plight of our people. Our leaders pleaded for help for the destitute Little Shell people. Tribal leader Joseph Dussome asked Congress, "Are we not entitled to a Reservation and allotments of land in our own County, just the same as other Indians are?" Two weeks later, the Department of the Interior rejected our leader's plea:

> The Indians referred to are Chippewas of the Turtle Mountain Band. They were under the leadership of Little Shell who became dissatisfied with the treaties of the United States and the Turtle Mountain Band of Chippewas. He accordingly refused to accede thereto . . . The disaffected band, by its failure to accede to the terms of the treaty and remove to the reservation is now unable to obtain any rights thereon for the reason that the lands of this band are all disposed of, and the rolls became final[.] . . . There is now no law which will authorize the enrollment of any of those people with the Turtle Mountain band for the purposes of permitting them to obtain either land or money.

Letter of Asst. Secretary Scattergood, dated December 14, 1931. Three years later, however, Congress enacted the Indian Reorganization Act [IRA], which provided a mechanism for groups of Indians like ours to organize and apply for land. In December 1935, the Commissioner of Indian Affairs took steps to organize our people under the IRA. The Commissioner proposed a form to enroll our people, stating:

> It is very important that the enrollment of homeless Indians in the State of Montana be instituted immediately, and it is proposed to use this form in the determination of Indians who are entitled to the benefits of the Indian Reorganization Act.

BIA Letter, December 23, 1935. This effort resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the

project. Once the roll was complete, the Field Administrator clearly stated that the purpose of the roll was to settle our people and bring them under federal jurisdiction:

> The landless Indians whom we are proposing to enroll and settle on newly purchased land belong to this same stock, and their history in recent years is but a continuation of the history of wandering and starvation which formerly the Rocky Boy's band had endured.
>
> Out of the land purchase funds authorized by the Indian Reorganization Act, we are now purchasing about 34,000 acres for the settlement of these Indians and also to provide irrigated hay land for the Indians now enrolled on Rocky Boy's Reservation. The new land, if devoted wholly to that purpose, would take care of only a fraction of the homeless Indians, but it is our intention to continue this program through the years until something like adequate subsistence is provided for those who cannot provide for themselves. The first step in the programs is to recognize those Indians of the group who may rightfully make claim of being one-half degree, which is the occasion for presenting the attached applications. The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.

Roe Cloud Roll applications, 1937. The Department of the Interior never fulfilled this promise. The limited resources available to acquire land were expended for tribes already recognized. In 1940, Senator James Murray requested Interior to fulfill its promise of land for the Little Shell Band. Assistant Commissioner Zimmerman responded that his office was "keenly aware of the pressing need of the landless Chippewa Cree Indians of Montana. The problem thus far has been dealt with only in a very small way. I sincerely hope that additional funds will be provided for future purchases in order that the larger problem remaining can be dealt with in a more adequate manner." Unfortunately, the Federal Government's efforts to assist the Little Shell Tribe gave way during the termination era of the 1950s to the termination policy, and, as a result, the land promised for our people was never forthcoming.

Recent Experience With the Office of Federal Acknowledgment [OFA]

When the Department of the Interior adopted regulations establishing an administrative process to acknowledge Indian tribes in 1978, once again the Little Shell people had hope. We hoped that the Department's process would finally bring to conclusion the Tribe's long effort to achieve federal recognition. The administrative process has turned out to be just another cruel hoax on the Little Shell people. We began work on through this new process in 1978 and, *thirty years later,* it still has not been completed.

For years after its initial submission, the Tribe researched its history and community to establish the seven mandatory criteria under the regulations. We had numerous technical assistance meetings with the staff and responded to requests for additional information. Finally, nearly twenty years later in 1995, the Bureau of Indian Affairs declared that the Tribe's petition was ready for active consideration.

However, a "ready for active consideration" designation does not mean that the OFA will commence its review; it only means that you get into line. Active consideration begins only when the Bureau of Indian Affairs has time to commence active consideration. In our case, that was 1997, two years after the petition was declared ready for active. At that point, we hoped that we were at least on the road toward completion of the process. Once again, we were wrong.

On July 24, 2000, the Bureau of Indian Affairs finally issued the proposed finding on the Tribe's petition. The proposed finding found that the Tribe had met all the seven mandatory criteria and should be recognized—but this was not the end of the process. It merely triggered the next step—which is public comment on the proposed finding and review by the Bureau of Indian Affairs of those public comments as part of its final determination.

The Tribe takes very little comfort in the favorable proposed finding. Although the Department found that the Tribe met all the mandatory criteria, the Department "encouraged" the Tribe to submit more documentation. No significant evidence was submitted in opposition to the favorable proposed finding. Unlike many other cases, neither the State of Montana nor any local government submitted adverse comments on the proposed favorable finding for the Little Shell Tribe. But the Department made clear that it preferred that the Tribe submit additional records for certain time periods before the 1930s. We took the Department's suggestion to heart, submitting approximately 1,000 pages of additional reports and appendices supported by several boxes of documentation.

We are still waiting for the Department's final determination on the Tribe's petition. The Director of OFA advised a federal court in June 2005 that OFA expected to issue its Final Determination on Little Shell in February 2007. See 8th Declaration of Lee Fleming, *Mashpee Wampanoag Tribal Council v. Norton,* Case No.1:01CV00111 (D.D.C.) This did not happen. Then, OFA advised the Tribe in writing to expect the commencement of active consideration on the final determination on August 1, 2007. This did not happen, either. Instead, OFA granted itself extensions, advising the Tribe to expect active consideration on the final determination to begin by August 1, 2008, with a final determination to be issued by the end of 2008. Once more, this did not happen. On July 24, 2008, the Tribe received another letter from OFA, granting itself yet one more extension. Now, we are told to expect a final determination by January 28, 2009. Of course, nothing prevents the OFA from granting itself another extension, so the Tribe has no confidence that this new deadline is any more firm than the earlier deadlines.

Over the past 30 years, the Tribe has been fortunate to have the services of the Native American Rights Fund on its petition. Without NARF's assistance, it would have been impossible for the Tribe to participate in this protracted and expensive administrative process. NARF has spent over 3,400 attorney hours over the last fifteen years on our petition. Consultants and graduate students put in thousands and thousands of additional hours. Tribal consultants, such as historians, genealogists and graduate students, donated substantial amounts of time pro bono or worked at substantially reduced rates in compiling large portions of the petition. Even with this generosity, the total cost for consultants and associated expenses over the last fifteen years exceeds $1 million dollars.

The lengthy process also imposes an immeasurable human cost, with the recognition battle passing from one generation to the next. The demands of providing for my people without the protection of federal recognition, a protection that has been promised for one hundred years, has been daunting, to say the least. And it is just heartbreaking to think that, after all we've been through with this administrative process, the Department could at the end of day even decide not to confer federal acknowledgment, to reverse its own favorable proposed finding.

Enough is enough. It's time for Congress to step in, to accept what the Department itself found in its proposed finding—that the Little Shell Tribe is entitled to federal recognition. *It is unconscionable that nine years after it found that the Little Shell constitutes an Indian tribe, that in the face of no significant opposition to that proposed favorable finding, that the Little Shell Tribe is still waiting.* One entire generation of Little Shell people has passed away, including my own father, as we wait for administrative action and we have no confidence that the new deadline will be met.

The Constitution of the United States gives the Congress the privilege and right to recognize tribal governments. The Congress has considered the needs of the Little Shell people time and time again. Congress should not wait any longer, and should not force the Little Shell people to wait any longer, for the completion of a seemingly never ending administrative process. It's time for Congress itself to issue the final determination on the status of the Little Shell Tribe and enact S. 724.

The Reasonable and Necessary Terms of S. 724

First and foremost, S. 724 takes the final step that has been interminably delayed by the Bureau of Indian Affairs—even though it has essentially acknowledged that the Little Tribe is real and should be recognized—and that is the confirmation of federal recognition for the Tribe. This has been promised to the Tribe, both by Congress and the Department of the Interior. There is no rational reason for further delay. Since the Department does not seem capable of bringing its deliberations to an end, the Congress should do so by recognizing the Little Shell Tribe through legislation.

I must underscore that the State of Montana, affected local governments, and all recognized tribes in the State of Montana support the bill to recognize the Little Shell Tribe. The circumstances here truly are unique. The Department of the Interior has already issued a proposed favorable finding on the Tribe's petition and there is no government opposition to recognition of the Tribe. In this case, the enactment of federal recognition legislation only makes sense.

In addition, S. 724 does more than simply confirm federal recognition. It addresses many of the issues newly recognized tribes and local communities struggle with for decades after formal federal recognition—the establishment of a land base and a tribal service area. It is well documented that it takes years and sometimes more than a decade for the Department of the Interior to take land into trust for newly recognized tribes. For example, it took eight years after the Jena Band of Choctaw Tribe was recognized before Interior took that Tribe's cemetery and governmental

offices into trust. Further, many tribes suffer from the years it takes for the Department to establish a service area for the newly recognized tribe. For example, after completion of administrative challenges to the Department's final determination acknowledging the Cowlitz Indian Tribe in 2002, the Cowlitz Tribe still does not have a BIA service area. Thus, even if the Department of the Interior does issue its final determination next year (which is doubtful given the Tribe's experience with OFA), the Tribe could be forced to endure many additional years in legal limbo as it struggles to establish and land base and service area.

S. 724 addresses these issues. It defines a service area for the Tribe consisting of four counties where our people live. It also directs the Secretary to acquire trust title to 200 acres located within the service area to be used as a tribal land base. With these terms, the Little Shell people are put much closer to the actual delivery of federal Indian trust services and benefits.

Can any reasonable person believe that the Little Shell people haven't waited long enough? The enactment of S. 724 would finally end the uncertainty regarding the status of the Little Shell people. The enactment of S. 724 would finally provide for the establishment of a land base for the Little Shell people, something the Department of the Interior promised one hundred years ago. And the enactment of S. 724 would provide certainty for the local governments that support recognition of the Little Shell Tribe, by defining the Tribe's service area and the location of a land base.

Conclusion

As our history shows, the Little Shell people are persistent and patient. But I have difficulty in explaining to my people why we still remain unrecognized, even though the Department of the Interior issued a favorable proposed finding on the Tribe's petition in 2000. We have waited on the Department for one hundred years. Now it's time for Congress to act. The Little Shell people implore this Committee to act favorably on S. 724 and allow the bill to move forward.

Additional Testimony

It was a pleasure to testify before the Committee on S. 724, a bill to reestablish the government to government relationship between the United States and the Little Shell Chippewa Tribe of Montana. At that hearing, Mr. Lee Fleming of the Office of Federal Acknowledgment made statements regarding the Little Shell Tribe that are of concern to the Tribe and which therefore require a response. Towards that end, I respectfully request that this supplemental statement of the Little Shell Tribe be included in the hearing record. There are three issues I wish to address.

1. OFA's Alleged "Warning" in the Favorable Proposed Finding

Mr. Fleming testified that the Little Shell Tribe had been "warned" in OFA's favorable proposed finding that there were gaps in the Tribe's documentation, gaps that had to be filled or the Tribe would run the risk that OFA's favorable finding could turn into a negative final determination. As OFA stated in the Notice of Proposed Finding on the Little Shell petition, "This proposed finding is based on the available evidence and does not preclude the submission of other evidence to the contrary. Such new evidence may result in a change in the conclusions reached in the proposed finding." 65 F. Reg. 45394, 45396 (July 21, 2000). In other words, because no new evidence was submitted that would support a contrary finding, there is no basis in the record for turning the favorable proposed finding into a negative final determination.

In fact, Mr. Fleming's suggestion that Little Shell had been "warned" in the favorable proposed finding is contradicted by the finding itself. On criterion (a), OFA's proposed finding specifically states that contrary new evidence would be required to reverse the favorable proposed finding:

> This proposed finding also accepts as a reasonable likelihood that references to the petitioner's individual ancestors as Indians and references to portions of their ancestors as residents of Indian settlements before the 1930's are consistent with the identifications of these and other ancestors of the petitioner as Indian groups after 1935. This conclusion departs from prior decisions for meeting criterion (a), which required evidence of a specific identification of the petitioner as an Indian entity during each decade. The Department believes that, *absent strong proof to the contrary,* it is fair to infer a continuity of identification from the evidence presented . . . (emphasis supplied)

Summary under the Criteria for the Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana (July 14, 2000) at page 6 (hereafter "Summary").

It would be arbitrary and capricious for OFA now to apply a different standard to the Little Shell Tribe in order to reverse the favorable proposed finding in the absence of new, negative evidence.

Finally, the Tribe did, in fact, submit substantial additional evidence in response to OFA's request for more documents in the favorable proposed finding. For example, additional work has demonstrated that the percentage of members tracing to a historical tribe is higher than thought in the proposed finding, *i.e.,* is 94%, not 62% We provided this additional information specifically to show that there was no "departure" from previous practice in the favorable proposed finding, not because we believed such a showing was necessary to avoid a reversal of the finding into a negative final determination. As OFA's proposed finding observed, certain departures from previous acknowledgment decisions for Little Shell were warranted, but additional evidence from the Tribe "may create a different record and a more complete factual basis for the final determination, and thus eliminate or reduce the scope of these contemplated departures from precedence." 65 F. Reg. at 45395. Since no substantial negative evidence was submitted, and all governmental entities in the state support the recognition, our Tribe has expected that—someday when OFA ever finishes its work on our petition—the favorable proposed finding would become a favorable final determination. (But see concern expressed in section 2, *infra.*) Now, the very existence of the voluminous record of 67,000 pages, a record OFA convinced the Tribe it needed to generate, is used as an excuse by OFA for having missed its deadlines.

2. OFA's Failure to Share New Information with the Little Shell Tribe

Mr. Fleming espoused his view that tribes should be required to go through the complete administrative process so that all the evidence relating to tribal existence can be "scrutinized" by all concerned. But in fact OFA's process does not allow this "scrutiny" of all evidence, even by the petitioner. For example, 25 CFR § 83.10 (l)(1) provides that after the period for submitting materials has closed, the "Assistant Secretary may also conduct such additional research as is necessary to evaluate and supplement the record. . . . the additional materials will become part of the petition record." However, OFA makes no allowance in its regulations for a petitioner to access and respond to these materials prior to a final determination. In fact, OFA conducted weeks of field study in Montana after the closing date for submission of materials, conducting dozens of interviews and accumulating other materials as well. These materials have not been provided to the Little Shell Tribe despite the Tribe's request that they be shared.

Indeed, the Tribe was forced to file a Freedom of Information Act request for the documents and OFA denied the Tribe's request for a waiver of the FOIA fees, which OFA estimated at approximately $4,500 dollars. The Tribe appealed OFA's denial of the fee waiver request, but then the Tribe ultimately informed OFA that it would pay the under protest. OFA then informed us that the twenty working day time within which FOIA allows OFA to respond could not be met. When we asked OFA how long it would take to produce the new documents, our attorney was informed that the OFA attorneys who must review for privacy matters were all busy and that review of the responsive documents was not a high priority for them. Who knows when, if ever, we will get the material? And even if it is provided, there is no provision in the process for us to comment on them or to supplement the record if necessary before the final determination is made. The OFA *process itself* violates due process.

3. Extensions of Time

In his testimony, Mr. Fleming tried to emphasize that the Tribe itself had asked for numerous extensions as an excuse for OFA missing its target dates for completing the final determination. Mr. Fleming's attempt to blame shift is based on a mixing of apples and oranges. He tries to compare the Tribe's "understandable difficulty in completing research on a very large number of dispossessed Indians on the American frontier" (Summary, *supra,* at page 6) with the Department's duty to analyze such information once it has been gathered in one place. The latter is a far more manageable task. It should be noted that unfortunately, the Tribe's chief researcher, Dr. Rob Franklin, passed away during this process. It fell to his wife, Dr. Pamela Bunte to pick up the work, juggle her teaching duties, and struggle with her own physical ailments in an effort finally to finish the process of submitting materials to OFA.

Conclusion

In conclusion, there was nothing in Mr. Fleming's statement or response to questions at the hearing that explains either why OFA has been unable to meet its dead-

lines to issue a final determination for Little Shell or how that determination can be anything other than favorable.

The CHAIRMAN. President Sinclair, thank you very much. We appreciate your being here and your testimony.

The Honorable Ann Tucker will testify next, Chairwoman of the Muscogee Nation of Florida.

Chairwoman Tucker, thank you very much for being here. You may proceed.

STATEMENT OF HON. ANN DENSON TUCKER, CHAIRWOMAN, MUSCOGEE NATION OF FLORIDA

Ms. TUCKER. Chairman Dorgan, Honorable Committee Members, my name is Ann Denson Tucker. I am Chairwoman of the Muscogee Nation of Florida, the Florida Tribe of Eastern Creek Indians, and I welcome the opportunity to testify on Senate Bill 514 for the immediate Federal recognition of our tribe. I wish to thank Senator Nelson and Senator Martinez for their bipartisan sponsorship of this important legislation, and their staff members who have spent hours to ensure that this legislative request is the proper thing to do and the right way to do it.

Thirty years of BIA process have inflicted financial hardship and injury on some of the poorest people in Northwest Florida, the Creek Indian people, and there is no end in sight. Because of the BIA's inability to act on this petition, the Muscogee Nation of Florida must rely on Congress.

Muscogee Nation of Florida's center of government is in the Bruce Indian community of Walton County, Florida. Our ancestors signed 11 treaties with the United States Government between 1790 and 1833. After President Andrew Jackson's Indian removal policies had decimated the Creek confederacy, our ancestors were faced with a brutal choice: remove from our homeland or find a way to survive. We found a way to survive.

For the first half of the 19th century, we lived in Dale County, Alabama, in an Indian encampment near the Choctawhatchee River. By the Civil War, we were moving at night to avoid Indian removal and following the river south to Bruce Creek, where we still live today. We established our community, continued our traditions, fished, hunted, timbered, and farmed cooperatively. We did not have anthropologists traveling into the wilderness that was Northwest Florida to seek out Indians in a place where Jim Crow laws had made Indians illegal and the KKK reigned supreme to enforce this policy.

In 1850 Florida, it was illegal to trade with Indians. In 1851 Florida, it was illegal for Indians to hunt and to fish. In 1852 Florida, it was illegal under penalty of death for Indians to be Indians. We have spent 150 years on this homeland, the land of Timpoochee Canard, the land of the Euchees. We live separate, apart, with known community leaders, and they have addressed the needs of our community to the outside world at the local, State, and even Federal level. We had our own currency. We had our own teachers for our own school.

Our council house was the geographic center of our town, the same building used for community meetings, political venues, community business, and community celebrations. It is still, today, our

voting precinct. We have our own cemeteries and our own church with handwritten records that are 100 years old. We have a constitution, a baseline roll, and tribal codes that have been updated through the assistance of the Administration for Native Americans.

We have our language preserved and we are proud that one of our young adult tribal members recently addressed the United Nations on the urgency of protecting the indigenous languages of this Country.

Jim Crow laws did not allow my tribe to have a State reservation. Our State recognition was by concurrent resolutions passed by the House and Senate of the State of Florida. It is the best that you get in Florida, and we are the only Tribe that has this. In Florida, we have no Indian commission to oversee a State recognition. If we are not a Federal tribe, we are considered to be nothing at all.

The legacy of Jim Crow laws is that southeastern tribes historically require intervention from Congress. We are not an exception to the rule with this legislation; we are the norm. The May 23rd, 2008 policy letter from the former deputy director of the BIA removed any doubts as to whether my Tribe should be in this Committee with Senate Bill 514. A unilateral pronouncement in his policy letter enabled another acknowledgment applicant to be bumped to the top of the list for review.

If the criteria for recognition can be arbitrarily and capriciously changed and interpreted, then there is no reason to believe that Muscogee Nation of Florida will ever receive due process or timely disposition. We can be ignored and selectively bypassed by other applicants, regardless of filing dates, and tossed out of the process and told to find another method without full review of our tribal data.

The BIA process is broken beyond repair for the Muscogee Nation of Florida. My tribal government has determined that congressional recognition is our only option. Our arduous journey from Bruce, Florida to these halls of Congress has taken us 150 years. We now stand ready, waiting for active consideration for Congress to take action on Senate Bill 514. Thank you for allowing us to testify today.

[The prepared statement of Ms. Tucker follows:]

PREPARED STATEMENT OF HON. ANN DENSON TUCKER, CHAIRWOMAN, MUSCOGEE NATION OF FLORIDA

Introduction

Chairman Dorgan, Honorable Committee Members, my name is Ann Denson Tucker. I am Chairwoman of the Muscogee Nation of Florida, the Florida Tribe of Eastern Creek Indians. Thank you for inviting me to testify about my tribe's experience with the federal recognition process.

My tribe needs and deserves federal recognition, and we need Congress to take action. Three decades of paperwork, costs, and delays are sapping my tribe of economic resources that could be going to help our members and delaying our ability to access federal programs designed to help tribes in our situation.

First, I would like to remind you about who my tribe is.

The Muscogee Nation of Florida, also known as the Florida Tribe of Eastern Creek Indians, is a tribe of Creek Indian people whose home is centered in Bruce, in Walton County, Florida. Our ancestors signed 11 treaties with the United States between 1790 and 1833 that led to their forced removal from their traditional homelands. Eventually, our tribal ancestors left their Indian enclave in Daleville, Ala-

bama and followed the Choctawhatchee River south to Bruce Creek, where we re-established our community and homes, fished, hunted, farmed cooperatively, raised cattle, and practiced our traditional ceremonies. My Tribe has lived on this land as a community and as a cultural, social and political unit for 150 years.

Unfortunately, the tale of my tribe is not complete without understanding the effort that was made to erase us from history.

By the time we migrated from Daleville to Bruce, *Jim Crow* laws had been enacted in Florida (see attachment 2). By 1850 it was illegal to trade with Indians. And in 1852, it became illegal—under penalty of death—for Indians to be "Indian," unless the Indian was a Seminole or was confined to a Reservation.

Because my tribe neither was Seminole nor had a reservation, the *Jim Crow* laws made it impossible for my tribe to openly embrace its cultural heritage and community. While we survived, until the *Jim Crow* laws were repealed by federal law, the Civil Rights Act, the tribe was forced to hide its government, traditional ceremonies, and culture. As a result, satisfying BIA's tribal recognition requirements became difficult, but we struggled to meet their paperwork demands. However, a series of changes of BIA recognition regulations has made the task impossible because the agency is demanding written documents that do not exist because *Jim Crow* laws criminalized interactions with our tribe.

This brings us to why I am here today—the BIA has made it clear that they do not intend to act on our tribe's petition for recognition.

It has been 60 years since our community leader—my great grandfather–wrote to the BIA and explained that our people deserved compensation for lands taken under the Treaty of Ft. Jackson (see attachment 3). BIA's response, which is on file in the Federal Archives, was dismissive, declaring curtly, "You are mistaken. You cannot possibly be who you say you are because the members of that Tribe are either dead or removed. . ." Fast forward to 1957, when the Seminole Tribe of Florida gained federal recognition and BIA finally acknowledged that it had not rid the Southeast of the Florida Tribe of Eastern Creek Indians. Fast forward again, 14 years, to 1971, when BIA finally verified our racial identification to the U.S. Government and, in turn, to the State of Florida. By then, my great grandfather had been dead for 2 years, and we had already spent 24 years trying to get BIA to acknowledge our existence as Indians, much less our status as a tribe. Now, 37 years later, I am here to tell you that our Indian community and tribal government are still waiting, and we need Congress to intervene.

My tribe has spent many thousands of dollars and an untold amount of time trying to satisfy the BIA. We have retained attorneys, historians, genealogists, archaeologists and other experts to try to satisfy BIA's requirements. And we have done it all over again when BIA's requirements changed. After each attempt we have been met with new demands and no substantive action.

The BIA made is crystal-clear earlier this year that they do not intend to take any reasonable actions to address our circumstances. On May 23rd, BIA published new guidance and direction regarding its internal procedures for evaluating petitions by Indian tribes for Federal acknowledgement. The guidance explicitly states that all tribes must be able to document continuous tribal existence in a manner that demonstrates that the tribe is entitled to a "government-to-government relationship with the United States." As I just explained, we cannot satisfy this standard-because of *Jim Crow* laws designed to erase my tribe from history.

The new guidance makes it clear that now one of two things will happen to the Muscogee Nation of Florida: (1) the BIA will address other petitions, even those submitted years after the Muscogee Nation of Florida's submission, and will "not expend time on the" tribe because it cannot produce certain documents-and the petition will continue to flounder for many more years; or (2) the BIA will notify the Muscogee Nation of Florida that it does not meet BIA standards and will inform the tribe of "alternatives, if any, to acknowledgement."

In the end, the BIA cannot help my tribe because their regulations cannot recognize the unique circumstances my tribe faces. Indian tribes share much in common, but each tribe is also unique. We live in different geographic areas, have differing cultures and traditions, and have faced different legal barriers in the States where we reside. BIA regulations cannot accommodate these differences, and for tribes like mine that means we spend decades languishing in a regulatory purgatory. While BIA changes their rules and guidance over time, the results do not change. And although *Jim Crow* laws were eventually repudiated and eliminated, they continue to operate in the shadows by preventing our tribe from meeting BIA standards.

My people need your help.

We have worked hard over recent years to tell our story and educate lawmakers about our plight. We request that this committee support S. 514, The Muscogee Nation of Florida Federal Recognition Act. This legislation is supported by both Senators from Florida, in the House by our local members of the House of Representatives.

S. 514 is the only path for our tribe out of the continually shifting maze of BIA regulations, guidance, and demands. My people have endured delays and mistreatment for too long, and we seek your assistance. As each year passes, the tribe struggles to care for its members needs as it becomes more and more difficult to imagine when we will receive the federal recognition to which we are entitled. The tribal leaders who began the recognition process in their youth are now tribal elders. Our elders, like my mother, deserve to be recognized before they pass, and your assistance is our only hope for making this a reality.

Thank You.

Attachments*

1) Muscogee Nation of Florida–Executive Summary

2) Florida *Jim Crow* laws

3) Court case permitting compensation for lands taken under Treaty of Ft. Jackson

4) Demographics of tribe 1900–current

5) Walton County endorsement of S–514

The CHAIRMAN. Chairwoman Tucker, thank you very much for being here and for your testimony today.

Next, we will hear from the Honorable Ron Yob, the Chairman of the Grand River Bands of Ottawa Indians in Michigan.

Mr. Yob, thank you. You may proceed.

STATEMENT OF HON. RON YOB, CHAIRMAN, GRAND RIVER BANDS OF OTTAWA INDIANS

Mr. YOB. Good afternoon, Chairman Dorgan, Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs. My name is Ron Yob, and I Chairman of the Grand River Bands of Ottawa Indians of Michigan. On behalf of my tribe, I want to thank you for the opportunity to testify today on S. 1058, a bill to expedite review of the Grand River Tribe's petition. With me today is one of my tribal council members, Philip Cantu.

We strongly believe that recognition of our Tribe is long overdue. We are the largest treaty tribe in the Midwest that does not have a government-to-government relationship with the United States. Our forefathers entered into five separate treaties with the United States: in 1795, 1807, 1821, 1836, and 1855. In the 1855 one, my great-great-great grandfather was one of the signatories of that treaty.

Over 700 members watch as their cousins, who are enrolled in other Michigan tribes, enjoy the benefits of Federal recognition. Our members wonder why Federal education and health care is not available to us. It is very sad to be denied our birthright as this Nation's first Americans. Over 250 of our members are one-half blood Grand River Ottawa. Little River has already negotiated our treaty land rights through agreements with utility companies without our participation or input. We need recognition so we will be at the table.

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*The information referred to is printed in the Appendix.

Our inland hunting and fishing rights were negotiated by the other treaty tribes in the State of Michigan and the United States. Grant River was not at the table. We were told not to intervene, and we had no money to do so, in any case. We believe that if Congress does not act soon on our recognition, the damage to our culture and traditions could be very severe.

If we have to wait the 20 or 25 years it will take the BIA to act, many of our elders will be gone. They are our language speakers who need to pass their knowledge down. Without help from Congress, it would be very hard to maintain the transfer of our culture to our children. We are trying very hard to keep our traditions alive, but every year that goes by it becomes more and more difficult.

We are certain that we meet the seven mandatory criteria established by the BIA and the regulations that are found at Part 83.7 of Section 25 of the U.S. Code of Federal Regulations. The documents we provided to the BIA prove this. We have been identified as a distinct community since 1900. The Tribe has existed as a community from historical times until the present. The Tribe has maintained political influence over its member from historical times to the present.

BIA has a copy of our current governing documents, including our membership criteria. Our members are individuals who descend from a historic Indian tribe. Our members are not members of other federally recognized Indian tribes and our Tribe has not been terminated by an act of Congress. We have documented these criteria thoroughly, but I am quite sure that, as I sit here, the BIA has not begun to review the additional material we submitted in 2006 and will not look at those documents until well into the next decade, if then.

Meanwhile, at great expense and no financial assistance from the Government, the Tribe has had to, and will in the future, continuously update all the material and file it with the BIA. Recognized tribes receive Government loans and grants to maintain their important tribal government infrastructures. The simple fact is that the Federal Government system is broken. There is no way it can be fixed unless Congress steps in with a new law of additional funds. At this point, that does not seem likely.

Congress has regularly reviewed the recognition process at least since the early 1980s and has agreed that the process is broken. In fact, Congress knows the regulations now in place are not based on any law passed by Congress. We hope that Congress will pass our bill with amendments to bring it up to date. We are happy to work with the Committee staff on new language. We have been on the current recognition system for 14 years, and hope that we do not have to wait another 20 years for a final determination of our status.

As my testimony points out, Grand River applied for reorganization in 1935, but we were denied because the Tribe had no land base and the Department had no money for land purposes. Congress has preliminary authority over Indian Affairs. As such, in the end, Congress has the responsibility for determining who are Indians and which tribes deserve Federal reaffirmation. No one is closer to the issues than the members of Congress and Senators from

the States where the tribes are located. In all of the cases before you today, support from members of the House and Senate for the tribes involved is evident and should be respected.

I want to thank you for letting me present that.

[The prepared statement of Mr. Yob follows:]

PREPARED STATEMENT OF HON. RON YOB, CHAIRMAN, GRAND RIVER BANDS OF OTTAWA INDIANS

Good afternoon Chairman Dorgan, Vice Chairman Murkowski and Members of the Senate Committee on Indian Affairs. My name is Ron Yob and I am Chairman of the Grand River Bands of Ottawa Indians ("Tribe") of Michigan. Thank you very much for holding this hearing today on the bill, S. 1058, that would expedite review of the Tribe to secure a timely and just determination of whether the Tribe is entitled to recognition as a Federal Indian tribe. We would like to take this opportunity to express our deep appreciation to Senator Levin and Senator Stabenow for their interest and support of our Tribe and for introducing this legislation on our behalf.

The two Senators also introduced a bill on behalf of the Tribe in the 109th Congress, S. 437, on which this Committee held a hearing on June 21, 2006. No companion bill has been introduced in the House of Representatives, although we are working with Congressman Hoekstra on a bill to provide direct congressional recognition of the Tribe in the same manner as Congress, in 1994, recognized our sister tribes, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians.

For many valid reasons, the Tribe is very hopeful that the Committee will favorably consider S. 1058 or a similar bill. The story of our Tribe is long and varied, as is the story of recognition of all of the Michigan Indian Treaty Tribes of which the Grand River Bands of Ottawa Indians may be the only one that remains unrecognized.[1] The Grand River Bands of Ottawa Indians is the largest unrecognized Treaty Tribe in Michigan—and perhaps in the entire United States. Our members live primarily in western Michigan, in the same area we have lived since before the Europeans first arrived there. Many elders speak our Ottawa language. Our prehistory burial mounds are located along the Grand River near the City of Grand Rapids and in many other areas of the River from below Lansing to Grand Haven.

Tribal History

Who We Are: The Grand River Bands of Ottawa Indians of Michigan is composed of the 19 bands of Ottawa Indian who occupied the territory along the Grand River Valley and other river valleys in what is now Southwest Michigan, including the cities of Grand Rapids and Muskegon. The Tribe has about 700 enrolled members and the majority live in and around the counties of Kent, Muskegon and Oceana.

Treaties: The members of Grand River Bands of Ottawa Indians are descendants of the signatories of the 1795 Treaty of Greenville, the 1807 Treaty of Detroit, the 1821 Treaty of Chicago, the 1836 Treaty of Washington (DC), and the 1855 Treaty of Detroit. The Grand River Bands of Ottawa Indians is a political successor Tribe to the original Tribes represented at the Treaty signings. Other Michigan Treaty Tribes include the Little Traverse Bay Bands of Odawa Indians, the Little River Band of Ottawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Indian Community. Their members are also descendants of the signers of the 1836 Treaty of Washington and the 1855 Treaty of Detroit. All of these successor Tribes have now been recognized by the United States except for the Grand River Bands of Ottawa Indians and, perhaps, the Burt Lake Band of Ottawa Indians. Below is a description of our Tribe, our continued efforts as a community to seek redress of our tribal land claims, and our recognition efforts.

Continuous Existence: The Grand River Bands of Ottawa Indians consists of several inter-related extended families which comprise a kinship organization that functions today much the same way we did before Treaty times. As a community we gather for religious celebrations, social gatherings, and to attend to the graves of our ancestors. We also host the annual Homecoming of the Three Fires Pow Wow in Grand Rapids as we did again in June 2008. The political leadership of our Tribe has, to a great extent, been passed down from Headmen and Chiefs of Treaty times, within the same families. Each generation of leaders has represented the Tribe in

[1] Burt Lake was not a named group in the treaties but its members may descend from treaty signatories. It was denied recognition by the BIA and Representative Stupak has introduced legislation to recognize that group.

dealings with the United States and other Tribes, and tried to provide health, education and economic assistance to tribal members by whatever means available.

Tribal Land Claims: In the 1940s, the Grand River Bands of Ottawa Indians organized with other Tribes in Michigan under the name of the Northern Michigan Ottawa Association to pursue claims for reservation lands that were taken from us without compensation. The Tribe filed claims under the Indian Claims Act of 1946 (25 USC § 70; Chap.2A) and the Indian Claims Commission (ICC) awarded judgment in favor of the Tribe in several dockets. These awards for Grand River Bands of Ottawa Indians and others became the subject of two settlement Acts of Congress for the distribution of the funds.

1976 Tribal Judgment Fund Distribution Settlement Act: In 1976, the Congress enacted P.L. 94–540, the Grand River Band of Ottawa Indians—Disposition of Funds to provide for the distribution of funds awarded to the Tribe in Docket 40–K of the ICC. The funds were allocated to persons of Grand River Bands of Ottawa Indian blood who were descendants of persons who appeared on the 1908 Durant Roll or other census rolls acceptable to the Secretary and who were one-quarter (¼) degree Grand River Bands of Ottawa Indians blood.

1997 Michigan Indian Land Claims Settlement Act: In 1997, the Congress passed the Michigan Indian Land Claims Settlement Act to implement distribution of several land claim awards. By this time, five Michigan successor Tribes to the Ottawa and Chippewa Treaties had been recognized by the United States. The first, Bay Mills Indian Community (Chippewa), was recognized by the Secretary in 1935–37. In the 1970s, the Sault Ste. Marie Tribe of Chippewa Indians was recognized by the Department of the Interior prior to promulgation of the 1978 regulations governing federal acknowledgment procedures. The Grand Traverse Band of Ottawa and Chippewa Indians was the first to be recognized under the new regulations. Finally, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians were recognized by an Act of Congress in 1994.

The 1997 Settlement Act provided for the distribution of funds awarded in ICC dockets 18–E, 58, and 364 (Ottawa and Chippewa) and docket 18–R (Bay Mills and Sault Ste. Marie). The Act reflected the Tribes' agreement as to distribution and shares. The per capita shares for the members of the unrecognized Tribes were included in the 1997 Act along with a set-aside for any Tribes that might be recognized within a specific time frame. Section 106(d)(1) of the Act describes the potential eligible unrecognized treaty tribes as: Grand River, Traverse, Grand Traverse, Little Traverse, Maskigo, or L'Arbre Croche, Cheboigan, Sault Ste. Marie, Michilmackinac. In the 1997 Act, we believe the Congress used tribal names that were contained in the treaties that gave rise to the land claims.

Of the nine other Michigan groups currently on the BIA list of groups petitioning for federal recognition, the Grand River Bands of Ottawa Indians is the only one that represents—by name—a historic Michigan Treaty Tribe. This is important because the 1997 law set aside funds for treaty descendants who are not members of a federally recognized tribe but who are one-quarter blood Ottawa/Chippewa. It also set aside funds for the unrecognized Tribes, such as the Grand River Bands of Ottawa Indians, for the operation of tribal programs.

The Act provided that, to be eligible for the set-aside, an unrecognized Tribe must have filed its *documented petition* by December 15, 2000 (3 years after date of enactment). The Grand River Bands of Ottawa Indians filed it petition on December 8, 2000. The Act gave the BIA six years to issue a final determination. Unfortunately, despite the fact that the Tribe filed its petition within the timeframe set by Congress, the Bureau of Indian Affairs' Office of Federal Acknowledgment has still, to this day, failed to act on the Tribe's petition. The judgment funds were paid to members in June 2007, about eight weeks after our bill, S. 1058, was introduced in the 110th Congress. Our Tribe will not receive its share of the judgment funds or the bonus funds that Congress had set aside in the 1997 Act for newly recognized treaty tribes. That money is now gone forever, yet there is no penalty against the BIA for its failure to abide by the requirements of the law.

Tribal Recognition Efforts: In 1934, the Tribe filed to reorganize its government under the Indian Reorganization Act enacted that same year. Commissioner of Indian Affairs John Collier (and author of the IRA) concluded that the Tribe was eligible for reorganization. However, we were put on hold because of federal funding issues. After World War II, the Federal Government's position toward Tribes changed and the Termination era took hold in earnest in the 1950s. Thus, reorganization was not an option politically so the Tribe's efforts were put on hold again. (The Tribe remained actively engaged during this period, however, in pursuing our Treaty land claims as discussed above.). During the 1970s and 1980s Tribal leaders did not pursue Federal Recognition as some of our elders and leaders, believing we

were already recognized by the United States, feared that this process would actually threaten our status as a sovereign nation.

However by the early 1990s we recognized that formal federal recognition would be necessary for us to pursue treaty, statutory rights and the protection of our people. In 1994, the Tribe filed a letter of intent with the BIA to file a petition for recognition and the Grand River Bands of Ottawa Indians is petitioner #146.

After making our submission on December 8, 2000 (21 boxes—three sets each of seven archival boxes), the Grand River Bands of Ottawa Indians did not hear from the Bureau of Indian Affairs until April 2004 when they granted us a technical assistance meeting at the request of Congressman Pete Hoekstra. It took another nine months for us to receive our 29-page technical assistance (TA) letter on January 26, 2005. The Grand River Bands of Ottawa Indians spent the next 17 months gathering materials and preparing a 63-page legal response supported by a 265-page ethno-historical response to the TA letter, including additional documents and two certified copies of all of our membership documents. The Tribe filed this response to the TA letter on June 9, 2006.

Conclusion: We know the Committee is well aware of the time consuming and very expensive work that goes into filing a petition for Federal recognition as an Indian Tribe. We have no doubt that the Grand River Bands of Ottawa Indian meets the seven criteria set out in the regulations and is qualified to be recognized by the Federal government and to enjoy the benefits of the trust protection and the government-to-government relationship that will ensue. If S. 1058 is not passed and the Grand River Bands of Ottawa Indians remains mired in the Federal Acknowledgment Process, we estimate it will take 15 to 25 years for recognition to come. In the meantime, our tribal citizens do not share the benefits that their cousins in other Michigan Tribes enjoy. And many of our elders will be gone without having had the benefit of recognition. Our Indian children will not be considered to be Indian children for purposes of the Indian Child Welfare Act, 25 USC § 1901 et seq., and will not be protected as Congress intended.

The Grand River Bands of Ottawa Indians has the support of its community, other Michigan Tribes, and our Senators, as evidenced by their introduction of S. 1058. This bill does not directly recognize the Tribe but instead refers the matter to the Bureau of Indian Affairs for a determination, with timelines for deciding the Tribe's status and filing a Report to Congress.

Now that the BIA has utterly failed to meet its obligations under the 1997 Act, we hope that Congress will grant federal status to the Grand River Bands of Ottawa Indians in the same manner that it reaffirmed the existence of four other Michigan Tribes—Lac Vieux Desert in 1988, and, in 1994, the Little River Band of Ottawa Indians, the Little Traverse Bay Bands of Odawa Indians, and the Pokagon Band of Potawatomi Indians. There is ample precedent for direct reaffirmation of our status. We are painfully aware that Congressional Acts to recognize Tribes have fallen out of favor and believe S. 1058 will give Congress the needed assurance that the Grand River Bands of Ottawa Indians is deserving of the Federal relationship.

The September 2004 issue of National Geographic magazine contains a map of historic Indian country which shows the "Grand River Ottawa" as the historic Tribe of Southwestern Michigan. We know that the opinion of mapping scholars does not match the exhaustive work of the OFA in determining whether an existing tribal group is indeed the successor to an historic Tribe, but we are confident that the Grand River Bands of Ottawa Indians is such a Tribe and take pride in realizing that many others think so, too.

The Grand River Bands of Ottawa Indians has always been an active leader in the Michigan Indian community. We participate, though often unofficially, in Indian Child Welfare cases, NAGPRA repatriation matters and other Indian affairs dealings with state, local and private entities. We also spearheaded the return of the original 1855 Treaty to Grand Rapids that was exhibited in the Museum named for former President Gerald Ford.

We are attaching the "Resolution of the Grand River Bands of Ottawa Indians June 18, 2002" that authorizes the Tribe to seek legislation in Congress to direct the Department of the Interior to act timely on our petition.

Thank you again for you attention to S. 1058 and we implore the Committee to act quickly on this legislation.

The CHAIRMAN. Mr. Yob, thank you very much for your testimony.

Finally, we will hear from Dr. Helen Rountree, Professor Emeritus at Old Dominion University, Department of Anthropology, in Norfolk, Virginia.

Ms. Rountree, thank you very much.

STATEMENT OF HELEN C. ROUNTREE, PH.D., PROFESSOR EMERITUS, DEPARTMENT OF ANTHROPOLOGY, OLD DOMINION UNIVERSITY

Ms. ROUNTREE. Thank you.

Mr. Chairman, members of the Committee, and guests, it is my honor to speak on behalf of these Virginia Indian people, with whom I have been working intensively since 1969. I would add I haven't gotten a dime for it.

I am Dr. Helen C. Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. I have produced seven books so far on the native people of Virginia.

At this point, I request that all testimony, written and oral, that has been presented in previous hearings on the Virginia tribes be entered into the record along with today's testimony.

The CHAIRMAN. Without objection.

Ms. ROUNTREE. Thank you, sir.

The ancestors of the tribes I speak for were native to Virginia when Jamestown was founded. All were signatories in 1677 to a treaty between the Virginia tribes and the King of England. However, they became landless as non-Indian settlers poured in and, by Virginia custom—not law—such Indian communities were considered to be outside the scope of the treaty. The treaty itself was with the King of England and is now considered to be with the Commonwealth of Virginia, not the United States. These tribes, therefore, remained State Indians in a State that ignored them, a situation very different from that of the other three tribes represented in this hearing.

When much more detailed U.S. census records began to be made in 1850, these people do appear as enclaves and, in some U.S. censuses, specifically Indian ones. They are traceable as the ancestors of the six Virginia tribes before you today.

The Office of Federal Acknowledgment has just this year issued changes to try to speed up the Federal recognition process, but they do very little for the six tribes of whom I speak. Most of the changes are for tribes with a treaty and/or IRA relationship with the Federal Government, which these six tribes do not have. The remaining change, moving up the starting date to 1789, does not do much for them either. Aside from the problems with pre–1850 records, which I have documented elsewhere, there are problems with State and local records that make these Indian communities hard for a researcher to track. It is as if the ever-growing legend of Pocahontas—thank you, Disney—contrasted with the reality of 19th and 20th century Indian people, made Anglo-Virginians ever less tolerant of anything other than the legend.

Beginning after the Civil War and culminating with Virginia's Racial Integrity Law of 1924, Virginia became a State committed to the proposition that there were only two races, "white" and "colored," leaving no room for Indians. Under the 1924 law, anyone insisting upon an Indian identity on an official document could be sent to prison for a year. Several people were, in fact, imprisoned for such insistence. I knew one of them, by the way, personally.

The campaign to eliminate Indians from the State was headed by the State's Vital Statistics Bureau, which went so far as to issue a circular with "suspicious" families' names listed county by county. The families were referred to as "these mongrels." The circular was sent to all officials in charge of county records, all school superintendents, and all licensed health personnel, who signed off on birth and death certificates, in the State. It is no wonder that these Indian communities became much harder for researchers to find.

Some of their members left the State, keeping up their ties to home but returning only during the Civil Rights era when they no longer had to be, as one old-timer said to me, "scared like a rabbit." But the communities hung together and hung on, as the attached quick-reference chart will show. That is page 4 of my testimony. They still exist, and they still say they are Indians. And even now, so thorough was the public relations campaign against them for decades, they meet skepticism on a daily basis.

The tribes I speak for today consulted a BIA representative over a decade ago and were told that even if they submitted a petition forthwith, they would not see a decision "in your lifetime." And this was said to people then in their 40s. The six tribes are not merely being impatient in wanting to move faster than that. Their primary motive for seeking Federal recognition is getting better access to health programs, badly needed by their elders now.

Little schooling in Virginia was available to those people when they were young, if they wanted to remain "Indians" in the State. See the quick-reference chart; it will tell you how many schools did not go beyond grade school. Therefore, their income level has suffered ever since, and in their old age they are hurting badly. The six tribes are not interested in remedying that fact through gaming. In fact, they have waived their rights to gaming, if they are recognized. Instead, they hope to provide better conditions for their people through Federal Indian programs after recognition by the United States Congress.

These tribes have endured over three centuries of injustice, some of the worst of it and by far the most public of it being in the recent past. Without Federal recognition and the aid springing from it, the injustice is ongoing. I hope that you will accede to their request for acknowledgment. Thank you.

[The prepared statement of Ms. Rountree follows:]

PREPARED STATEMENT OF HELEN C. ROUNTREE, PH.D., PROFESSOR EMERITUS, DEPARTMENT OF ANTHROPOLOGY, OLD DOMINION UNIVERSITY

Mr. Chairman, members of the Committee, and guests: It is my honor to speak on behalf of these Virginia Indian people, with whom I have been working intensively since 1969. I am Dr. Helen C. Rountree, Professor Emerita of Anthropology at Old Dominion University in Norfolk, Virginia. I have produced seven books, so far, on the Native people of Virginia.

At this point, I request that all testimony, written and oral, that has been presented in previous hearings on the Virginia tribes be entered into the record along with today's testimony.

The ancestors of the tribes I speak for were native to Virginia when Jamestown was founded; all were signatories in 1677 to a treaty between the Virginia tribes and the King of England. However, they became landless as non-Indian settlers poured in, and by Virginia custom (not law) such Indian communities were considered to be outside the scope of the treaty. The treaty itself was with the King of England and is now considered to be with the Commonwealth of Virginia, not the United States. These tribes therefore remained "state" Indians in a state that ig-

nored them, a situation very different from that of the other three tribes represented in this hearing. When much more detailed U.S. Census records began to be made in 1850, these people appear as enclaves and, in some U.S. Censuses, specifically Indian ones. They are traceable as the ancestors of the six Virginia tribes before you today.

The Office of Federal Acknowledgment has just this year issued changes to try to speed up the federal recognition process, but they do very little for the six tribes of whom I speak. Most of the changes are for tribes with a treaty and/or I.R.A. relationship with the Federal Government, which these six tribes do not have. The remaining change, moving up the starting date to 1789, does not do much for them, either. Aside from the problems with pre–1850 records, which I have documented elsewhere, there are problems with state and local records that make these Indian communities hard for a researcher to track. It is as if the ever-growing legend of Pocahontas, contrasted with the reality of 19th and 20th century Indian people, made Anglo-Virginians ever less tolerant of anything other than the legend.

Beginning after the Civil War and culminating with Virginia's Racial Integrity Law of 1924, Virginia became a state committed to the proposition that there were only two races, "white" and "colored," leaving no room for Indians. Under the 1924 law, anyone insisting on an Indian identity on an official document could be sent to prison for a year. Several people were, in fact, imprisoned for such insistence. The campaign to eliminate Indians from the state was headed by the state's Vital Statistics Bureau, which went so far as to issue a circular with "suspicious" families' names listed county by county. The families were referred to (and I quote) as "these mongrels." The circular was sent to all officials in charge of county records, all school superintendents, and all licensed health personnel (who signed off on birth and death certificates) in the state. It is no wonder that these Indian communities became much harder for researchers to find. Some of their members left the state, keeping up their ties to home but returning only during the Civil Rights era when they no longer had to be, as one old-timer said to me, "scared like a rabbit." But the communities hung together and hung on, as the attached quick-reference chart will show. They still exist, and they still say they're Indians. And even now, so thorough was the public relations campaign against them for decades, they meet skepticism on a daily basis.

The tribes I speak for today consulted a BIA representative over a decade ago and were told that even if they submitted a petition forthwith, they would not see a decision "in your lifetime" (this was said to people then in their 40s). The six tribes are not merely being impatient, in wanting to move faster than that. Their primary motive for seeking federal recognition is getting better access to health programs, which are badly needed by their elders now. Little schooling within Virginia was available to those people when they were young–if, that is, they wanted to remain "Indians" in the state (see the quick-reference chart). Therefore their income level has suffered ever since, and in their old age they are hurting badly. The six tribes are not interested in remedying that fact through gaming–in fact, they have waived their rights to gaming, if they are recognized. Instead they hope to provide better conditions for their people through federal Indian programs, after recognition by the United States Congress.

These tribes have endured over three centuries of injustice, some of the worst of it and by far the most public of it being in the recent past. Without federal recognition and the aid springing from it, the injustice is ongoing. I hope that you will accede to their request for acknowledgment.

INFORMATION CHART ON SIX INDIAN TRIBES IN VIRGINIA

Helen C. Rountree, Ph.D.
Professor Emerita of Anthropology
Old Dominion University

Information supplied by HCR's fieldwork or else info. provided for federal recognition effort, 2002-2007
NOTE: distinct early 20th C ethnic groups lived in clusters, organized formally, created own schools and churches, and in-married; ONLY FORMAL ORGANIZATIONS & PUBLIC ACTIVITIES ARE SHOWN HERE.

Name of group	Formally incorporated in	State recognition in	Tribal Church organized in	County support for tribal school received in	Fed. Gvt. asked to help
Chickahominy	1901	1983	1901 (Baptist)	1922 High school added, 1950s	1934, 1946
E. Chickahominy	1924	1983	1924 (Baptist)	[w/ Chickahominy]	1946
Monacan	1989	1989	1908 (Episcopal)	1890s-1908, 1946-63 Grade school only	
Nansemond	1984	1985	1850 (Methodist)	1890s, 1922 Grade school only	
Rappahannock	1921	1983	1964 (Baptist)	1962 (bused to U. Matt. School 1964-65) Grade school only	
Upper Mattaponi	1923	1983	1942 (Baptist)	1892, 1917 Grade school only	1892, 1946

NOTE: the help asked of federal government was for EDUCATION in these instances. Another instance, in 1943-44, concerned Virginia's hard-line racial policy.

SOCIAL SCIENTISTS WORKING WITH TRIBES:

James Mooney, Bureau of American Ethnology, Smithsonian Institution [anthropologist]
1899-1901 – visited Chickahominy, Nansemond

Frank G. Speck, Dept. of Anthropology, University of Pennsylvania
1919-50 – worked with Upper Mattaponi, Rappahannock, Chickahominies, Nansemond

Bertha Pfister Wailes, M.A. student in Sociology Dept., University of Virginia
Early 1920s until her death in 1970s – worked with Monacans

Theodore Stern, Dept. of Anthropology, University of Pennsylvania
1940-48 – worked with Chickahominies

Katherine Seaman, Dept. of Sociology & Anthropology, Sweet Briar College [anthropologist]
Late 1960s-early 1970s – worked with Monacans

Helen C. Rountree, Dept. of Sociology & Criminal Justice, Old Dominion University [anthropologist]
1969 to present – working with Chickahominies, Nansemond, Rappahannock, Upper Mattaponi
1973 to present – occasional visits to Monacans

Sam Cook, Center for Interdisciplinary Studies, Virginia Polytechnic University [anthropologist]
1995 to present – working with Monacans

Helen C. Rountree
Brief Vitae
(revised September 2008)

EDUCATION:

A.B., *summa cum laude*, College of William and Mary; Sociology and Anthropology.
Honors thesis: "A Cross-cultural Delineation of the Role of the Witch and the Sorcerer"
M.A., University of Utah; Anthropology.
M.A. thesis: "Between Two Worlds: The Life History of a Western Shoshone Woman"
Ph.D., University of Wisconsin-Milwaukee; Anthropology.
Ph.D. dissertation: "Indian Land Loss in Virginia: A Prototype of Federal Indian Policy"

EMPLOYMENT:

1968 through 1999: Old Dominion University, Norfolk, Virginia.
Instructor, 1968; Assistant Professor, 1973; Associate Professor, 1980; Professor, 1991.
Current rank: Professor Emerita of Anthropology.

RESEARCH INTERESTS:

Geographical: North American Indians, especially on Virginia Coastal Plain [1570 to present]; Middle East; England, especially in Tudor and Jacobean periods.
Topical: Ethnohistory, ethnicity, ethnobotany, ecological anthropology, political and legal anthropology, gender.

PROFESSIONAL ASSOCIATIONS (since retiring):

American Anthropological Association (Life Member)
American Society for Ethnohistory (Life Member and Past President)
Archeological Society of Virginia (Life Member)
Council of Virginia Archaeologists (Associate Member)

FIELDWORK AS CULTURAL ANTHROPOLOGIST:

Western Shoshone Indians (summer 1967)
Powhatan tribes of Virginia (fall 1969 to present)
Honorary Member, Upper Mattaponi Tribe
Honorary Member & Acting Recording Secretary, Nansemond Tribe

Shorter visits:

Most Indian reservations in U.S., several in Canada
Mexico (three trips, one of 5 weeks living with local family); Peru (1 week); England (four trips totalling 16 weeks, mostly small towns); Ivory Coast (3 weeks); Tanzania (3 weeks)

SIGNIFICANT ACADEMIC PUBLICATIONS [sole author unless otherwise noted]:

2007 *John Smith's Chesapeake Voyages, 1607-1609* (junior authors are Wayne E. Clark and Kent Mountford). Charlottesville: University of Virginia Press. [Reconstructing the people, land, plants, and animals of the Chesapeake region in those years.]

2005 *Pocahontas, Powhatan, Opechancanough: Three Indian Lives Changed by Jamestown.* Charlottesville: University of Virginia Press. [Honorable Mention: James Mooney Prize]

2004 Look Again More Closely: 18th Century Indian Settlements in Swamps. *Journal of Middle Atlantic Archaeology* 20: 7-12.

2002a *Before and After Jamestown: Virginia's Powhatans and Their Predecessors* (junior author is E. Randolph Turner, III). Gainesville: University Press of Florida.

2002b Trouble Coming Southward: Emanations Through and From Virginia, 1607-1675. IN *The Transformation of the Southeastern Indians, 1540-1760.* Robbie Ethridge and Charles Hudson, eds. Jackson: University Press of Mississippi. Pp. 65-78.

2001 Pocahontas: The Hostage Who Became Famous. IN *Sifters: Native American Women's Lives.* Theda Perdue, ed. New York: Oxford University Press. Pp. 1-28.

1998b The Evolution of the Powhatan Paramount Chiefdom in Virginia (junior author is E. Randolph Turner, III). In *Chiefdoms and Chieftaincy: an Integration of Archaeological, Ethnohistorical, and Ethnographic Approaches*. Elsa M. Redmond, ed. Gainesville: University Press of Florida. Pp. 265-296.

1998a Powhatan Indian Women: The People Captain John Smith Barely Saw. *Ethnohistory* 45: 1-29 [1994 presidential address to Am. Soc. for Ethnohistory].

1997 *Eastern Shore Indians of Virginia and Maryland* (junior author is Thomas E. Davidson). Charlottesville: University Press of Virginia.

1996a A Guide to the Late Woodland Indians' Use of Ecological Zones in the Chesapeake Region. *The Chesopiean* 34 (2-3).

1996b "Powhatan" and "Powhatan Confederacy" in *The Encyclopedia of the American Indian*. Frederic E. Hoxie, ed. Boston: Houghton Mifflin. Pp. 509-513.

1994a On the Fringe of the Southeast: The Powhatan Paramount Chiefdom in Virginia (junior author is E. Randolph Turner, III). IN *The Forgotten Centuries: The Southeastern United States in the Sixteenth and Seventeenth Centuries*. Charles Hudson and Carmen Tesser, Editors. Athens: University of Georgia Press. Pp. 355-372.

1994b Articles on "Chickahominy," "Mattaponi," "Monacan," "Nansemond," "Rappahannock," and "Upper Mattaponi." IN *Native America in the Twentieth Century: An Encyclopedia*. Mary B. Davis, ed. New York: Garland. Pp. 103-104, 328-229, 357, 369, 534, 667-68.

1993 *Powhatan Foreign Relations, 1500-1722*. Charlottesville: University Press of Virginia. (as editor and contributor)

1992a Indian Virginians on the Move. IN *Indians of the Southeastern United States in the Late 20th Century: An Overview*. Anthony J. Paredes, ed. Tuscaloosa: University of Alabama Press. Pp. 9-28.

1992b Powhatan Priests and English Rectors: Worldviews and Congregations in Conflict. *American Indian Quarterly* 16: 485-500.

1990 *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries*. Norman: University of Oklahoma Press.

1989 *The Powhatan Indians of Virginia: Their Traditional Culture*. Norman: University of Oklahoma Press.

1987 The Termination and Dispersal of the Nottoway Indians of Virginia. *Virginia Magazine of History and Biography* 95: 193-214.

1986 Ethnicity Among the "Citizen" Indians of Virginia, 1800-1930. IN *Strategies for Survival: American Indians in the Eastern United States*. Frank W. Porter III, ed. New York: Greenwood Press. Pp. 173-209.

1979 The Indians of Virginia: A Third Race in a Biracial State. IN *Southeastern Indians Since the Removal Era*. Walter L. Williams, ed. Athens: University of Georgia Press. Pp. 27-48.

1975 Change Came Slowly: The Case of the Powhatan Indians of Virginia. *Journal of Ethnic Studies* 3 (3): 1-20.

1974 Change Came Slowly: The Powhatan Case. *The Chesopiean* 12(6): 162-66. Reprinted in 2004 in *The Chesopiean* 41(2): 26-29.

1972 Powhatan's Descendants in the Modern World: Community Studies of the Two Virginia Indian Reservations, with Notes on Five Non-Reservation Enclaves. *The Chesopiean* 10 (3): 62-96.

POPULAR WORKS (privately published by myself; sole author unless otherwise noted)

2007 *Life in an Eastern Woodland Indian Village*. Yorktown: J & R Graphics Services.

2006 *Building an Indian House* (senior author is William H. Hancock of Jamestown Settlement). Yorktown, Va.: J & R Graphics Services.

1999 *Beyond the Village: A Colonial Parkway Guide to the Local Indians' Use of Natural Resources*. Yorktown, Va.: J & R Graphics Services.

1995 *Young Pocahontas in the Indian World*. Yorktown, Va.: J & R Graphics Services.

MANUSCRIPTS IN PROGRESS:

MS. A. (junior author with Rebecca Seib) *The Indians of Southern Maryland*.

MS. B. *Powhatan Words and Names*. (book with junior authors Martha McCartney)

MS. C. The Early Ethnographers of Virginia: An Evaluation of John Smith, William Strachey, and Henry Spelman. (journal article; in revision)

In early talking stage: Book on Late Woodland peoples in the Virginia mountains, based upon archaeological site reports. First step taken in early June 2006: I sponsored a Masswomeck Roundtable among archaeologists.

In research stage: Book comparing coastal Algonquian Indian cultures from North Carolina to Massachusetts at time of European contact. Compiled culture-trait index files for it are complete for Virginia (1570-1613), Maryland (1631-62), and North Carolina (1584-90); currently adding later data for Virginia; sources already collected for southern New England.

CONSULTANT FOR:
1996 *Algonquians of the East Coast*. Alexandria, Virginia: TIME-LIFE Books (The American Indians Series).

MAJOR STUDY PROJECTS AND AWARDS:
(Participant) U.S. Department of Education, Group Study Abroad (African tour to Ivory Coast and Tanzania, 1983); Jerome Bookin-Weiner, principal organizer. Study topic: tribalism in developing nations.
(Participant) N.E.H. Summer Institute for College Teachers, "Spanish Explorers and Indian Chiefdoms," held at University of Georgia, summer 1989; Charles Hudson, principal organizer.
1993 Elected president of the American Society for Ethnohistory.
1995 Winner, Outstanding Faculty Award, State Council on Higher Education in Virginia. Used award money for private publication of children's book on Pocahontas (to rebut Disney's cartoon).

What I do *not* get is grants, because I don't apply for them. I pay for my own research from my savings, which enables me to do my own small-scale, long-term projects in the Chesapeake region *year-round, every year*.

CURRENTLY WORK AS CONSULTANT WITH:
Virginia Council on Indians (1983-2007) and Virginia Council of Chiefs (2007) (member of committee evaluating tribal recognition petitions since 1993; recording secretary in meetings, 2002)
Jamestown Settlement Museum (since 1986; member of Museums and Programs Advisory Committee since it was formed in 1997)
Historic St. Mary's City (sporadically since 1994)
Accokeek Foundation and Colonial National Farm, in Maryland (sporadically since 1992)
Hampton History Museum (since 1999)
Virginia Department of Education, revising its Standards of Learning (2007)

INVOLVEMENT IN TRIBAL RECOGNITION CASES:
State recognition:
Speaker on Indians' behalf in Joint Committee hearing (1982), which resulted in 1983 state recognition for the Chickahominy Tribe, the Chickahominy Indians, Eastern Division, the United Rappahannock Tribe, and the Upper Mattaponi Tribe.
Compiler of documents which helped lead to the 1985 state recognition for the Nansemond Indian Tribe.
Virginia Council on Indians/Council of Chiefs: member of committees evaluating tribal recognition petitions (1993 to present).
Maryland Commission on Indian Affairs: member of evaluating committee (1995-97).

Federal recognition:
Compiler of historical documents (1999 to present) and speaker (2006, 2007, 2008) on Indians' behalf in Congressional hearings on recognition bills, acting for the Chickahominy Tribe, the Chickahominy Indians, Eastern Division, the Nansemond Indian Tribal Association, and the Upper Mattaponi Tribe; acting indirectly for the Monacan Indian Nation.

The CHAIRMAN. Dr. Rountree, thank you very much for you testimony as well.

I wonder if I might depart from tradition and ask Mr. Fleming, who is the Director of the Office of Federal Acknowledgment, if you would be willing to come up to the table even as the witnesses are there.

Mr. Fleming, would you be willing to come over on the side of Dr. Rountree and present your testimony so that we might ask questions? And I appreciate your willingness to do that. We will include your full statement in the record. Mr. Fleming is the Director of the Office of Federal Acknowledgment in the Department of the Interior, and he will discuss the Department's efforts to improve the process.

Mr. Fleming, welcome. If you would proceed, we will make your full statement a part of the record.

STATEMENT OF R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. FLEMING. Good afternoon, Mr. Chairman and members of the Committee. My name is Lee Fleming, and I am the Director of the Office of Federal Acknowledgment at the Department of the Interior. I must say that my staff is a hard-working and dedicated staff, and we appreciate the regulations under which we are obligated.

I am here today to provide the Administration's testimony on S. 514, S. 724, S. 1058, and H.R. 1294. The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes the government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, State, and local governments.

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

Legislation such as these four bills would allow these groups to bypass this process, allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish recognition, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process. The Administration supports all groups going through the Federal acknowledgment process under 25 C.F.R. Part 83.

The Department, in 1978, recognized the need to adopt uniform regulations for Federal acknowledgment. Since 1978, 103 decisions have been issued: 50 proposed findings, 46 final determinations, and 7 reconsidered final determinations. Ron Yob outlined the seven mandatory criteria and my written testimony will have that information.

I want to say that over the past year the Department has taken several actions to expedite and clarify the Federal acknowledgment process. Some of these actions required changes to internal workload processes to eliminate backlogs in delays and others will require amendments to the regulations. Our goal is to improve the process so that all groups seeking acknowledgment can be processed and completed within a set time frame.

I won't go over the 12 decisions or events that have taken place over the past year, but they are listed here in the testimony. One of the most significant, though, was the publication of the guidance and direction in the Federal Register regarding internal procedures for the Office of Federal Acknowledgment.

I would like to turn now to the status of the petitions that are affected by the four bills. S. 514 provides Federal recognition as an Indian tribe to a Florida group known as the Muscogee Nation of Florida, which is currently a petitioner in the Department's Federal acknowledgment process. This group submitted to the Department its letter of intent in 1978 and completed documenting its petition in 2002, 24 years of researching. Currently, the group is fifth in line on the Ready, Waiting for Active Consideration list, thus, ready for the Department to review and evaluate its evidence under the seven mandatory criteria.

S. 724 provides Federal recognition as an Indian tribe to a Montana group known as the Little Shell Tribe of Chippewa Indians of Montana, currently a petitioner under our process. This group submitted to the Department its letter of intent in 1978 and completed documenting its petition in 1995. They took 17 years to research and provide documentation. Currently, this group is on Active Consideration and a final determination is expected early 2009.

S. 1058 provides an expedited review for Federal recognition as an Indian tribe to a Michigan group known as the Grand River Bands of Ottawa Indians, also currently a petitioner under our process. The group submitted to the Department its letter of intent in 1994 and completed documenting its petition in 2007. The group had taken time to provide the evidence necessary. This group is ninth on the Ready list.

H.R. 1294 is the bill that provides Federal recognition as Indian tribes to six Virginia groups. These groups are currently petitioners in the Department's Federal acknowledgment process and, under the regulations, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as an Indian tribe.

The Federal acknowledgment regulations provide a uniform mechanism and standards to review and consider groups seeking Indian tribal status. These four bills, however, allow these groups to bypass our process, thus avoiding the scrutiny to which other groups have been subjected. We look forward to working with these groups and assisting them further as they continue under the Federal acknowledgment process.

This concludes my statement, and I am happy to answer any questions the Committee may have.

[The prepared statement of Mr. Fleming follows:]

PREPARED STATEMENT OF R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Mr. Chairman and Members of the Committee. My name is Lee Fleming and I am the Director for the Office of Federal Acknowledgment at the Department of the Interior. I am here today to provide the Administration's testimony on S. 514, the "Muscogee Nation of Florida Federal Recognition Act", S. 724, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2007", S. 1058, the "Grand River Bands of Ottawa Indians of Michigan Referral Act", and H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including governmental activities exempt from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

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

Legislation such as S. 514, S. 724, S. 1058, and H.R. 1294 would allow these groups to bypass this process - allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish recognition, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process. The Administration supports all groups going through the Federal acknowledgement process under 25 CFR Part 83.

The Administration believes that the Federal acknowledgment process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing

this important government-to-government relationship. Before the development of these regulations, the Federal government and the Department of the Interior made determinations as to which groups were Indian tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately, treaty rights litigation on the West coast, and land claims litigation on the East coast, highlighted the importance of these tribal status decisions. Thus, the Department, in 1978, recognized the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgment.

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

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;

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

(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

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

(5) demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

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

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

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe.

Over the past year, the Department has taken several actions to expedite and clarify the Federal acknowledgment process. Some of these actions required changes to internal workload processes to eliminate backlogs and delays and others will require amendments to the regulations. Our goal is to improve the process so that all groups seeking acknowledgment can be processed and completed within a set timeframe. We look forward to working with the Congress to this end.

Since September 2007, the Department has made several decisions on petitions.

- The Department's final determination to acknowledge the Mashpee Wampanoag Tribe had become final and effective for the Department.
- In October 2007, the Department made a final determination not to acknowledge the St. Francis/Sokoki Band of Abenakis of Vermont. This determination became final and effective for the Department on October 1, 2007.
- On November 26, 2007, the Department issued two proposed findings for the Juaneno Band of Mission Indians, Achachemen Nation (Petitioner #84A), and the Juaneno Band of Mission Indians (Petitioner #84B) and published notice on December 3, 2007, starting 180-day comment periods for both of these California petitioners and interested parties. The comment period was extended until December 2, 2008.
- On January 28, 2008, the final determinations not to acknowledge the Nipmuc Nation (Hassanamisco Band) and the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians of Massachusetts became final and effective for the Department.
- On March 12, 2008, the Department issued a negative final determination on the Steilacoom Tribe of Indians.
- The Department conducted two day-long formal technical assistance meetings on April 17 and 18, 2008, for the Juaneno Petitioners #84A and #84B.
- On May 23, 2008, the Department published Guidance and Direction in the Federal Register regarding internal procedures for the Office of Federal Acknowledgment.
- On May 30, 2008, the Department published two negative proposed findings for the Biloxi, Chitimacha Confederation of Muskogees, Inc. and the Pointe-au-Chien Indian Tribe.

Status of Petitions for Tribes Affected by the four Bills:

S. 514

S. 514, the "Muscogee Nation of Florida Federal Recognition Act", provides Federal recognition as an Indian tribe to a Florida group known as the Muscogee Nation of Florida (Petitioner #32), currently a petitioner in the Department's Federal acknowledgment process. This group submitted to the Department its letter of intent in 1978, and completed documenting its petition in 2002. Currently this group is fifth in line on the "Ready, Waiting for Active Consideration" list, thus ready for the Department to review and evaluate its evidence under the seven mandatory criteria.

The CHAIRMAN. Mr. Fleming, thank you very much for your testimony. I have a few questions, and then I will turn to Senator Murkowski.

We have this afternoon Defense Secretary Gates appearing before the Congress in a classified session, so we will truncate this just a bit. He is here to talk about the war in Iraq and Afghanistan.

Mr. Fleming, Mr. Sinclair, in his testimony, talked about the frustration they have had with the dates that have been offered. The Director of OFA advised a Federal court in June of 2005 that they expected to issue a final determination in February 2007. Then OFA advised the Tribe in writing to expect the commencement of active consideration of the final determination in August

2007. That didn't happen. Then they granted extensions and said it will be August 2008, with a final determination by the end of 2008. That didn't happen in August. Then on July 24th the Tribe received another letter from OFA granting itself one more extension, now maybe 2009.

What is the reason for this? And can you put yourself in the position of a petitioner and say what on earth is going on? Wouldn't that be enormous frustration on the part of a petitioner who has been waiting a long, long, long time, only to find that your office keeps saying, well, it will be now, then it will be later, then later again? Tell me what is going on.

Mr. FLEMING. We have currently three full-time teams. A team is composed of an anthropologist, genealogist, and historian. We are pleased to announce that we have a fourth team that has been selected and we are able to apply these resources to the various groups that are on our plate. We have currently seven groups that are under what is known as Active Consideration. Little Shell is one that is right before us, where we are working to produce a final determination, which is the final decision for the Department on a case that has been before us.

I might state that the group itself had requested 10 extensions in the process. When the proposed finding was issued—and it was a positive proposed finding—the decision-maker at the time warned the group that although this is a positive decision, you have 70-year evidentiary gaps that need to be filled, and if you do not fill those gaps, then a positive proposed finding could turn into a negative final determination.

The CHAIRMAN. But that wasn't my question. I understand your testimony on that. My question was why does your office tell the court August 2007, August 2008, February 2007, January 2008?

Mr. FLEMING. We are asked to provide projections that we are able to give the court or to the petitioners an idea of how we are focusing on our production.

The CHAIRMAN. So if you told the court, in June of 2005, that you figured you would issue a final determination in February 2007, a year and a half ago, what caused that judgment to be so bad in 2005?

Mr. FLEMING. There are administrative occurrences that take place. We have litigation that we have to attend to that has deadlines, so we have to rearrange our resources at particular times. We have the issue of making sure, though, that the petitioners are notified of these particular extensions and why those extensions are needed.

The CHAIRMAN. I understand you are notifying them, and that is what causes me to ask why are you notifying them if, in 2005, you said you would finish in 2007, a year and a half ago. You have not come to us saying, look, we can't meet deadlines we are promising tribes, give us some resources. I don't understand it. It looks to me like you say, well, it is administrative. You know, my colleague and I, Senator Murkowski, have watched these Federal agencies act like they are wading through wet cement for years and years and years.

Mr. FLEMING. Well, let me give you an example. When the proposed finding came out for the Little Shell, through our Federal ac-

knowledgment information resource database, we were able to scan the response, and that created, then, an overall administrative record of 20,116 documents, with a total page count of 67,000 pages of documentation. That is quite a bit of material to review for a final determination overall. We have been able to develop an image system to allow for faster review, but you multiply that by this group and other groups, and the limitation of our teams, we are only able to do what we can.

The CHAIRMAN. You know, I don't want you to make decisions hastily; I want you to make good decisions. But I don't have any idea how we measure your performance. You take whatever time you decide to take and miss deadlines and tell me, well, it is administrative.

Let me ask further, if I might. I am just asking about the Montana one because they set out what specifically you had told the Federal court and what you had represented in writing you would do and you have not done. I am only saying that if I were a petitioner, I would be enormously frustrated because it is not as if they have waited for six months or six years; in some cases it is 20 years.

Ms. Tucker, in her testimony, made the point that the BIA will address other petitions even though they were submitted years after Muscogee and will not expend time on the Tribe because it cannot produce certain documents.

If that is the case—and I don't know if it is, but if that is what Ms. Tucker says, and they cannot produce the documents because the documents don't exist. If that is the case, is there an alternative to coming to the Congress? Is the alternative to stay with you and wait until five or ten or fifteen years until you have told her you can't produce the documents, so your Tribe cannot possibly exercise the Federal recognition process at Interior? The only alternative would be to go to Congress. What is the alternative for Ms. Tucker?

Mr. FLEMING. Well, the group was provided a technical assistance review letter, and in that letter it revealed that the Department had concerns over the Indian entity identifications, we had concerns over their continuous, distinct community, their continuous leadership. They had descent difficulties and, with regard to their membership, they had to address individuals who could not demonstrate Indian descent, and some of the members may have an association with another federally recognized Indian tribe.

Now, in order to respond to our technical assistance review letters, we advise that there are many types of documents that are out there to assist in this process: birth certificates, marriage/divorce/adoption/probate records, death certificates, and other primary documentation like Federal and State censuses. Even tax, land, and church records are available to help verify this process. And we stand ready to advise groups such as Muscogee Nation of Florida on how to address these.

This group is fifth on the waiting list and we do have a projected schedule of our current active cases and our cases that are waiting for active consideration.

The CHAIRMAN. I have been one of the strongest supporters here in Congress saying I believe tribes should go through the process

we have established for the tribes, but that only works for so long if this process does not move along. And I am not suggesting moving it along in six months or sixteen months, but we have got people waiting year after year after year, in some cases decades. Somehow, you are going to wear out your welcome with the Congress and we are going to have people in Congress pushing, with sufficient strength, that the recognition process doesn't work because we have no method by which to evaluate your work; you make promises and don't keep them, and you say, well, we are busy, it is just administrative.

So I have been a strong supporter, as you know, but the only way that we can continue to support this process is if the process actually works. You need more people? Ask us for more people. Set deadlines, keep the deadlines. But this is not fair, in my judgment.

I want to ask Dr. Rountree a question. You are here on behalf of six Virginia tribes is that correct? But my understanding is there are other Virginia tribes that are unrecognized, is that correct?

Ms. ROUNTREE. There are two other State recognized tribes, both with reservations.

The CHAIRMAN. And both have reservations.

Ms. ROUNTREE. Yes, they both have reservations.

The CHAIRMAN. They are not seeking Federal recognition?

Ms. ROUNTREE. One is going to be seeking it eventually through the BIA; the other seems to be on hold, from what I can learn.

The CHAIRMAN. And why is that the case? I mean, why——

Ms. ROUNTREE. Why are they on hold? I don't know, they don't tell me.

The CHAIRMAN. Well, the reason I am asking the question is the Governor and the Senator and the Congressman made the point about what has happened in Virginia that appears in the rearview mirror as almost criminal, probably is criminal by today's cultural standards, what was done to American Indians there. It seems to me that the application would logically have been on behalf of all tribes similarly situated for Federal recognition.

Ms. ROUNTREE. It seems that way to me, but they did not consult me.

The CHAIRMAN. And who are they?

Ms. ROUNTREE. The two reservation groups. They did not tell me, they didn't ask should they be included. I don't know what their negotiations were with the six tribes.

The CHAIRMAN. Would you see if you can determine what that is and submit it for the Committee? I will make further inquiries as well, because if we are going to deal with the issue of Virginia, I am just curious why, if there are more tribes who are similarly situated, would not have been part of the petitioning.

Ms. ROUNTREE. I can only make an educated guess at this point because, as I said, I have not talked to people. My educated guess is that they are not particularly hopeful even of their own getting through the BIA, and they are also leery of going through Congress. They have been put through even worse things by Dr. Plecker than the six non-reservation tribes, much worse.

The CHAIRMAN. Mr. Fleming, did you have observations about that?

Mr. FLEMING. You had inquired what the two tribes were, the Pomonkey and the Mattaponi. The Department has 12 formal petitioning groups from Virginia, and the bill only pertains to six of those groups. Of the 12 petitioning groups, we have two Rappahannock groups, two Chickahominy groups, and two Mattaponi groups. We also have two Monacan groups; one is located in Virginia and the other one is located in West Virginia. So it is an issue that we would hope that if these groups continue through the acknowledgment process, if there is any overlapping or if only partial groups are presented, our ultimate hope is that whatever tribe is recognized, be it through the Department or through Congress, that you are recognizing a whole tribe and not a partial or part of a tribe.

The CHAIRMAN. Well, I am going to ask the staff, Senator Murkowski's staff and my staff, to inquire in Virginia to try to understand what this means. My understanding was that there were up to 12 in Virginia, and there are six that are brought together in this legislation. I am not quite sure I understand why that is the case. I do understand the powerful testimony given today by the Governor and our two colleagues in Congress, but I want to try to understand what the universe of actions might be by the Federal recognition process or the Congress.

Dr. Rountree, did you have something else to add?

Ms. ROUNTREE. Only one other thing. I was answering for the State recognized tribes who do not overlap with one another.

The CHAIRMAN. All right.

Senator Murkowski, I took more time than I perhaps should have. Thank you for being patient.

Senator MURKOWSKI. No, thank you. Mr. Chairman, I also want to include—Senator Martinez has a letter that he apparently would like placed in the record for the Muscogee Tribe of Florida.

The CHAIRMAN. Without objection.

[The information referred to follows:]

Statement on S. 514, Muscogee Nation of Florida Federal Recognition Act

Chairman Dorgan and Senator Murkowski:

Thank you for holding this important hearing today to consider S.514, the Muscogee Nation of Florida Federal Recognition Act. I am a proud cosponsor of this legislation along with my colleague Senator Bill Nelson, and I urge the Committee to support its passage.

The Muscogee Nation of Florida, also known as the Florida Tribe of Eastern Creek Indians, is a Tribe of Creek Indian people who are located in Bruce, Florida, which is in the Panhandle area of the state. The Muscogees are decedents of the Tribes that made up the Historic Creek Confederacy, and were signatories to the 11 treaties with the United States between 1790 and 1833 that led to the Creeks forced removal from their traditional homelands.

The remaining Creek Indian people that did not leave Florida during the Trail of Tears were subjected to harsh treatment and racial segregation. In 1852, the General Assembly of Florida enacted legislation that made it illegal for any Native American to remain in Florida, and those that did remain would be punished under penalty of death for leaving their reservation. The Muscogee were subjected to the injustice of Jim Crow laws in Florida, and for nearly 100 years they were forced to hide their culture, government structure, and traditional way of life.

As a result, the Muscogee Nation has had great difficulty in meeting BIA's changing tribal recognition requirements even though Jim Crow laws made it practically impossible for them to prove their existence. Because of the incredible gridlock of the BIA's recognition process, the Muscogees have been in a bureaucratic quagmire for over 30 years with no end in sight as to when action will be taken on their petition.

The State of Florida has recognized the Tribe's official status, and in 1981 the Muscogee Tribal Charter was approved by the state to allow to the tribe to begin applying for federal grants by the tribal government.

The members of the Muscogee Nation have significant healthcare, education, and senior service needs which have been compounded by inaction at BIA. I urge the Committee to approve S.514, and I look forward to working with you to secure final passage.

Sincerely,

Mel Martinez
United States Senate

Senator MURKOWSKI. If you could just, very quickly, with the Little Shell Tribe, Chairman Sinclair, you have been in this process now for 30 years, is that correct?

Mr. SINCLAIR. Yes.

Senator MURKOWSKI. And, Chairman Tucker, Muscogee has been in process for about 30 years, is that correct?

Ms. TUCKER. Yes. Our first petition was written by an assistant professor at Pensacola Junior College and was filed in late 1977 and was returned in 1978 with a number. We had a roll and a petition, and the new regulations were returned to us.

Senator MURKOWSKI. Chairman Yob, how long for the Ottawa, then?

Mr. YOB. In our current efforts, we put our letter of intent in in 1994.

Senator MURKOWSKI. And, Dr. Rountree, with the Virginia tribes, how long has this been underway with the BIA?

Ms. ROUNTREE. With the BIA? Most of them sent in petitions to—sorry, letters of intent to petition in 1978. There have been some other groups that I don't work with who have appeared since then and sent in letters later.

Senator MURKOWSKI. Well, the reason I ask is because Mr. Fleming has indicated that the preference, of course, is to go through the process; and I would agree with Chairman Dorgan, that is the process that we have put in place. There is good reason for it and it is important to follow that, and only do you seek the legislative solution if there is an overriding reason—and those are your words, Mr. Fleming—to bypass the administrative process.

But you have indicated that we don't want to go to the legislative process because it avoids scrutiny, and I guess my question to you is when you have 30 years here with the Little Shell and 30 years with the Muscogee and 30 years with—excuse me, not quite 30 years, 17 and close to 30, how is this avoiding scrutiny?

Mr. FLEMING. Senator Murkowski, a good part of the time is work that is done on both sides. You have a petitioning group that is trying to research evidence to apply under the seven mandatory criteria, so, as a group submits a letter of intent, that is not the fully documented petition at the very beginning, and in some cases these groups have taken over 20 years to do the research.

One of our cases of a group in New England petitioned and put a letter of intent in 1978 but did not submit documented petition material until 1998. Yet, we get blamed for that 20-year research project that is done by volunteers, it is done by limited resources by the groups. The groups may go through some leadership problems and such. This is why, in our directive, we wanted to address how the Department can deal with groups that do go through splintering problems. The moment you have a dispute between two leaders, sometimes their records are moved and taken away, and then we get a barrage of Freedom of Information Act requests.

Senator MURKOWSKI. And I can clearly appreciate that you can have a build-up of time and it is not necessarily on the agency's ends, that there are other issues at play then. So it is not as if we want to say, okay, nothing should extend beyond 10 years or set an arbitrary number, but when you made the comment that somehow or other seeking a legislative solution could be viewed as an attempt to avoid scrutiny, I would suggest that, at least with these groups that we have before us today, the scrutiny has clearly been there, based on what I have seen.

I want to try to understand what, in your opinion, would qualify, then, as an overriding reason to bypass this administrative process. And let's just use two examples, whether it is Muscogee or whether it is the Little Shell, where you have 30 years between the time the letter of intent has been filed and where you are in the process now. So you clearly have I think what most people would consider to be adequate time to review and to exchange and to get to the documentation.

The other situation that, in my mind, might be a compelling reason is the story that we have heard today about the Virginia tribes, and the fact that you may be requesting documentation or information that does not exist.

And I think, Chairman Tucker, you have mentioned this as an issue as well.

So if these two situations don't qualify as an overriding reason to bypass, what would? What has, in your opinion, constituted an overriding reason?

Mr. FLEMING. I would look to the recent directive. In the directive is a provision that allows for an Indian tribe that has had long historic State reservation status. In the directive, if the group is able to demonstrate that, then they can go to the head of the waiting list, because, with that long-standing reservation status, there is considerable State documentation because of that State relationship. I would say, in those cases, there you have an overriding factor.

The groups that are before us right now have had, and some still do, a lot of questions with regard to their Indian ancestry, to some that have questions regarding the continuous, distinct community; some have questions over political influence and leadership. Some may even be associated, as I mentioned earlier, with another federally recognized Indian tribe.

You want all of that to be clear and all of that cleared and understood before they are either recognized under our process, and I would think you would want it clear before you recognize them through a Federal statute.

Senator MURKOWSKI. I understand what you have said. I don't know that any who are represented here today would suggest that that is making this process any more defined for them and their quest.

One last quick question. Then, if I have additional, I will go ahead and submit them to the record.

I think it was you, Chairman Tucker, that mentioned that one of the reasons that you are seeking the Federal recognition through Congress is the financial hardship issue, and the matter of limited funding.

Ms. TUCKER. Yes.

Senator MURKOWSKI. We have all had to deal with lawyers at one point in time and pay lawyer's fees, and they are not cheap. Do you have any idea of what you have had to pay as you have sought this recognition over the course of these decades? What are we talking about in terms of dollars?

Ms. TUCKER. Millions.

Senator MURKOWSKI. Millions?

Ms. TUCKER. Yes. Easily.

Senator MURKOWSKI. Chairman Sinclair? Similar situation?

Mr. SINCLAIR. I think the lawyers alone, in our case, I think our last estimate was they put $1 million, but most of it has been pro bono because we don't have any money. But their patience, I think, is growing thin. You know, we are kind of at the end.

Senator MURKOWSKI. It speaks to a process that, again, as Chairman Dorgan has noted, we want to make sure that when you utilize the process that we have set up through the agency to provide for this recognition, that it not be a—I think Senator Tester used the word—generational quest and a quest that can literally put you in a bankrupt situation or a financial stress that you look at and you say we simply can't even avail ourselves of this option because

we don't have the time and we don't have the money. We have to have better systems in place. I would like to think that, with these guidelines that are out there, that is helping somewhat, but it sounds like there is more that remains to be done.

Mr. Fleming?

Mr. FLEMING. Well, I wanted to point out that, in particular for the Virginia groups, for example, under the directive, there is a provision that allows for a group to only be burdened with documenting from 1789, which was when the United States was created through its governing document. So rather than 1607 to the present, they only need to document from 1789 to the present. By having that provision in there, they are relieved of 182-year evidentiary burden, and that is very helpful in their case. We have requested documentation from Dr. Rountree, and I believe even Senator McCain had asked for Dr. Rountree to provide the office with whatever documentation. We have not received anything yet, but we look forward to receiving documentation from all of these groups and hope that the documentation meets the seven mandatory criteria.

Senator MURKOWSKI. Well, I am sure that that is appreciated, but I will tell you, when the new passport requirements were being discussed and Alaska Natives in my State knew that they were going to be required to have a passport to go over into Canada, I can tell you that there was great concern by many elders in our villages because they simply have no documentation, and these are people that are living here today. So to say that, well, we have kind of forgiven them for the first 150 years and they just need to find it from 17–whatever—I forget the date that you gave me.

Mr. FLEMING. 1789.

Senator MURKOWSKI. 1789, thank you. We recognize that it is easier said than done.

Mr. FLEMING. Right. When I was registrar for the Cherokee Nation, we worked with many families that were born outside of a hospital, and many of them did not have the standard birth certificates. So the staff had to work with the families to establish what are known as delayed birth certificates, which is—as we know, the birth certificate is one of the key cornerstones of all of what is required by many agencies. So it is helpful when you have a trained staff that can work with individuals and with groups to help them meet the requirements.

And we are very excited by the fact that we now are on the internet. As you know, our agency has been off of the internet for over six and a half years. Our office was one of the first to get their material up, and it was actually put online today so that groups, interested parties, the general public can take a look at our decisions, our regulations, and many of the items that are necessary. Before we were cut off the internet, we only had 20 documents that were on our website. We have over 500 now, just at the flick of a switch today. So we are trying to be transparent and helpful.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, again, let me thank all of you who have traveled to Washington to provide testimony today. As I indicated, the Committee is holding this hearing because we want to gather

additional information for the purpose of making some decisions as we go forward when the new Congress begins.

This Committee is adjourned.

[Whereupon, at 3:50 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA

Good Afternoon Mr. Chairman and colleagues on the Senate Indian Affairs Committee. I thank you for holding this hearing today regarding recognition of six Virginia Indian tribes. For years now I have worked closely on this matter with these tribes and with my colleagues in the Virginia Congressional delegation.

My message today is a simple one: While I strongly support federal recognition for these Virginia tribes, I do have a serious concern that H.R. 1294, the bill before the Committee, could produce the unintended consequence of allowing Virginia Indian Tribes greater rights to conduct gambling activities beyond the limitations currently established under Virginia's laws.

I shared these same concerns about gaming with the Committee at its June 2006 hearing on a similar bill. At that time, I noted that I strongly believe that Virginia's Indian tribes deserve federal recognition. But, I also noted then that I share the concern of some people that federal recognition could—without appropriate court-tested safeguards—unintentionally result in gaming in Virginia that is contrary to the letter and spirit of Virginia's laws. At that hearing, I committed to working with the Virginia tribes and others to ensure that a federal recognition bill would not result in such an unintended consequence.

Despite my best efforts, the best efforts of the tribes, and the best efforts of others in the Virginia Congressional delegation, a consensus has not been reached on this matter. I remain concerned that the House passed bill could produce the unintended consequence of allowing Virginia Indian tribes greater rights to conduct gambling activities beyond the limitations currently established under Virginia's laws.

Last year, I specifically asked the Congressional Research Service to review the House passed language on gambling. I respectfully submit for the record the CRS memorandum reviewing this legislation. In the memorandum, CRS states that the gaming language in H.R. 1294 has never been tested in court and that it is not possible "to predict or assert with any degree of certainty that H.R. 1294 provides 'iron clad' protection against gaming."

It is important to recognize that Congress has previously passed legislation that has been upheld in court with respect to federal tribal recognition and gaming limitations. It is my hope that the Committee would work with the Virginia tribes and the Virginia Congressional delegation to examine these statutes and court cases and determine if such language could serve as a model to help move this very important recognition bill forward in an amended fashion.

Mr. Chairman, I hold the view that a consensus can be reached to move this legislation forward. The Virginia tribes deserve recognition, and I believe federal recognition can be achieved while respecting Virginia's laws on gaming. Congress has passed similar laws for others tribes in other states, and courts have upheld those laws. Those efforts should serve as our path forward.

The case for federal recognition of these Virginia tribes is clear. To date, the Federal Government has acknowledged more than 500 Native American tribes, yet the Federal Government has not done so for six of the tribes that first greeted Captain John Smith upon the shores of Jamestown more than 400 years ago. While I recognize that there is an administrative process that is also available to obtain recognition, the case is well established that, because Virginia, many decades ago, destroyed vital documents, that this process is not appropriate for these tribes.

In sum, Mr. Chairman, it is my hope that a federal recognition bill can pass the Congress and be signed into law with court-tested safeguards in place to protect our state laws on gaming.

Given the fact that legislative activity in the 110th Congress could come to a close in the coming days, I recognize that a consensus on this matter may not be achieved this year. If that is indeed the case, it is my hope that you and others on this Committee will help move federal recognition legislation with court-tested gaming safeguards in the next Congress.

Attachment

Memorandum August 23, 2007

TO: Hon. John W. Warner
Attention: John Frierson

FROM: M. Maureen Murphy
Legislative Attorney
American Law Division

SUBJECT: The Anti-Gaming Provisions of H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act

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This responds to your request for a memorandum discussing whether H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, as passed by the House on May 8, 2007, "gives the state of Virginia 'iron clad' protection against gambling interests gaining any further gaming rights than any other Virginian."

To respond to your request, we will: (1) set forth the anti-gaming and jurisdictional provisions of H.R. 1294 and any relevant legislative history; (2) provide a brief background on the legal basis of Indian gaming; (3) briefly describe some of the factors that have been included in legislation upheld as curtailing tribal gaming or subjecting tribal gaming to state law; and (4) analyze the H.R. 1294 gaming and jurisdictional provisions in light of factors relied upon in judicial opinions upholding legislation denying gaming rights to other tribes.

It will not be possible, however, to predict or assert with any degree of certainty that H.R. 1294 provides "iron clad" protection against Indian gaming. Courts approach Indian law decisions against a backdrop of statutory and decisional law interpreting federal Indian policy as it has evolved historically and sometimes use canons of statutory construction favoring Indian and tribal rights. Unless lawmakers are cognizant of these decisions and policies and provide ample legislative history and precise and comprehensive statutory explication of their goals, they risk the possibility that their intent will not be actualized. This is particularly true in matters involving gaming and jurisdiction, both of which figure in H.R. 1294.

H.R. 1294. H.R. 1294 provides federal recognition for six Virginia Indian tribes: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe–Eastern Division; the Upper Mattaponi Tribe; the Rappahannock Tribe, Inc.; the Monacan Indian Nation; and the Nansemond Indian Tribe (hereinafter, the Tribes or the Virginia Tribes). In extending federal recognition, the bill includes provisions applicable to each tribe which generally incorporate

and make applicable to the Virginia Tribes the general laws of the United States which are applicable to Indians and Indian tribes. The provisions read:

> All laws (including regulations of the United States of general applicability to Indians or Nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq)) that are not inconsistent with this title are applicable to the Tribe[s] and tribal members.[1]

As passed by the House, the legislation contains language with respect to each of the these tribes that is intended[2] to preclude gaming. It reads:

> The Tribe shall not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.[3]

There is also language applicable to each of the Tribes, which are captioned "Jurisdiction of the State of Virginia." It reads:

> (a) In General- The State of Virginia shall exercise jurisdiction over–
> (1) all criminal offenses that are committed on; and
> (2) all civil actions that arise on lands located within the State of Virginia that are owned by, or held in trust by the United States for, the Tribe.
> (b) Acceptance of State Jurisdiction by Secretary- The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the State of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.[4]

These provisions were added to the legislation during the April 27, 2007, mark up session held by the House Committee on Natural Resources, and are not addressed in the Report accompanying the legislation.[5] Indicative of the congressional intent that these provisions preclude gaming under IGRA by the Virginia Tribes are statements made by various members during the House debate. Representative Rahall, Chairman of the House Committee on Natural Resources, assured the House that the anti-gaming provisions provided a broad prohibition on tribal gaming and had the full backing of the Virginia Tribes. He said:

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[1] H.R. 1294, 110th Cong., 1st Sess., as passed by the House, May 8, 2007, Sections 103(a), 203(a), 303(a), 403(a), 503(a), and 603(a). All references to H.R. 1294 hereinafter are to this version.

[2] H.R. Rept. 110-124, 110th Cong., 1st Sess. 22 (2007), states: "The six Virginia tribes agreed to a prohibition on gaming and have repeatedly stated that they have no intention of pursuing gaming at this time. Accordingly, the tribes are prohibited from conducting any gaming pursuant to any inherent authority they may possess pursuant to the Indian Gaming Regulatory Act, or any other federal law." [sic].

[3] H.R. 1294, sections 106(b), 206(b), 306(b), 406(b), 506(b), and 606(b).

[4] H.R.1294, sections 108, 208, 308, 408, 508, and 608.

[5] H.R. Rep. 110-124, 110th Cong. 1st Sess. (2007).

> To address claims that the tribes are only interested in Federal recognition so that they may conduct gaming, the six tribes supported an outright gaming prohibition which was included in this bill. This gaming prohibition precludes the Virginia tribes from engaging in, licensing or regulating gambling pursuant to the Indian Gaming Regulatory Act on their lands.[6]

Various supporters of the bill indicated that endorsement was premised on having been assured that the bill contained an absolute prohibition of casino gambling, whether or not they believed that stronger language was possible.[7] Representative Moran, the sponsor of the legislation, and Representative Shays engaged in a colloquy that indicates that both believed that the provisions were intended to prohibit gaming by the Tribes. They differed in their views of whether the gaming prohibition would be efficacious. Representative Moran

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[6] 153 *Cong. Rec.* H4604 (May 8, 2007 daily ed.) (statement of Rep. Rahall).

[7] Representative Goodlatte stated:

> ...in recent days I have begun to hear murmurs that the language is not as strong as we have been led to believe, and the tribes are considering challenging the gaming limitation. I have always believed the tribes when they have said they do not wish to pursue gambling, so I hope that there is no truth to a challenge.
>
> I believe it is the desire of this Congress that if challenged in court, this language would be upheld, just as similar language was upheld in *Del Sur Pueblo v. State of Texas*, 69 Fed. App. 659. However I urge the Senate to look closely at this bill to see if the language can be tightened and strengthened to further ensure that casino-style gambling doe [sic.] not come to the Commonwealth. 153 *Cong. Rec.* H4606 (May 8, 2007, daily ed.) (statement of Rep. Goodlatte).

Representative Wolf spoke of similar "rumors that attorneys are being consulted about ways to overturn the limitation on tribal gaming" and provided a state of the rationale behind the limitation as follows:

> Under the bill, no Virginia Indian tribe or tribal member...would have any greater rights to gamble or conduct gambling operations under the laws of the Commonwealth of Virginia than any other citizen of Virginia. Further, it is the expectation of Congress that the language restricting gambling operations by Indian tribes will be upheld if it is ever challenged in court, just as similar language was upheld in *Ysleta Del Sur Pueblo v. the State of Texas*, 69 Fed. App. 659.
>
> *****
>
> If casino gambling were to come to Virginia, it would open the door to the myriad of financial and social ills associated with gambling. Virginia's tourism sector, its economy and its communities are some of the strongest in the country. Places such as the Shennandoah Valley, Williamsburg and Jamestown are national treasures which draw visitors from all over the world. Small businesses thrive in Virginia. The Commonwealth's reputation would be tarnished if it allowed casino-style gambling within its borders.
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> This legislation, I believe, does shut the door on the opportunity for these tribes to acquire land and eventually establish tribal casinos. As I said, I know that the current tribal leadership has indicated that they do not want to pursue gambling–and I believe they are sincere. But what the leaders today say doesn't lock in the leaders of tomorrow. I have already started to worry that future leadership of the tribes will pursue establishing tribal casinos. I hope I am wrong. 153 *Cong. Rec.* H4607 (May 8, 2007 daily ed.) (statement of Mr. Wolf).

indicated that the prohibition was a necessary compromise and espoused it as effective because it was similar to other gaming prohibitions imposed on other Tribes, including the Narragansett Indian Tribe.[8] Representative Shays, on the other hand, was concerned that future legislation or court decisions could open the way for gaming by the Virginia tribes.[9]

Background on Indian Gaming. Jurisdiction over criminal and civil matters arising on Indian reservations is a complex matter. Under federal law, any gambling that is conducted on Indian reservations, "whether or not it is sanctioned by an Indian tribe," must conform to state laws and regulations; otherwise, it is generally subject to federal prosecution[10] unless it is conducted under the terms of the Indian Gaming Regulatory Act (IGRA).[11]

IGRA provides a basis for gaming activities on "Indian lands"[12] that need not conform to state law. The three classes of gaming authorized by IGRA progress from tribally regulated class I social gaming, through class II bingo and non-banking card games--regulated by tribes and the Indian Gaming Regulatory Commission, to class III casino gaming, which requires a tribal state-compact.[13] The federal courts have long recognized that Indian tribes, as a matter of retained inherent tribal sovereignty, have certain territorial

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[8] 153 *Cong. Rec.* H4563-4565 (May 8, 2007 daily ed.) (statement of Rep. Moran).

[9] Id. at 4564 (statement of Rep. Shays).

[10] Under 18 U.S.C. § 1166,

> (a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.
>
> (b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.
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> (c) For the purpose of this section, the term "gambling" does not include -
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> (1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or
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> (2) class III gaming conducted under a Tribal-State compact proved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.
>
> (d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

[11] 25 U.S.C. §§ 2701, et seq.

[12] "Indian lands" is defined to include lands within Indian reservations and lands held in trust by the United States for an Indian tribe or individual. 25 U.S.C. § 2703(4).

[13] 25 U.S.C. §§ 2703(6), (7), and (8).

jurisdiction with respect to civil and criminal law within their reservation borders.[14] IGRA was enacted as part of a long tradition of federal legislation and judicial decisions that have established an intricate jurisdictional allocation among Indian tribes, states, and the federal government with respect to governmental power over reservation activities.

Under the Indian Commerce Clause of the U.S. Constitution,[15] the federal government has exclusive authority over Indians on Indian reservations and Indian trust land.[16] State authority over Indians on their reservations, thus, depends upon federal delegation. In the criminal law area, crimes committed by or against Indians in Indian country are subject to federal prosecution and, with the exception of major crimes for which there are federal statutory definitions or other offenses which tribes have punished exercising their concurrent jurisdiction, state criminal laws are used as the basis of federal prosecution.[17] During the late 1970's, tribes began to authorize or conduct various types of gaming activity not permissible in other parts of their states. Eventually, the Supreme Court broadly upheld tribal authority to do so in *California v. Cabazon Band of Mission Indians*.[18] The case is premised on the allocation of criminal and civil jurisdiction in "Indian country"[19] under a federal statute, usually referred to as Public Law 280.[20] That statute was enacted in 1953. It delegates criminal jurisdiction over most crimes committed in Indian country and a degree of civil jurisdiction over matters arising in Indian country to certain states, including California.[21] The criminal component of Public Law 280 reads:

> Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the

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[14] See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Montana v. United States*, 450 U.S. 544 (1981); *Lara v. United States*, 541 U.S. 193 (2004).

[15] U.S. Const., art. I, § 8, cl. 3.

[16] *Worcester v. Georgia*, 31 U.S. 515 (1832).

[17] 18 U.S.C. §§ 1151 - 1153.

[18] 480 U.S. 202 (1987).

[19] "Indian country," the geographical component of federal criminal jurisdiction over Indian lands, is defined in 18 U.S.C. § 1151 to mean "(a) all land within the limits of any Indian reservation..., (b) all dependent Indian communities..., and (c) all Indian allotments...."

[20] Act of August 15, 1953, ch. 505, 67 Stat. 588, 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-126, 18 U.S.C. §§ 1360, 1360 note.

[21] At first five states, California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), and Wisconsin (except Menominee Reservation), were designated for delegation of this jurisdiction. Later Alaska was added. Pub. L. 85-615, 72 Stat. 545. In 1954, the Menominee Tribe was added. Act of August 24, 1954, ch. 910, 68 Stat. 795. Another provision allowed any state to assume jurisdiction. This was repealed by Pub. L. 90-284, 82 Stat. 79 (1968), but not before 10 states assumed some jurisdiction under it. It has since been amended and now requires consent of a tribe in a special election before a state may assume jurisdiction over criminal offenses; it also permits retrocession of state jurisdiction. 25 U.S.C. §§ 1326; 1321(a); and 1322(a). Since then, only one state, Utah, has accepted jurisdiction, Utah Code §§ 9-9-201 – 9-9-213, but no tribes in Utah have consented to state jurisdiction.

> criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory....[22]

The civil provision reads:

> (a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State...
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> *****
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> (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.[23]

In 1973, in *Bryan v. Itasca County*,[24] in an opinion on which the *Cabazon* Court relied, the Supreme Court held that the civil component of Public Law 280 did not authorize state taxation of Indian land in Indian country. Moreover, the Court read the legislative intent of Congress in enacting Public Law 280 as not conveying general regulatory jurisdiction over Indian country to the states.[25] The Court in *Cabazon* noted that while Public Law 280 conferred on California general criminal jurisdiction to prescribe and punish crimes committed by and against Indians on California reservations, its grant of civil jurisdiction was limited, as had been held in *Bryan*. According to the *Cabazon* Court's reading of *Bryan*, Public Law 280's grant of civil jurisdiction to states did not extend to general civil regulatory jurisdiction and, thus, did not give California–or any of the other Public Law 280 states–the authority to prescribe civil laws and regulations for Indian reservations. The Court, therefore, inquired as to the nature of California's bingo law in terms of whether it was a criminal-prohibitory law or a civil-regulatory law. It accepted the holding of the appellate court that the California gambling law was civil-regulatory, primarily because California did not prohibit all forms of gaming, but allowed and regulated some bingo operations and some card games, and operated a state lottery. The fact that unregulated bingo was subject to criminal misdemeanor treatment under California law did not alter the Court's analysis.

Finding that Public Law 280 had not delegated authority to California to regulate bingo on Indian reservations, the Court looked to whether or not there was implied federal preemption and found that there was. It found federal preemption by engaging in a balancing test of federal and tribal interests versus California's interest, all of which was considered against a backdrop of tribal sovereignty. It found that the federal policy and interest in tribal self-determination and economic development outweighed the interest advanced by California–preventing organized crime from taking hold.

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[22] 18 U.S.C. § 1162(a).

[23] 28 U.S.C. §§ 1360(a) and (c).

[24] 426 U.S. 39 (1973).

[25] Id., at 387. According to the Court, "certainly the legislative history...makes it difficult to construe [the] jurisdiction...acquired...as extending general state civil regulatory authority, including taxing power, to govern Indian reservations."

Federal Legislation Subjecting Tribal Gaming to State Law. Several federal laws settling Indian land claims or providing recognition to a particular Indian tribe contain clauses designed to subject tribal land to state jurisdiction or to preclude tribal gaming under IGRA. None contains language identical to that included in H.R. 1294. It might be useful to examine the language of some of these statutes and any judicial decisions interpreting them, particularly with respect to gaming.

The Maine Indian Claims Settlement Act of 1980 (MICSA).[26] Under MICSA, Maine laws are made applicable to Maine Indian tribes. The language reads, in pertinent part, as follows:

> Except as provided in section 1727(e)[27] and 1724(d)(4)[28] of this title, all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.
>
> (B)(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.[29]

Another provision of MICSA makes inapplicable any subsequently enacted federal Indian law "which would affect or preempt the application of the laws of the State of Maine"[30] as provided in the MICSA. IGRA was enacted after MICSA and has been held not to apply to

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[26] 25 U.S.C. §§ 1721 et seq.

[27] Under 25 U.S.C. § 1727(e), the Indian Child Welfare Act is made applicable to Maine tribes.

[28] Under 25 U.S.C.§ 1724(d)(4), the Secretary of the Interior is authorized to enter into negotiations with the State of Maine and the Houlton Band of Maliseet Indians respecting an agreement regarding trust acquisition of land or natural resources.

[29] 25 U.S.C. §§ 1725(a) and (b)(1). Under the Maine Implementing Act, there is a general provision containing language similar that of the federal statute subjecting all Maine Indians and Indian nations to the laws of the state. Me. Rev. Stat. Ann. tit. 30 § 6204. "Laws of the state" is defined to mean "the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof." Me. Rev. Stat. Ann. tit. 30 § 6203(4). With respect to the Passamaquoddy Tribe and the Penobscot Indians, separate provisions define jurisdiction of their courts and their law enforcement authority. Me. Rev. Stat. Ann. tit. 30 §§ 6209-(A) and (B) and 6210.

[30] 25 U.S.C. § 1735(b). It reads:

> The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indian nations, or tribes or bands of Indians which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

the Passamaquoddy Tribe, thereby precluding IGRA gaming.[31] Its effect upon another Maine tribe, the Aroostook Band of Micmacs, which was accorded federal recognition after IGRA was enacted, is not as clear. Under the terms of the Aroostook Band of Micmacs Settlement Act of 1991,[32] federal law is applicable to the Aroostook Band of Micmacs to the same extent as it is applicable to other Maine tribes recognized in the MICSA.[33] There appears to have been no judicial decision precisely on point interpreting this provision. There is, however, a decision finding that the provision of the MICSA applying state law to "all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members"[34] subjects the Aroostook Band of Micmacs to state law. In *Aroostook Band of Micmacs v. Ryan*,[35] the U.S. Court of Appeals for the First Circuit held that the MICSA provision abrogated any common law tribal sovereign immunity which the Aroostook Band of Micmacs might claim and subjected the tribe to the authority of a Maine anti-discrimination law and to enforcement proceedings based on discrimination complaints filed by tribal employees. In reaching the decision, the court chose to respond to claims that the MICSA provision was similar to the provision of Public Law 280 at issue in *Bryan v. Itasca County*. It contrasted the legislative history and language used in MICSA with that of Public Law 280 and noted that "the Court in *Bryan* stressed that Public Law 280 lacked "any conferral of state jurisdiction over the tribes themselves,' [while the MICSA] expressly *does* apply to Indian tribes in addition to their members."[36]

The Catawba Indian Claims Settlement Act (CICSA).[37] CICSA provides that IGRA does not apply to the Catawba Indian Tribe. The provision reads:

> (a) The Indian Gaming Regulatory Act...shall not apply to the Tribe.
> (b) The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation. [38]

The settlement agreement between the State of South Carolina and the Catawba Tribe, which was ratified by the federal legislation, permits the Catawba Tribe to conduct bingo. The CICSA contains a provision, which is similar to the savings clause in MICSA. It makes

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[31] *Passamaquoddy Tribe v. State of Maine*, 75 F. 3d 784 (1st Cir. 1996). In this case, the court interpreted the savings clause in MICSA to require a "later Congress to stop, look, and listen before weakening the foundation on which the settlement between Maine and the Tribe rests...[and as signaling] courts that, if a later Congress enacts a law for the benefit of Indians and intends the law to have effect within Maine, that indent will be made manifest." Id., at 789.

[32] Pub. L. 102-171, 105 Stat. 1143, 25 U.S.C. § 1721 note.

[33] 25 U.S.C. § 1721 note, § 6(b). This provision reads: "For the purposes of application of Federal law, the Band and its land shall have the same status as other tribes and their lands accorded Federal recognition under the terms of the Maine Indian Claims Settlement Act of 1980."

[34] 25 U.S.C. § 1725(a).

[35] 484 F. 3d 41 (1st Cir. 2007).

[36] Id., at 52 (citation omitted, emphasis in original).

[37] 25 U.S.C. § 941 et seq.

[38] 25 U.S.C. § 941*l*. This section is implemented by S.C. Code § 27-16-110.

subsequent federal Indian legislation inapplicable unless it so specifies.[39] The CICSA contains various provisions which substantially subject the tribe and tribal land to state jurisdiction.[40] In a case in which the Catawba Tribe contested the authority of a state municipality to deny approval of a high stakes bingo operation, the U.S. Court of Appeals for the Fourth Circuit ruled against the tribe, affirming a district court opinion that had specifically found that "the federal implementing legislation expressly delegated regulatory authority over the Tribe's gambling operations to the State of South Carolina and its political subdivisions."[41]

The Rhode Island Indian Claims Settlement Act of 1978 (RICSA).[42] RICSA, as amended in 1996,[43] has been held to preclude gaming.[44] As originally enacted, RICSA had a jurisdictional provision implementing a settlement arrangement executed by state and local government officials and private landowners in settlement of litigation involving claims by the Narragansett Indian Tribe that certain lands in Rhode Island had been illegally transferred in violation of federal law.[45] One of the terms of the settlement, as characterized by the House Report accompanying the federal legislation was that "[a]ll the laws of the State were agreed to continue in full force and effect on the settlement lands...."[46] The jurisdictional provision in the federal legislation reads, in pertinent part:

> Except as otherwise provided in this subchapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.[47]

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[39] 25 U.S.C. § 941m(c). It reads:

> The provisions of any Federal law enacted after October 27, 1993, for the benefit of Indians, Indian nations, tribes, or bands of Indians, which would affect or preempt the application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands, as provided in this chapter and the South Carolina State Implementing Act, shall not apply within the State of South Carolina, unless such provision of such subsequently enacted Federal law is specfically [sic] made applicable within the State of South Carolina.

[40] For example, 25 U.S.C. § 941h(1) subjects "[a]ll matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory...[to] the terms and provisions of the Settlement Agreement [with the State] and the State [implementing] Act...unless otherwise provided...." Similar language applies to "[a]ll matters pertaining to governance and regulation of the reservation 9including environmental regulation and riparian rights". 25 U.S.C. § 941h.

[41] *Catawba Indian Tribe of South Carolina v. City of North Myrtle Beach*, 100 U.S. App. LEXIS 13987 (4th Cir. 2000) (unpublished opinion).

[42] Pub. L. 95-395, 92 Stat. 813, 25 U.S.C. §§ 1701 - 1716.

[43] Pub. L. 104-208, Div. A, Title I, § 10(d) [Title III, § 3301], 110 Stat. 3009-227, 25 U.S.C. § 1708(b).

[44] *Narragansett Indian Tribe v. National Indian Gaming Commission*, 158 F. 3d 1335 (D.C. Cir. 1998).

[45] 25 U.S.C. § 1702(h). For history of the dispute, see *Town of Charlestown v United States*, 696 F. Supp. 800, 801-805 (D.R.I. 1988), *aff'd* 873 F. 2d 1433 (1t Cir. 1989).

[46] H.R. Rep. 95-395, 95th Cong., 2d Sess. 7 (1978); 1978 U.S.Code Cong. & Ad. News 1948, 1950.

[47] 25 U.S.C. § 1708(a).

In a 1994 decision, *State of Rhode Island v. Narragansett Indian Tribe*,[48] the U.S. Court of Appeals for the First Circuit found that the jurisdictional grant to Rhode Island included civil regulatory jurisdiction and civil adjudicatory jurisdiction, but did not preclude tribal concurrent jurisdiction. It, therefore, held that the tribe had sufficient jurisdiction to satisfy the IGRA requirement that gaming be on "Indian lands within ...[a] tribe's jurisdiction"[49] over which the tribe "exercises governmental power."[50] Congress reacted by enacting a 1996 amendment to RICSA precluding gaming; it reads:

> For purposes of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*), settlement lands shall not be treated as Indian lands.[51]

This amendment has been upheld to deny the Narragansett IGRA gaming rights against a claim that it was a denial of equal protection. The U.S. Court of Appeals for the District of Columbia found that Congress denied gaming rights to the Narragansett Tribe based on elements of the legislative history of IGRA and the Settlement Act. [52] These factors, according to the court, could be fairly interpreted by Congress as evincing tribal agreement to state control and that for Congress to exclude "from IGRA those tribes that have specifically agreed to state gambling regulation is an 'appropriate' governmental purpose."[53]

The Ysleta del Sur Pueblo Restoration Act[54] *and the Alabama and Coushatta Indian Tribes of Texas Restoration Act*.[55] These two statutes, which were enacted together, restored federal status and recognition for two previously terminated Texas tribes. Virtually identical provisions preclude the applicability of IGRA on their reservations and lands. The Ysleta del Sur Pueblo legislation provides that Texas is to exercise civil and criminal jurisdiction within the tribe's reservation as if it had assumed Public Law 280 jurisdiction with the consent of the tribe.[56] However, a separate provision precludes gaming; it contains three subsections. One subjects gaming to Texas law. It reads:

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[48] 19 F. 3d 685 (1st Cir. 1994), *cert. denied*, 513 U.S. 919.

[49] 25 U.S.C. §§, 2710(b)(1) and 2710(d)(3)(A).

[50] 25 U.S.C. § 2703(4)(B).

[51] Pub. L. 104-208, Div. A., Title I, § 10(d) [Title III, § 330], 110 Stat. 3009-227, 25 U.S.C. § 1708(b).

[52] *Narragansett Indian Tribe v. National Indian Gaming Commission*, 158 F. 3d 1335 (D.C. Cir. 1998).

[53] Id., at 1341. The court reviewed legislative histories of RICSA and IGRA and found sufficient evidence for its conclusion that Congress could have believed that the RICSA conveyed jurisdiction to Rhode Island and that the 1996 amendment was merely preserving the terms agreed on by the parties to the settlement. It noted that, although language that would have specifically excluded the settlement lands from IGRA's coverage was dropped during the course of considering the IGRA legislation, there was a Senate floor colloquy in which the two Rhode Island Senators, Senators Chafee and Pell, and the Chairman of the Senate Indian Affairs Committee, Senator Inouye, clarified the intention that Rhode Island law would govern gaming on the settlement lands.

[54] Pub. L. 100-89, Title I, 101 Stat. 666, 25 U.S.C. § 1300g (1987).

[55] Pub. L. 100-89, Title II, 101 Stat. 669, 25 U.S.C. §§ 731 - 737.

[56] 25 U.S.C. § 1300g-4(f).

> All gaming activities which are prohibited by the laws of the State of Texas are... prohibited on the reservation and on the lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86 which was approved and certified on March 12, 1986.[57]

Another emphasizes the limits of the grant of jurisdiction to Texas. It reads:

> Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.[58]

The third subsection provides for federal enforcement of the Texas gaming laws and penalties made applicable in the first subsection and preserves the right of Texas to bring injunctive actions in federal court; it reads:

> Notwithstanding section 1300g-4(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of this section.[59]

Similar language applies to the Alabama and Coushatta Indian Tribes of Texas.[60] The courts have upheld these statutes as requiring tribal gaming to comply with Texas gaming law and to be enforced in federal court either by a federal criminal action or by a suit brought by the Texas State Attorney General to enjoin violations.[61]

Massachusetts Indian Land Claims Settlement Act of 1987 (Massachusetts ILCSA).[62] Massachusetts ILCSA settled claims of the Wampanoag Tribal Council of Gay Head, Inc,

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[57] 25 U.S.C. § 1300g-6(a),

[58] 25 U.S.C. § 1300g-6(b).

[59] 25 U.S.C. § 1300g-6(c).

[60] 25 U.S.C. § 737. This refers to "Tribal Resolution No. T.C. -86-07, which was approved and certified on March 10, 1986."

[61] See *Alabama-Coushatta Tribes of Texas v. Texas*, 208 F. Supp. 2d 670 (E.D. Tex. 2002); *Texas v. del Sur Pueblo*, 220 F. Supp. 2d 668 (W.D. Tex. 2001); *modified, aff'd* 69 Fed.Appx. 659 (5th Cir. 2003), 2003 WL21356043, *cert. denied* 540 U.S. 985 (2003). In *Ysleta del Sur Pueblo v. State of Texas*, 36 F. 3d 1325 (5th Cir. 1994), *cert denied*, 514 U.S. 1016 (1995), the court ruled that IGRA was inapplicable to the Ysleta del Sur Pueblo by virtue of the language of the restoration legislation. Notwithstanding that ruling, the Alabama-Coushatta Tribes operated a casino without a tribal-state compact for five years before the court ruled, in *Alabama-Coushatta Tribes of Texas v. Texas*, that the restoration legislation made Texas gaming law applicable to tribal lands. According to the court, despite some indication in the legislative history (floor statement by a Member of the House) that could have been interpreted as applying the *Cabazon* decision to the legislation, the plain language of the gaming provision, the text of the tribal resolution, and language in committee reports combined to reveal that "Congress and the Tribe intended for Texas' gaming laws and regulations to operate as surrogate federal law on the Tribe's reservation in Texas." 208 F. Supp. 2d 670, 677.

[62] Pub. L. 100-95, 101 Stat. 704, 25 U.S.C. §§ 1771 et seq.

a federally recognized Indian tribe now known as the Wampanoag Tribe of Gay Head (Aquinnah), to certain lands in Gay Head, Massachusetts (now, Aquinnah) by extinguishing tribal land claims, ratifying past land transfers, establishing a settlement fund with state and federal contributions, and setting rules for jurisdiction on lands to be purchased or transferred to the Wampanoags. Among the jurisdictional provisions are: (1) specific limited authority for the Wampanoag Tribe to regulate hunting on settlement lands[63]; (2) authority for Massachusetts law and regulations to apply to any tribal land outside the town of Gay Head[64]; (3) a limitation on tribal jurisdiction over lands within the town of Gay Head[65]; (4) a provision specifying that "[a]ny after acquired land held in trust for the Wampanoag Tribal Council of Gay Head, Inc., any successor, or individual member, shall be subject to the same benefits and restrictions as apply to the most analogous land use described in the Settlement Agreement"[66]; and, (5) a general jurisdictional provision referencing gaming.[67] Tribal jurisdiction is severely restricted with respect to lands outside of Gay Head, the statute provides that:

> Any land acquired by the Wampanoag Tribal Council of Gay Head, Inc., that is located outside the town of Gay Head shall be subject to all the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts.[68]

Tribal jurisdiction over lands within Gay Head is confined to tribal members and subject to further restrictions. The statute specifically makes these lands subject to the settlement agreement[69] and further provides:

> The Wampanoag Tribal Council of Gay Head, Inc., shall not have any jurisdiction over nontribal members and shall not exercise any jurisdiction over any part of the settlement lands in contravention of this subchapter, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of Gay Head, Massachusetts, and applicable Federal laws.[70]

The general provision applying state law reads:

> Except as otherwise expressly provided in this subchapter or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts (including those laws and regulations which prohibit the conduct of bingo or any other game of chance).

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[63] 25 U.S.C. § 1771c(a)(1)(B).

[64] 25 U.S.C. § 1771d(g).

[65] 25 U.S.C. § 1771e.

[66] 25 U.S.C. § 1771d(c).

[67] 25 U.S.C. § 1771g.

[68] 25 U.S.C. § 1771d(g).

[69] 25 U.S.C. § 1771d.

[70] 25 U. S.C. § 1771e(a).

This legislation became law fourteen months before IGRA was enacted.[71] Although there has been no reported case addressing the ability of the Wampanoag Tribe to conduct gaming under IGRA, the civil regulatory authority of the town under the legislation has been upheld. The case involved a tribal challenge to the town's enforcement of zoning requirements against the tribe's construction of a shed for shellfish hatchery on tribal land within the town.[72]

Analysis of H.R. 1294 Anti-Gaming Language. The provision of H.R. 1294 specifically prohibiting tribal gaming reads:

> The Tribe shall not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.[73]

This language does not appear in federal law and, thus, has not been tested in the courts. It precludes gaming "as a matter of claimed inherent authority," thereby making inapplicable the rationale under which tribal gaming was upheld in *Cabazon*. It also precludes gaming under IGRA.[74] The criminal component of IGRA, 18 U.S.C. § 1166, criminalizes any gaming in Indian country that does not conform to state law or is not conducted in accordance with IGRA. This appears to leave only the possibility of gaming in accordance with Virginia law.

The language chosen in this anti-gaming provision may include a technical gap. H.R. 1294 states that the Virginia tribes shall not "*conduct*" gaming under IGRA. IGRA, however,

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[71] Both IGRA and the Massachusetts ICSA were enacted by the 100th Congress after *Cabazon*; the Massachusetts ICSA on August 18, 1987, and IGRA on October 18, 1988.

[72] *BuildingInspector and Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corporation*, 443 Mass. 1; 818 N.E. 2d 1040 (2004). The court ruled that the settlement agreement, state implementing legislation, federal settlement act, and deed transferring town land to the Wampanoag Tribe constituted a waiver of tribal sovereign immunity with respect to zoning on the particular tract of land. The tribe did not contest the applicability of the local zoning requirement; it claimed that only the tribe could enforce it. Important to the decision was the explicit waiver of tribal sovereign immunity in the language of the settlement agreement and the fact that the federal legislation was expressly subject to the terms of the settlement agreement. See 25 U.S.C. § 17711e(b). The court held that the tribe had agreed to be treated as a non-profit Massachusetts corporation for zoning purposes. The tribal attempt to remove the case to federal court failed on the basis of the jurisdictional rule of the well pleaded complaint, i.e. a state claim may not be removed to federal court when the federal issue arises only with a defense to be offered by the defendant. *Weiner v. Wampanoag Aquinnah Shellfish Hatchery Corporation*, 223 F. Supp. 2d 346 (D. Mass. 2002).

[73] H.R. 1294, sections 106(b), 206(b), 306(b), 406(b), 506(b), and 606(b).

[74] There is also a prohibition on gaming activities under regulations promulgated by the Secretary of the Interior or the National Indian Gaming Commission. The Secretary of the Interior has issued regulations , under the authority of IGRA, for class III gaming procedures, 25 C.F.R., Part 291, in situations in which a tribal suit to compel a state to enter into negotiations for a tribal-state compact is dismissed after the state raises a defense based on its Eleventh Amendment immunity. NIGC has issued various regulations, 25 C.F.R. Parts 501 et seq., for tribal gaming under the authority of IGRA.

authorizes tribes to "engage in, *or license and regulate*, class II gaming..."[75] and sets procedures for any tribe proposing "to engage in, *or to authorize any person or entity to engage in,* a class III gaming activity...."[76] The term "conduct" is not defined in IGRA, but it is used in the criminal component of IGRA in such a way as to distinguish tribally-conducted gaming from tribally sanctioned gaming.[77] Since the term "conduct' is not defined in H.R. 1294 or in IGRA, there is the possibility that a court would find ambiguous its use in H.R. 1294 with respect to whether it covers a situation in which a Virginia tribe were to authorize another person or entity to conduct a class III gaming activity[78] and secures a tribal-state compact for gaming by that entity. The strong opposition to gaming evident in the House debate and the explicit statement by the Chairman of the Natural Resources Committee, Representative Rahall, that the language of the bill "precludes Virginia tribes from *engaging in, licensing or regulating gambling* pursuant to the Indian Gaming Regulatory Act"[79] appear to show that the sponsors of the gaming prohibition intended it to cover all gaming on tribal land. On the other hand, if a court were to find the legislation ambiguous on this point, it might follow the lead of past decisions invoking principles of statutory construction that call for resolving ambiguous language in Indian statutes in favor of Indian rights.[80] However unlikely that prospect may be, it may be avoided by substituting, "shall not engage in, or license and regulate gaming activities...." for the current language, "shall not conduct gaming activities...."

Analysis of H.R. 1294 Jurisdictional Language. In addition to the anti-gaming provision, H.R. 1294 contains language conveying criminal and civil jurisdiction over trust lands of the Virginia Tribes and providing for tribal assumption of jurisdiction. Each of these will be examined in light of judicial interpretations of existing legislation delegating jurisdiction to states. Essentially, the decisions show that in examining federal laws delegating Indian country jurisdiction to states, courts have examined both the statutory language and the legislative background to determine the intent of Congress. They have distinguished between legislative jurisdiction and adjudicative jurisdiction.[81] In some cases, they have emphasized tribal willingness to agree to a limitation on jurisdiction in order to obtain federal ratification of a settlement with a state or federal recognition. H.R. 1294 includes no language which definitively conveys legislative jurisdiction, either criminal or civil, to Virginia; nor has the legislative history included a formal acknowledgment by the Virginia Tribes of their resolve to abide by Virginia law, including its gaming laws.

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[75] 25 U.S.C. § 2710(a)(2).

[76] 25 U.S.C. § 2710(d)(2)(A).

[77] 18 U.S.C. § 1166(b); see n. 10, supra.

[78] Although IGRA permits tribes to issue gaming licenses to individual or other entities, it requires the tribal ordinance under which they are to operate to be at least as restrictive as state law and the operators to be eligible for a state gaming license. 25 U.S.C. § 2710(b)(4)(A).

[79] See *supra*, n. 6.

[80] In *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985), the Court stated one of the canons of statutory construction applicable to Indian affairs legislation, "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit."

[81] "*Legislative jurisdiction* concerns a government's general power to regulate or tax persons or property, while *adjudicative jurisdiction* concerns the power of court to decide a case or to impose an order." Nell Jessup Newton (ed.), *Cohen's Handbook of Federal Indian Law*, § 7.01 (2005 ed.).

Criminal jurisdiction. A comparison of the jurisdictional language included in H.R. 1294 with that of other statutes conveying criminal law jurisdiction over Indian reservations to states indicates the possibility that H.R. 1294 will be viewed as ambiguous. H.R. 1294 authorizes Virginia to "exercise jurisdiction over...all criminal offenses that are committed on...lands located within the State of Virginia that are owned by, or held in trust by the United States for" the Virginia Tribes. Because it does not clearly state, as does Public Law 280, that the criminal *laws* of the state are to apply to Indian country within the state, it raises questions as to whether it conveys legislative authority to define and prescribe criminal conduct; i.e., whether substantive offenses, such as those covered by the Major Crimes Act,[82] including murder and manslaughter, are to be defined by federal law rather than Virginia law.

Another possible ambiguity may be seen by comparing the H.R. 1294 language with the provision of MICSA subjecting any Maine "*Indian nation, tribe or band of Indians*" to the "civil and criminal jurisdiction of the State, the laws, of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person."[83] H.R. 1294 language does not clearly state whether the criminal law jurisdiction being conveyed to Virginia includes criminal law jurisdiction over the Virginia tribes, as sovereign entities. To be certain that Virginia will be able to define as well as enforce criminal law on Indian reservations or trust lands, language such as that used in the earlier statutes might be considered. To illustrate, the following language would provide Virginia with authority to punish crimes committed by the tribes as corporate entities or governmental entities and to enact criminal laws applicable to Indians and Indian trust land in Virginia:

> The State of Virginia shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country in Virginia to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State.[84] The Tribe and its members and any lands held in trust for the benefit of the Tribe or its members shall be subject to the criminal jurisdiction of Virginia, the laws of Virginia, and the courts of Virginia, to the same extent as any other person or land therein.[85]

Civil jurisdiction. H.R. 1294 conveys to Virginia the authority "to exercise jurisdiction over...all civil actions that arise on lands in the State of Virginia that are owned by, or held in trust by the United State for" the Virginia Tribes.[86] It is susceptible to being interpreted in precisely the same way as the parallel language in Public Law 280 was interpreted by the Supreme Court in *Bryan*. That would mean that it would be read as serving to convey adjudicatory jurisdiction to entertain lawsuits arising in Indian country if they are brought before it, but not to prescribe civil laws. As a model for language conveying civil regulatory jurisdiction, i.e., the jurisdiction to make and enforce civil laws and regulations, as well as civil adjudicatory jurisdiction, there are several federal land claim settlement statutes, including MICSA, which might be modified to make Virginia civil regulatory and

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[82] 18 U.S.C. § 1153.

[83] 15 U.S.C. § 1725(a).

[84] This language is based on 18 U.S.C. § 1162(a).

[85] This language is based on 25 U.S.C. § 1725(a).

[86] H.R. 1294, sections 108(a)(2), 208(a)(2), 308(a)(2), 408(a)(2), 508(a)(2), and 608(a)(2).

adjudicatory jurisdiction applicable to the Virginia Tribes. For example, language modeled on MICSA might read:

> The Tribe and its members and any lands held in trust for the benefit of the Tribe or its members shall be subject to the civil jurisdiction of Virginia, the laws of Virginia, and the civil jurisdiction of the courts of Virginia, to the same extent as any other person or land therein.[87]

Procedure for tribal assumption of jurisdiction. H.R. 1294 also has a provision which appears to be a means of providing the Virginia Tribes with some form of concurrent jurisdiction with the State of Virginia. It reads:

> Acceptance of State Jurisdiction by Secretary- The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the State of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.[88]

Because of the absence of legislative history, the intent of this specific language is difficult to interpret. One reading of it might be that if it is enacted, the governmental authority of the Virginia Tribes would be unchanged; they would have no governmental authority until the Secretary of the Interior accepted a cession from the State of Virginia. The language seems to be predicated on the assumption that under the civil and criminal jurisdictional provisions, there would be no change in the applicability of Virginia laws to the Virginia Tribes, their land, or their members after enactment of H.R. 1294 and the creation of tribal reservations. If a court were to take this view in interpreting the law, the result might be that the tribes would be without any governmental authority other than that mentioned in H.R. 1294 or in Virginia law.[89]

On the other hand, because the legislation includes a clause that provides that "[a]ll laws (including regulations of the United States of general applicability to Indians or Nations, Indian tribes or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq)) that are not inconsistent with this title,"[90] questions are likely to arise as to the applicability of various federal Indian statutes, such as the Indian Child Welfare Act (ICWA).[91] Since ICWA provides that Indian tribes "have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled with the reservation of such tribe, except where such jurisdiction is vested in the State by existing

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[87] This language is based on 25 U.S.C. § 1725(a).

[88] H.R. 1294, sections 108(b), 208(b), 308(b), 408(b), 508(b), and 608(b).

[89] This would eliminate what this memorandum labels the "technical gap" in the H.R. 1294 anti gaming provision. See supra, at 13-14. That is because without any governmental authority, the Virginia Tribes would not satisfy the IGRA requirements that a tribe must have jurisdiction over tribal land and that the tribe "exercises governmental power" over it. 25 U.S.C. § 2710(b)(1), 2310(d)(3)(A), and 2703(4)(B). See *State of Rhode Island v. Narragansett Indian Tribe*, 19 F. 3d 685.

[90] H.R. 1294, sections 103(a), 203(a), 303(a), 403(a), 503(a), and 603(a).

[91] 25 U.S.C. §§ 1911 et seq.

Federal law."[92] There might also be questions as to the extent of state authority to tax tribal trust land and tribal income. The fact that the Act of June 18, 1934, is specifically referenced may also inject a note of ambiguity. That legislation, known as the Indian Reorganization Act, includes a provision which authorizes tribes to organize as governments and adopt constitutions.[93]

Conclusions. H.R. 1294, which provides for federal recognition of six Virginia Indian Tribes, contains certain provisions designed to prevent gaming on tribal land unless it conforms to Virginia law. There is a possible technical gap in the language used to prohibit gaming under IGRA because of use of the term "conduct" rather than including language specifically covering tribal authorization of another entity or person to engage in gaming activities. This potential defect may be overcome by sufficient legislative history or a judicial reading of the jurisdictional provisions as completely withholding all governmental authority from the Tribes until transferred under a procedure specified in H.R. 1294. The language used in the jurisdictional provisions of H.R. 1294, when compared with language used in other statutes which have been upheld to preclude tribal gaming, does not appear to be sufficiently precise in conferring legislative criminal and civil jurisdiction to the State of Virginia with respect to the Virginia Tribes, their members, or their lands. There are models in existing law which may be adapted to correct this, examples of which have been provided.

We hope this information is helpful to you and that you will call upon our office should you need further assistance.

M. Maureen Murphy
Legislative Attorney

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[92] 25 U.S.C. § 1911(a).

[93] 25 U.S.C. § 476.

PREPARED STATEMENT OF REV. JONATHAN M. BARTON, GENERAL MINISTER, VIRGINIA COUNCIL OF CHURCHES

Chairman Dorgan, members of the Senate Indian Affairs Committee Governor Kaine, Senator Webb, Congressmen Moran, Congressman Scott, tribal leaders from the Virginia Tribes, thank you for your leadership and the opportunity to provide testimony today. My name is Jonathan Barton and I serve as the General Minister for the Virginia Council of Churches. I ask your permission to include my previous testimony. I would like to express my deep appreciation to the members of Virginia's six tribes present here today for inviting the Council to stand with them in their request for Federal Acknowledgment. The Virginia Council of Churches stands with the Virginia tribes today in solid support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007."

The Virginia Council of Churches, established in 1944, is the combined witness of 37 governing bodies of 18 different Catholic, Orthodox, and Protestant denominations located within the Commonwealth of Virginia. A list of our member denominations is appended to my written comments. During our 64-year history, we have an established record for fairness, justice, and the dignity of all peoples. We stand today grounded in our faith and in our history and values. Faith means living not by our feelings but by our commitments. The assurance of things hoped for is often less about when a hoped-for dream becomes a reality than why that dream must become reality. The conviction of things not seen isn't always about when or even how it will come to pass but rather why it deserves our energies in the first place. We hold fast to our faith that our Virginia Tribes will be recognized by this Congress because we have assurance in the rightness of it and have the conviction necessary to see it through.

Four hundred and one years ago when Captain Christopher Newport sailed into the Chesapeake Bay, a relationship between the church and Virginia's Indigenous Peoples began. There is little doubt in the historical record that one of the purposes of Jamestown was to establish the Church of England. In 1999 both chambers of the Virginia General Assembly agreed to House Joint Resolution 754 urging Congress to grant Federal Recognition to the Virginia Tribes. Our legislature asked the state's delegation in Congress "to take all necessary steps forthwith to advance it." Six years ago when I testified before this Committee and the House Committee on Natural Resources, Senator Ben "Nighthorse" Campbell made the comment: "You know Rev. Barton, the Indians and the church have not always gotten along very well." The church has much to repent in our early missionary efforts. My presence here today represents a desire to repent for past sins. These early immigrants who came to these shores in the early 1600s failed to find the Image of God in the native people they encountered. These early settlers were guided by the "Doctrine of Discovery." Under this principle, European powers lay claim to lands within the New World and the continent of Africa. This Doctrine evolved from various papal bulls, dating back to 1493 provided a sense of Divine Calling, outlining how Europeans could claim and acquire land from the Indian Nations. They believed that in order to be a Christian, they needed to look, live, and speak with an English accent. Even though the missionaries were excessively zealous, the scriptures they brought with them eventually provided a source of strength for our Virginia Tribes to endure four centuries of oppression and discrimination. As settlements increased in Virginia, missionaries continued to reach out to the tribes. While this relationship was often tense the message took root and began to flourish within the tribes. By the middle of the 19th Century and up through the middle of the 20th century tribal churches were established and became a focal point of the community. Even during the period of the Racial Integrity Act when the Commonwealth was asserting there are no Indians here Baptist, Methodist and Episcopal Indian Churches continued to serve our tribes. These relationships continue today.

During that same hearing, Senator Allen asked me about concerns the Council may have regarding gaming. At that time, I stated the Council's opposition to all forms of gaming and our conviction that if gaming comes to Virginia it will not be the Virginia Tribes who are the ones to introduce it. This is still our strong conviction today.

The cultural landscape is similar with each of the Virginia tribes. As you enter their land, you find the church, the school and the Tribal Circle. As you approach the Circle you can hear the sounds of the Tribal Drum, you can feel the heartbeat of life move through your body, declaring you are on sacred ground. It is here where the tribal community is grounded. You must listen to the sound of the drum of the past, so that you can sing in the present and dance into the future. Here is where the faith and traditions of the Elders are passed to new generations.

It has been a blessing for me to know and work with each of the chiefs of our Virginia tribes. I know them to be persons of great integrity and moral courage. Each brings strong leadership to their tribes. Each brings unique and special gifts, and they all share a common respect for their past and vision for the future.

In 2007, Virginia hosted America's 400th Anniversary Commemorations with special events drawing international guests and visitors. We welcomed the Queen of England, several visits from the President and Vice President, as well as several special signature events. In addition, the churches in Virginia held several of their own events recognizing significant events in the life of the church. The Virginia Tribes played a significant role in each of these events. The events and excitement of 2007 are for many a memory now and Virginia's Indigenous People, who have lived on this land for a thousand generations, and who greeted the English as they landed in 1607, are still not recognized. It seems that our tribes are not only frozen in history; they seem frozen in the indifferent ice of Dante's Inferno. We are called to review our complete history, reflect upon it, and act as a people of faith mindful of the significance of 1607. We are also called to remember that our Tribes are still here. The people of ancient Israel wandered in the desert wilderness for forty years. Our tribes have wandered the desert of their native land for ten times forty years. Now they stand on the edge over looking the promise and wonder if like Moses they will not be able to enter. If the dream of federal recognition has been deferred to the next generation or will they, at last, be able to cross over the Jordan River.

The people in our churches and communities now look at the significance of these events differently. What represented newness of hope and opportunity for some was the occasion for oppression, degradation, and genocide for others. For the church this is not just a time for celebration but a time for a committed plan of action insuring that this "kairos" moment in history not continue to cosmetically coat the painful aspects of the American history of racism. This nation is a great nation with high ideals and hopes for all people. While we strive to reach these lofty goals we have also fallen short of the mark. What continues to make us great is that we acknowledge our flaws and redress the wrongs, always seeking a more perfect union. These six Virginia Tribes; the Chickahominy, the Chickahominy—Eastern Division, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond, stand before you today after a four hundred year journey asking only that you honor their being, honor their contributions to our shared history, and honor their ancestors by acknowledging they exist. This simple request is vital to the healing of the broken circle, broken four centuries ago when cultures collided and forever changed the history of the world. It is about the present and the recognition that despite the journey these tribes have survived and are still here. It is about taking their proper place among the other 563 tribes currently recognized by the United States. It is about the future that future generations may experience the fullness of life intended by their forbearers and their Creator. Let us mend the Circle so that we may move forward into the future. Let me close with the words from one of the songs created and recorded for the Jamestown observance in 2007 by "Anniversary Voices."

Remember the Many.

We are all part of the sacred earth, every deer, every stream, every tree.

We have learned to respect all living things, and to live in harmony.

We are riders on the sands, the sands of time, the Creator's in the wave in the shore.

We are riders on the sands, the sands of time, the Creator's in the wave in the shore.

We have been here for more than ten thousand years.

We will be here for ten thousand more!

Stand where I'm standing; take a look at my view.

How should I feel? I was here before you.

The time has arrived recognition is due.

Remember the many who've become the few!

The member Communions of the Virginia Council of Churches, strongly encourage you to remember the few, recognize our tribes pass the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007.

PREPARED STATEMENT OF HON. GENE ADKINS, CHIEF, CHICKAHOMINY INDIAN TRIBE-EASTERN DIVISION

The Chickahominy Indian Tribe-Eastern Division is located 25 miles east of Richmond in New Kent County, Virginia. European contact with the tribal ancestry of the modern-day Chickahominy Tribe and the Chickahominy Indian Tribe-Eastern Division is recorded as early as 1607. The Tribes shared history until the early 1900's when it was decided by the Eastern Chickahominy to organize their own Tribal Government. This was done because of travel inconvenience to tribal meetings of the Chickahominy Tribe in Charles City County.

In 1870, a census showed an enclave of Indians in New Kent County believed to be the beginning of the Chickahominy Indian Tribe-Eastern Division. In 1910, a school was started in New Kent County for the Chickahominy Indian Tribe-Eastern Division. Grades 1 through 8 were taught in this 1-room school. This building was also the beginning of a place to have religious meetings. 1920-1921 saw the beginning of a move to form an incorporated tribal government for the Chickahominy Indian Tribe-Eastern Division. E. P Bradby was elected Chief of the Tribe. Chief Bradby spent much time working with historians and others who were knowledgeable of the tribes in Virginia. The process of writing about the Indians in New Kent County helped with the organization of the Eastern Chickahominy. A Council and Trustee Board were organized to help with the governing of the Tribe. In 1922, the Tsena Commocko Indian Baptist Church was organized. The Church building was erected during the time the Tribe was

organizing. The Church became the center of the Tribe, which held everyone together. In 1925, a certificate of incorporation was issued to the Chickahominy Indian Tribe-Eastern Division. The Tribe continued a good relationship with the Chickahominy Tribe. In 1950, the Indian school was closed and students were bussed to Samaria Indian School in Charles City County. This was good for the education at that time for all students of both Counties. This strengthened all tribal members. Because the grades were only 1 through 10, students who wanted to graduate from high school were sent to Oklahoma and other states that accepted them in their schools. It was a hard burden on the parents. Each student who graduated remained in those schools to receive 2 year and 4 year degrees. It wasn't until the colleges in Virginia opened doors to the Indians that helped the students remain in Virginia.

State recognition was granted in 1983 in a joint effort by the Virginia Tribes. The Chickahominy Indian Tribe-Eastern Division is involved with the Virginia Council on Indian, The United Indians of Virginia and Virginia Indian Tribal Alliance for Life. These organizations are involved in the growth of the Virginia Indians that help everyone.

The Chickahominy Indian Tribe-Eastern Division has a 132 membership roll. The Chickahominy Indian Tribe-Eastern Division has had over 20 men and women serving in our military services.

We are in the process of building a Tribal Center, where we can meet as a Tribe. The Tribe hopes to build a museum and hold a Pow Wow on the land that has been purchased. There was a Pow Wow held by the Chickahominy Indian Tribe- Eastern Division in mid

1920's on the banks of the Chickahominy River, that once was owned by an elder of the Tribe. This land is no longer by an Indian.

With the hope of federal recognition, the Tribe is planning for grants to help our children get degrees in higher education such as medicine, business, law and engineering. Also, grants would be available for housing and medical care. As we approach the future, we want to bring growth in tourism. Tourism would help to display the history of our tribe. We would be able to display the crafts of our artisans.

Thank you for the opportunity to present our testimony and desire for Federal recognition. I strongly encourage you to pass this bill and make it a reality. We want acknowledgement of our culture and heritage that has for too long been denied.

PREPARED STATEMENT OF HON. KENNETH ADAMS, CHIEF, UPPER MATTAPONI INDIAN TRIBE

I am Kenneth Adams, Chief of the Upper Mattaponi Tribe of King William County, Virginia. I am submitting this statement on behalf of the Upper Mattaponi Tribe seeking Federal acknowledgement through H.R. 1294, The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007.

There is overwhelming evidence of the continuing existence of the Upper Mattaponi Indian Tribe. We have lived close to the upper reaches of the Mattaponi river, as documented by John Smith of the Jamestown colony in the early 1600s. Today, the town of Aylett on the Mattaponi River incorporates ancestral land of the Upper Mattaponi Indians. Other written accounts and maps tell of a concentration of Indians in the vicinity of Aylett from the colonial era onward.

Records of the 20th century include the establishment of Sharon Indian School in 1919 to educate the children of the Upper Mattaponi Tribe. Today Sharon Indian School is listed on the National Register of Historic Buildings as the only public Indian School still existing in the Commonwealth of Virginia. After the school was built, the Upper Mattaponi used the school for church worship services until 1942, when Indian View Baptist Church was built, the name reflecting the membership of the tribal people of the Upper Mattaponi Indian Tribe.

From the late 1940s into the late 1950s, Upper Mattaponi children attended high school and college at Bacone College in Muskogee, Oklahoma, a school established in 1880 for the education of American Indians. In 1892 from the King William County Superintendent of Education and again in the 1940s from the Tribal Chief, educational assistance was requested from the Bureau of Indian Affairs for the Upper Mattaponi Indian Tribe.

Draft cards of the First and Second World Wars document many of the Upper Mattaponi warriors as Indians, and marriage records from 1853 forward document the Upper Mattaponi as Indians.

These are but a few of many reasons we should be officially acknowledged by the Federal Government as an Indian Tribe. We have spilt our blood and given our lives for this nation in the Revolutionary War and the wars of the 20th century. We are only asking this government for one thing and that is proper recognition of the Upper Mattaponi Indian Tribe.

PREPARED STATEMENT OF HON. STEPHEN R. ADKINS, CHIEF, CHICKAHOMINY INDIAN TRIBE

Thank you Chairman Dorgan and other distinguished members of this committee for allowing me to submit testimony in support of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007—H.R. 1294. This bill and the history of the six Virginia tribes seeking federal acknowledgement was researched diligently and studiously by Senator Jim Webb before he agreed to support the bill. I thank Senator Webb for giving this bill due diligence and his subsequent unflagging support of the merits of this bill. A hearing on our Federal Recognition was held by this committee in 2006. I am honored to submit my testimony to this Senate Committee today on behalf of the six Tribes named in H.R. 1294 the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattaponi, the Rappahannock, and my Tribe the Chickahominy. I feel deeply privileged that His Excellency, Timothy M. Kaine, Governor of the Commonwealth of Virginia, who in his inaugural address pledged his strong support for Federal Recognition of the Virginia Tribes is here today giving oral testimony in support of H.R. 1294. I wish to thank Dr. Helen Rountree, a renowned anthropologist specializing in the heritage of the Virginia Tribes, who worked on the petitions we filed with the BIA, for providing expert testimony before you today and who is prepared to assist with any questions you may have about our history. And finally I thank Rev. Jon Barton from the Virginia Council of Churches who has worked tirelessly in our effort to gain Federal Recognition and who is supplying written testimony today.

Chairman Dorgan et. al., I am sure you are well aware of the events that occurred in Virginia and the United Kingdom commemorating the 400th anniversary of the first permanent English Settlement in America in May 1607. The settlement became known as Jamestown and is located on the James River in Tidewater Virginia. On Anniversary Weekend at Jamestown, May 11–13, 2007, visitors from all over the world including leaders representing the United States government, Great Britain, Native Americans and African Americans et. al., gathered acknowledging the birth of this Great Republic, the United States of America, which blossomed at Jamestown. In July 2006, a delegation of 54 tribal members representative of the gender and age demographics of the Tribes recognized by the Commonwealth of Virginia had the opportunity to visit the United Kingdom as part of its 2007 Commemoration activities. For many of us it was a first time visit to St. George's Church at Gravesend, the final resting place of Pocahontas, the daughter of Paramount Chief Powhatan and the wife of John Rolfe. History tells us that Pocahontas died when she returned with John Rolfe to England in 1616.

The impact of our experience in Gravesend is something I want to share with you because it was beyond what any of us could have possibly imagined. The congregation of St. George's Church brought home to us, the very real connection the British people feel with our heritage. And for us, who have experienced and know so well what has happened to our people since the days of Pocahontas, the connection we felt to both the congregation and Pocahontas was palpable and real. The British have paid honor and tribute to her in a manner that no member of her family or her descendants has ever received in this country. This feeling of respect and honor in the church through its living congregation suffused the entire Virginia Indian delegation. But to my utter amazement, this attitude of honor and respect transcended the spiritual and emotional service within the church and was extended to us in every venue we attended from Kent University, to Kent County Council, to the House of Commons and the House of Lords. If you would indulge me, I would like to share with you the words from a plaque which hangs on a wall of St. George's Church, I believe from these words you can sense the very sincere regard British people feel for Pocahontas. *"This stone commemorates Princess Pocahontas or Metoak daughter of the mighty American Indian Chief Powhatan. Gentle and humane, she was the friend of the earliest struggling English colonists whom she nobly rescued, protected, and helped. On her Conversion to Christianity in 1613, she received in Baptism the name Rebecca, and shortly afterwards became the wife of John Rolfe, a settler in Virginia. She visited England with her husband in 1616, was graciously received by Queen Anne wife of James I. In the twenty second year of her age she died at Gravesend preparing to revisit her native country and was buried near this spot on March 21st 1617.*

I believe for our people to go back to Great Britain and be embraced by this church congregation was a significant reconciliation and healing. As descendants, we have not felt the honor here at home that those in Great Britain both feel for Pocahontas and bestowed upon us. Through this visit to Gravesend, we saw Pocahontas as more than the legend we live behind, we saw her as the first to brave the new world that opened up with first contact by the English. We saw Pocahontas

as one with whom we can identify, as a soul who today can still touch us, and remind us of whom we are and remind us that we have a proud heritage. She is not a myth, for, she is still inside all of us, and her death and burial in England, remind us of how far and challenging our path has been since she braved that voyage to England. She was brave and she was alone. It was a tremendous experience to step into that church and feel the love of that British congregation. Appropriately, the St. George's Church Guide, contains this prayer:

> May your Church, Lord, be a light to the nations, the sign and source of your power to unite all men. May she lead mankind to the mystery of your love? Amen.

I could tell you the much publicized story of the 17th century Virginia Indians, but you, like most Americans, know our first contact history. I wish there was time today to tell the full story of what has happened to the Virginia Tribes since Pocahontas went to England to the Court of Queen Anne. The story of Chief Powhatan and his daughter Pocahontas is well known across this land, her picture being in this very capitol building with her English husband John Rolfe. But, what about our story, for years the Commonwealth of Virginia did not care about our story? Our public school textbooks had scant mention of who we are. So, what do you know or what does mainstream America know about what happened in those years between the 17th century and today. The fact that we were so prominent in early history and then so callously denied our Indian heritage is the story that most don't want to remember or recognize. In 2006 & 2007, the Virginia Indian Tribes, were a part of the commemoration of Jamestown. In 2007, when Jamestown was visited by the Queen of Great Britain and the President of the United States, the Virginia Tribes gained a much deeper understanding of who we are, fueled in part by our learning gained from our trip to Great Britain and in our involvement in researching the truth about the underpinnings of the first permanent English Settlement at Jamestown and, finally, what our contributions meant to its success. Our connection to Pocahontas and, by extension, to Great Britain must come full circle and extend to the Congress of the United States of America. We must feel the same honor and love from leaders of the United States of America as we do from the people from Great Britain with whom our last treaty was signed in 1677.

I and the Chiefs from Virginia, stand on the shoulders of many others besides Pocahontas and Powhatan. One story that has always made me sad, and which brings in a different picture than the love we experienced in Great Britain, is that of the Paspahegh led by Chief, Wowinchopunk whose wife was captured and taken to Jamestown Fort and "run through" with a sword, whose children were tossed overboard and then their brains were "shot out" as they floundered in the water, and whose few remaining tribal members sought refuge with a nearby tribe, possibly the Chickahominy. With this horrific action in August 1610, a whole Nation was annihilated. A Nation who befriended strangers, and, ultimately died at the hands of those same strangers. As we commemorated Jamestown 2007 and the birth of our Nation, those of Indian heritage in Virginia were also reminded of this history.

We are seeking recognition through an act of congress rather than the BIA because actions taken by the Commonwealth of Virginia during the twentieth century erased our history by altering key documents as part of a systematic plan to deny our existence. This state action separates us from the other tribes in this country that were protected from this blatant denial of Indian heritage and identity. The documentary genocide the Virginia Indians suffered at the hands of Walter Ashby Plecker, a rabid white separatist, who ruled over the Bureau of Vital Statistics in Virginia for 34 years, from 1912 to 1946 was well documented in an article written by Peter Hardin of the Richmond Times Dispatch in 2000. Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Indians on vital records. A practice that was supported by the state's establishment when the eugenics movement was endorsed by leading state universities and was further supported when the general assembly enacted the Racial Integrity Act in 1924. A law that stayed in effect until 1967 and caused my parents to have to travel to Washington D.C. on February 20, 1935 in order to be married as Indians. This vile law forced all segments of the population to be registered at birth in one of two categories, white or colored. Our anthropologist says there is no other state that attacked Indian identity as directly as the laws passed during that period of time in Virginia. No other ethnic community's heritage was denied in this way. Our state, by law, declared there were no Indians in Virginia in 1924, and if you dared to say differently, you went to jail or worse. That law stayed in effect half of my life.

I have been asked why I do not have a traditional Indian name. Quite simply my parents, as did many other native parents, weighed the risks and decided it was not worth the risk of going to jail by giving me a traditional Indian name.

Former Senator George Allen, as Governor of the Commonwealth of Virginia, sponsored legislation in 1997 acknowledging the injustice of the Racial Integrity Act.

Unfortunately, while this legislation allows those of the living generations to correct birth records, the legislation or law has not and cannot undo the damage done by Plecker and his associates to my ancestors who endured pain and humiliation in venues disparate as trying to obtain marriage licenses to being inducted into the Armed Forces as Indian, all because of these distorted, altered, incorrect records.

We are seeking recognition through Congress because this history of racism, in very recent times, intimidated the tribal people in Virginia and prevented us from believing that we could fit into a petitioning process that would understand or reconcile this state action with our heritage. We feared the process would not be able to see beyond the corrupted documentation that was designed to deny our Indian heritage. Many of the elders in our community also feared, and for good reason, racial backlash if they tried.

My father and his peers lived in the heart of the Plecker years and carried those scars to their graves. When I approached my father and his peers regarding our need for state or federal recognition they pushed back very strongly. In unison they said. "Let sleeping dogs lie and do not rock the boat". Their fears of reprisal against those folks who had risked marrying in Virginia and whose birth records accurately reflected their identity outweighed their desire to openly pursue any form of recognition. Those fears were not unfounded because the threat of fines or jail time was very real to modern Virginia Indians.

Chairman Dorgan, the aforementioned story is very painful and I do not like to tell that story. Many of my people will not discuss what I have shared with you but I felt you needed to understand recent history opposite the romanticized, inaccurate accounts of 17th-century history.

Let me tell you how we got here today. The six tribes on this bill gained State Recognition in the Commonwealth of Virginia between 1983 and 1989. The legislation of 1997 placed the burden of cost to correct the inaccurate vital records on the Commonwealth of Virginia, but it couldn't fix the problem—the damage to our documented history had been done. Although there were meager attempts to gain federal acknowledgement by some of the tribes in the mid 20th century, our current sovereignty movement began directly after the enactment of the aforementioned legislation acknowledging the attack on our heritage. In 1999 we came to Congress when we were advised by the BAR (Bureau of Acknowledgement and Research) now OFA (Office of Federal Acknowledgement) that many of us would not live long enough to see our petition go through the administrative process. A prophecy that has come true. We have buried three of our chiefs since that prophetic declaration was made.

Given the realities of the OFA and the historical slights suffered by the Virginia Indian Tribes for the last 400 years, the six tribes referenced in H.R. 1294 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

As Chiefs of our tribes, we have persevered in this process for one reason. We do not want our families or our tribes to let the legacy of Walter Plecker stand. We want the assistance of Congress to give the Indian communities in Virginia, their freedom from a history that denied their Indian identity. Without acknowledgment of our identity, the harm of racism is the dominant history. We want our children and the next generation, to have their Indian Heritage honored and to move past what we experienced and our parents experienced. We, the leaders of the six Virginia Tribes, are asking Congress to help us make history for the Indian people of Virginia, a history that honors our ancestors who were there at the beginning of this great country. We want to experience the honor and love that we felt was still alive in the congregation at St. George's. After our visit to Great Britain I truly believed that Federal Recognition of the Virginia Indian Tribes would occur in that anniversary year. The reception we received in Great Britain and across the Commonwealth of Virginia convinced me the time was right to end 400 years of disenfranchisement. When recognition did not occur, there was much sadness among my people. But our hope does not waver. We believe in the language of the Constitution of the United States of America. We believe that ultimately America will do right by us. We believe the blood we shed in every military conflict the United States has engaged in will not be in vain. We believe you will reconcile history in this country between two cultures in a way that honors our history of learning to live together in peace and in love. That is what we want for our people, and for our nation. The acceptance of the invitation to visit Great Britain to share our culture and history to describe our contemporary lifestyles as both contributors to the

American way of life and aspirants to the American dream and our decision to honor Pocahontas at her grave has strengthened our resolve to obtain federal acknowledgement. It has made us understand that we deserve to be on a level playing field with the other 562 odd tribes who are federally acknowledged. It has made us unwilling to accept being discriminated against because of both a historical oversight and the concerted efforts of our Commonwealth to deny to us our rightful heritage. The aforementioned invitation to visit Great Britain was not easy for us to accept. We did not know what to expect, and we were apprehensive. In a powerful way this visit was destined to be for it brought us into the history we commemorated at Jamestown in a very positive palpable way.

The Commonwealth of Virginia has taken definitive actions to right the wrongs inflicted upon its indigenous peoples and stood with us as we commemorated the anniversary of the founding of the first permanent English Settlement which occurred 400 years ago on the banks of the James River at Jamestown, Virginia. We believe it is time for the United States Congress to stand alongside us and grant us the Recognition we deserve as Sovereign Nations who provided safe haven to the 17th-century colonists and helped give birth to the greatest Nation in the world.

Again, thank you for allowing me to submit testimony on behalf of the six tribes in H.R. 1294.

PREPARED STATEMENT OF WAYNE ADKINS, PRESIDENT, VIRGINIA INDIAN TRIBAL ALLIANCE FOR LIFE

I am Wayne Adkins, an assistant chief of the Chickahominy Tribe, and I am submitting this statement on behalf of The Virginia Indian Tribal Alliance for Life (VITAL), an organization of the tribes seeking Federal acknowledgement through H.R. 1294, The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007.

In 1999, after the Virginia General Assembly passed a resolution memorializing Congress to grant them Federal Recognition, the Virginia Tribes united to seek recognition through Congress collectively. VITAL was founded at that time to, among other things, work with Virginia's Congressional delegation to obtain federal recognition.

The Tribes of Virginia have been seeking federal recognition for nearly a century, but largely through individual tribal efforts. John Collier, head of the BIA in 1943, stated that it is largely "an historical accident" that the tribes of Virginia were not recognized, because our treaties were with England, rather than with the United States. For well over a century, ethnologists from various institutions have affirmed the identity of the Indian tribes in Virginia through independent, scholarly studies.

Part of VITAL's mission is to build grassroots support within the larger Virginia population. Throughout this effort, we have been pleased with the overwhelming support we have received. Starting in 2006, and throughout 2007, the Virginia Tribes participated in events commemorating the establishment of the colony at Jamestown that lead to the birth of the United States. At these events, we shared our history and culture in dance programs, panel discussions and historical presentations that honored the memory and contributions of our ancestors. And again, we received affirmation of support for federal recognition from all demographics and all regions of Virginia. The universal reaction we experience is surprise, even shock, that no tribes in Virginia are recognized by the United States, followed by the statement that recognition is appropriate and long overdue.

A significant event during this commemoration was the trip to Kent, England by a delegation of Virginia Indian people. The people of Kent insisted that the Virginia Indians be a part of their commemorative events. This participation became a life-altering experience for us.

Tribal leaders were treated as heads of state, acknowledging the tribal sovereignty that is still recognized by the English people. We were treated with much respect wherever we went. Even more important to many of us, we visited St. Georges, the church where Pocahontas, daughter of the paramount Virginia chief Wahunsenacawh (Powhatan), is buried. We were able to have a private worship service there and to worship there with the people of Gravesend. While at that site, I felt that we had fully reconnected with our ancestors and we had come full-circle.

This event, coupled with the many expressions of support by the people of England for our federal recognition effort, confirmed for me that federal recognition of the Virginia Tribes is warranted and strengthened my resolve to pursue it even more vigorously when we returned to the United States.

Through the efforts of VITAL, tribal leaders and our Congressional sponsors, we have enjoyed successful hearings in each session of Congress since 2002. We con-

tinue to receive exceptionally strong support from the Commonwealth of Virginia, including recent Governors.

The Virginia tribes are seeking federal recognition now for the same reasons as our ancestors who initiated efforts to obtain recognition in the early part of the 20th century.

It would allow our students to participate in educational programs open only to federally-recognized tribes. It will also help us provide health care for the elders of our tribes who cannot afford health care on their limited incomes.

Recognition will allow the tribes to repatriate the remains of their ancestors in a respectful and dignified manner. Museums and universities, for example, have a large number of Virginia Indian remains but are not required to repatriate them to non-Federally-recognized tribes.

Federal Recognition would place the Virginia tribes on equal footing with other tribes in the United States and afford us the same rights and opportunities they enjoy. Our tribal governments will be able to more fully exercise their sovereignty, helping to ensure the continuity and future of our tribal communities.

Finally, Federal Recognition will officially affirm our Indian identity and heritage in a way that our ancestors were prohibited from doing by the state of Virginia. It will allow us to fulfill our ancestors' dream for recognition and further honor them and their efforts to achieve it.

I strongly urge the Committee to mark up H.R. 1294 and position it for approval by the full Senate this year.

Montana-Wyoming Tribal Leaders Council
222 North 32nd St – Suite 401, Billings, MT 59101 Ph: (406) 252-2550, Fax (406) 254-6355
Website http://www.mtwytlc.com Email: belcourt@mtwytlc.com

Senator Jon Tester
Senate Committee on Indian Affairs
U.S. Senate
Washington D.C.

Dear Senator Tester:

As Chairman of the Montana-Wyoming Tribal Leaders Council www.mtwytlc.com, I am forwarding this letter of Support for those Tribes seeking Federal Recognition. It is my understanding that the Hearing you are part of with the Senate Committee on Indian Affairs this date is considering the following Bills:

S. 1058, the Grand River Bands of Ottawa Indians of Michigan Referral Act;

S. 724, the Little Shell Tribe of Chippewa Indians Restoration Act of 2007;

S. 514, the Muscogee Nation of Florida Federal Recognition Act;

and H.R. 1294, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007.

The Montana-Wyoming Tribal Leaders Council representing the Large Land Based Tribes of Montana does stand this date to support these Federal recognition bills and continues to support the continued efforts of Chairman John Sinclair this date as he testifies before the Senate Committee on Indian Affairs seeking Federal Recognition of the Little Shell Tribe of Chippewa Indians (S.724).

We thank you for your continued support and advocacy.

Respectfully Submitted:

James Steele, Jr.
Chairman, Montana-Wyoming Tribal Leaders Council
Chairman, Confederated Salish & Kootenai Tribes

cc:

Chairman Byron Dorgan
Vice-Chairman Lisa Murkowski
Members-Senate Committee on Indian Affairs

ATTACHMENTS TO THE PREPARED STATEMENT OF HON. ANN DENSON TUCKER

ATTACHMENT 1

Muscogee Nation of Florida – Executive Summary

The Muscogee Nation of Florida, also known as the Florida Tribe of Eastern Creek Indians, is a Tribe of Creek Indian people whose home is centered in Bruce, in Walton County, Florida. The Tribe was renamed in 2001 during a constitutional reorganization to better represent its traditional roots and identity. The Creek predecessors of Muscogee Nation of Florida signed 11 treaties with the United States between 1790 and 1833. By these agreements, the removal of the ancestors of the present day Muscogee Nation of Florida began from their traditional homelands in the states of Georgia, Alabama and Florida. *(See Attachment 1: Significant Creek Treaties and Treaty Cessions)*

Those who formed our modern nation followed the Choctawhatchee River south into the State of Florida from Dale County, Alabama as early as 1837 to escape the federal government's removal policies. That year federal officers had noted that some 200 Creeks lived at a village near Daleville. *(See Attachment 2: Creek Wars letter dated 1837)*

By the 1850s, the Creek people had begun the process of forced adaptation to survive. Migration into Florida required the re-establishment of traditional grounds, communities, lifestyles, and governance. In 1853, the General Assembly of the State of Florida passed its own stringent racially discriminating laws:

> **"It shall be unlawful for any Indian or Indians to remain within the limits of this State, and any Indian or Indians that may remain, or may be found within the limits of this State, shall be captured and sent west of the Mississippi; provided that Indians and half-breeds residing among the whites shall not be included in this section."**

This Act removed any possibility of Creek people openly living traditional lifestyles, much less identifying themselves – or being identified - as members of a Tribe of Indians. The law did not prevent the Creek people that formed Muscogee Nation of Florida from creating settlements that were separate and distinct from white or black communities. However, the laws of the State of Florida required the public suppression of identifiable Creek self-governance, traditional ceremonies, racial identification, practices and lifestyles under the direct threat of removal or death. Today, this policy is described as Ethnic Cleansing.

"When I was 8 years old I was beat by my father to make me remember not to talk about being Indian in public because we'd be sent away... It's been 80 years. I guess it's all right to talk about it now." (an added thought written on the side of her list of 'Things to Remember' for her first interview with a Historian in 1979)

Malzie Ward Pate, pictured, deceased 1997

The miscegenation or *Jim Crow* laws of the South became the determinant for racial identity. In the State of Florida, a non-reservated Indian living in Northwest Florida after 1853 was classified as white, negro, or mulatto. There were no allowances made in the State for Indian people who were not Seminoles, did not live in the Everglades, and had been forced to choose a migration into Florida or adhere to Andrew Jackson's Indian Removal policies. The Creeks of North West Florida were legislated to disappear into the fabric of an emerging white or black population. The 1852 law of the General Assembly represented the first Act of Extermination by the State of Florida and remained part of the State statutes until the federal Civil Rights Act was passed in 1964.

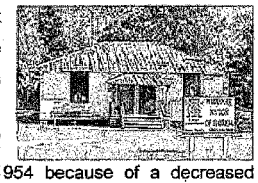
"My Mama used to bleach my knees when I was in elementary school away from Bruce because they were so dark she was afraid I'd get sent out of the white school."

Becky Ziegler – pictured, Tribal Member

When the categorization of "Indian" as a race disappeared, the legal impact was a documentary void in the Tribe's history of recognition by external sources. There are no documents written by observers from outside Muscogee Nation of Florida to list the Nation as an Indian community. No anthropologists visited the remote community of Bruce, which was best located by following the Choctawhatchee River or poor logging roads. Outsiders were not welcomed to stay in the area. Logging camps had to remain away from the Tribal Community. In essence, Muscogee Nation of Florida was a closed community system. While Muscogee Nation can easily document 6 of 7 mandatory criteria for federal recognition, it cannot meet the current interpretation of 25 CFR Part 83.7 (a) which requires "identification by an external sources" until after the Civil Rights Act was passed. **At this time, in-house interpretation and regulatory application made by personnel of the Office of Federal Acknowledgment requires documentation marked 'Indian' for every decade from 1900 to current day with no consideration for state laws that prevent the criteria from being met**. Consequently, the only Creek Tribe to be federally recognized under these regulations was achieved only by Senatorial intervention in 1983.

Historic documents generated inside the community itself provide ample evidence for the continuity of Muscogee Nation from 1890 to the present. Even though the Tribe was forced to acknowledge the new policies of the State of Florida and try to survive them, Muscogee Nation of Florida continued to function. It maintained its traditional form of leadership, subsistence type of living, and shared economics. Second cousin exchange marriage became a way to protect Indian bloodlines in the remote areas of the community. *(See Attachment 3 – Land Patent)*

Records of two institutions, the Muscogee Nation of Florida's school and its church, provide written evidence that the Creeks in and around Bruce survived throughout the twentieth century. Pine Level School was established in 1890. The name itself is historical, located in old Creek territory, and was brought to the Tribe's new settlement at the base of the Choctawhatchee River, as was Antioch, the Tribal Cemetery and Tribal Ceremonial Grounds. Antioch is the site of the Battle of Cowpens, the most violent battle fought in Walton County, Florida during the Creek Wars. Pine Level School served primarily Indian students who were taught almost exclusively by Indian teachers. The school was renamed Bruce School during the hardest years of the Jim Crow laws. A board of Creek Indian men administered the school with an elected liaison to the county education system. The school closed in 1954 because of a decreased population of Indian children in the area. During its years of operation, it afforded the community a place for social and political activities. The women met regularly to quilt, play bingo, and trade feed sacks to make clothing for the children in the community. The annual records of the school document the community of the Muscogee Nation of Florida for over 60 years. The school building became the property of the Bruce Women's Club, an organization of Creek Indian women that still exists today. The Bruce Women's Club proudly returned this building to the Tribal Government for the Muscogee Nation of Florida. *(See Attachment 4 – Register Page from Bruce School dated 1915)*



For the past 150 years, Muscogee Nation of Florida has continued to maintain ceremonial and traditional practices. During the late 1800s, the community made a move to incorporate some sort of organized religion into the community through the work of outside missionaries and circuit riders. The institution of the Church was another example of the community's efforts to co-exist with a dominant, dangerous and encroaching white society.

"One night my grandfather got called out to the front yard by the KKK. We knew they were going to try to burn us out. The voices got real loud and things were getting bad. All of a sudden one of the guineas up in the tree messed on the hood of the Grand Wizard and it made them all start laughing. We still keep guineas because they saved my Grandpa's life."

Dan Penton – pictured, Traditional Chief

Although the old ceremonies continued, the establishing of an acceptable church was used as a method to ensure the protection and survival of the Indian community. Handwritten church records document the names of community members who formed the church, the births and deaths of members, and the

continued participation of Creeks in this institution from 1912 to present day. The records are still maintained in the same format. It is noted that the Alabama-Florida Conference of the Methodist Church recognizes the Bruce Methodist Church, established in 1912, as a Native American Church. The original Church rolls listed from 1912 to 1917 form the baseline document for membership in the Muscogee Nation of Florida. *(See Attachment 5 – Church Roll dated 1912)*

"I remember when there was dancing on the grounds at Antioch and I remember the old ceremonies going on back when "Diamond Joe" was alive. Any time there was problems, we just went to Mr. J.J. and he sorted them all out."

Idell Burnham (age 102)

Local Grave Houses

Muscogee Nation of Florida maintained a traditional practice of leadership vested in a central male or female passed down from one tribal member to another or, in later years, elected by the tribal membership. Leadership was based on the ability to serve as a liaison between the tribal people and the non-Indian communities because of bilingual abilities and literacy. These qualities were vital to the survival of Muscogee Nation for the protection from further erosion of Creek identity and culture. The leader maintained a precarious balance serving as a representative, a mediator, a negotiator, and an advocate for the rights and protection of the community. The Ward family provided the succession of leaders within Muscogee Nation of Florida throughout the twentieth century. The names of these leaders and their order of succession are well remembered by community members. They are: William Josiah "Diamond Joe" Ward, Jesse Josiah "J.J." Ward, Mano Ward, Maize Ward Thomas, Donald Sharon, John "Breck" Thomas, and current Tribal Chairwoman, Ann Denson Tucker.

William Josiah Ward Jesse J Ward Mano Ward Maize W Thomas Donald W Sharon Breck Thomas Ann Denson Tucker

The communities and people of the Muscogee Nation continued to practice traditional form of government with its customs, medicine, language, hunting and fishing, and cooperative labor. During the early 20th century, the Tribe saw an increase in its membership. Men often maintained multiple households and households supported each other in a communal type living. By the late 1930s, the economics began to shift, which affected the Tribe's indigenous area. Turpentine industries declined, as did logging. The Tribal community was faced with developing new methods to ensure economic

survival. Liquor production filled this desperately needed void of revenue utilizing farming abilities and enabling the communities to locally produce crops for its creation such as corn, rice, and sugar cane. This was a tribally sanctioned enterprise with most of the community members involved in either its manufacturing or its delivery.

"We were always poor growing up. I'd get sent up to Mr. Mano's store. He used to just put the food on a tab like we were going to pay for it. He knew we couldn't, but he always made sure we got fed."

Carol Pate - Tribal Member

In 1947, the Bureau of Indian Affairs made an announcement for a Land Claim Settlement that would affect the historic Creek Nation. The people of the Muscogee Nation of Florida were participants in this litigation through a supportive agreement with Creek Nation East of the Mississippi. Ultimately, the litigations required a suit be filed against Creek Nation of Oklahoma to prove the continuance of Southeastern Creek people. Designated representatives from this Tribe's leaders were present in the halls of Congress when a determination was made in favor of Creek people.

"Thank you for your interest in the Creek Land Claim Settlements...However, you are mistaken about who [your people] are. All of the Creeks from the area you mentioned in your letter are either dead or removed..."

Letter to J.J. Ward (pictured) from DOI/BIA

The case was resolved in 1957 and the Southeastern Creeks were determined eligible to share in this settlement. Payment letters from the Department of the Interior were not issued until 1971, 3 years after the death of community leader J.J. Ward, who had worked for almost 25 years on behalf of the Creek people in Florida. The Docket 21 Letters provided legal documentation that finally reaffirmed the existence of Creek Indian people in Northwest Florida. But, it was a minority that the State of Florida was unprepared to deal with. *(Attachment 6 – Docket Letter of Chairwoman Ann Denson Tucker)*

" I was 18 years old when I got my land claim letter from Interior in 1971. I took the letter with me to register to vote as an Indian. The Clerk said that there wasn't a race for "Indian", but I could choose to be an Asian. She finally made me an "O" for Other. It wasn't easy to make the state identification system accept a racial change - it always labeled us as white or black by sight."

In 1974, the State of Florida created the Northwest Florida Creek Indian Council under Florida Statute 285 to deal with Creek Indian issues. Members of the leadership family of Muscogee Nation of Florida served on this Council, including: Mazie Rossell, Zera P. Denson, Donald Sharon, and Ann Denson Tucker. The State appointed council assisted the Creek people with elections to the formal structure of the Florida Tribe of Eastern Creek Indians in 1978, now known as the Muscogee Nation of Florida.

In 1986 the Senate and the House of Representatives for the State of Florida passed concurrent Resolutions that recognized the Florida Tribe of Eastern Creek Indians as the governing agent for Creeks in the State of Florida. During this same time, the Tribal government had cooperative agreements for repatriation in place with the Air Force, Navy, and the State of Florida. This agreement stayed in effect until NAGPRA prevented repatriation by non-federal Tribes. In other words, the Tribe no longer has the right to re-bury our dead. *(See Attachment 7 – Resolutions passed by the Florida Senate and House of Representatives)*

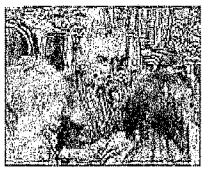
A petition for federal acknowledgment was turned into the Bureau of Indian Affairs in 1978, but was returned the same year because of major changes to 25 CFR Part 83. During the period of 1978 to 1995, the Tribe wrote 3 separate petitions for recognition. The first two petitions were not submitted, primarily because of changing BAR policies and rulings on other Creek petitions, including the Senate Administrative recognition of Poarch Band of Creeks in Alabama. Muscogee Nation of Florida submitted its petition to the BIA/BAR in June of 1995. In 1996, the Tribe received its Technical Assistance letter from the BAR (now OFA). The Tribe finalized it's response to this letter in 2002. It was placed on the "Ready, Waiting for Active Consideration" list in January, 2003. However, at that time, the Tribal government was notified that federal regulations had once again changed and that it needed to convert 120,000 documents into a computer database for the Office of Federal Acknowledgement - 63 banker boxes of information -- and that all data must be organized and separated on a criteria basis. In other words, if one document is required for all 7 criteria, it has to be copied 7 times. In the case of Muscogee Nation of Florida, an amount in excess of 840,000 sheets of paper could be required. The Tribe cannot bear this financial burden. While the Tribal government continues to try to meet new regulations with no mechanism for being 'grand-fathered in', our elders die without federal recognition. *(See Attachment 8 – Letter dated January 31, 2003 from R. Lee Fleming, DOI/BAR)*

Banker Boxes of Data

A written Constitution was set up in 1978 with the assistance of the Northwest Florida Creek Indian Council. Tribal codes were completed and adopted by 1990. The Tribe has an acceptable accounting system in place with regular audits for state and federal contracts. The Tribe runs a congregate meal site inside its Council House for the local community and is now establishing a volunteer fire department with the help of local Hub Zone personnel. The Tribal Government maintains good working relationships with local communities, participates in many community sponsored events, and has numerous resolutions of support from state officials and local governments, including the Walton County Board of County Commissioners.

A generation has been born and a generation has passed away while Muscogee Nation of Florida continues to make enough petition changes that an ineffective and unfair process can be satisfied. The problems encountered by Muscogee Nation of Florida is uniquely the case of a Southeastern Tribe, who must respond to a set of regulations that deliberately ignore the violent policies, history, and impact of Jim Crow laws on its one hundred - year past (the only time period that the Office of Federal Acknowledgement currently considers). The Tribe cannot be recognized by an external entity as an Indian Tribe when its people were not allowed to be Indian.

Muscogee Nation of Florida has 408 members who have met stringent membership criteria. Tribal members have provided vital records demonstrating their ancestry from persons whose names are recorded on the church register from 1912 to 1917, a direct relationship to the Parsons-Abbott Creek Census of 1832 in historic Creek Nation, and must maintain active ties to the Bruce community. More than one-half of Muscogee Nation members live within a 10-mile radius of the Tribe's Council House. More that 80 per cent live within a 30-mile radius. Almost all Tribal members live within 50 miles of Bruce, Florida.



Margi Gatti, Storyteller

Members of the Muscogee Nation of Florida are not members of any other federally recognized Tribes. The Tribe has a 7-acre land base in Bruce and has 13 acres of 4000-year-old shell mounds that it keeps in protective trust for the benefit of all people. The County Commissioners of Walton County Florida gave the mounds to the Tribe. There are limited services provided to the Tribe's membership. *(See Attachment 9 – Tribal Demographics from 1900 to Present)*

"The Tribe helped me get money to go to college on through Indian Education when I was 18. It was the difference in my getting my degree."

Ella Mae Walters - Tribal Member

Muscogee Nation of Florida has never been a part of another Tribe except through the cooperative effort of early Tribal leaders in the Land Claim Settlements of the 1950s. Tribal members still live on original Florida homesteads that date back to the mid-19th century. The people of Muscogee Nation of Florida have lived together, labored together, worshiped together, and stayed together as a Tribe despite the adversities created U.S. government Removal Policies and by a state government that attempted to legislate the Tribe out of existence through categorical removal and forced assimilation.

"We'll be an Indian Community no matter what happens to us with Indian Affairs. It's what we've always been and what we'll always be. I hope one day they'll understand us and what we've been through."

Bill Ward - Tribal Member

Youth Council Members

The Muscogee Nation of Florida now seeks a restoration of its relationship with the United States, which was established by treaties, disrupted by removal, and suppressed by racist laws. The Muscogee Nation of Florida Tribal Council calls upon the United States to rectify injustices of the past, reaffirm treaty relations, and restore recognition of the Tribe's sovereign rights. *(Attachment 10 – Letters of Support from Coushatta, Alabama Coushatta, Seminole, and Coleville Confederation)*

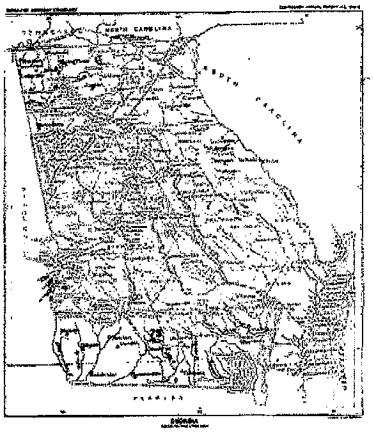
1814 – Treaty of Ft. Jackson.
General Andrew Jackson called for a meeting of Chiefs of the Lower Creeks - friendly Creeks. A small percentage of the Chiefs were in attendance and signed away Georgia and Alabama homeland. Northwest Florida became a highway for oppressed and struggling Creeks - the first stage of an Eastern Trail of Tears.

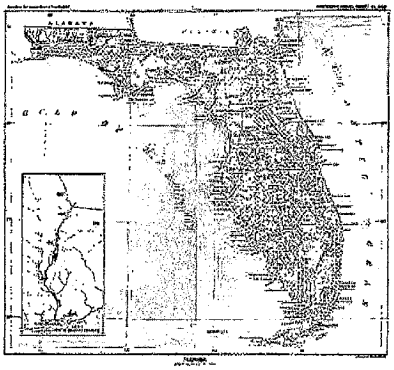
1821 - The Adams-Onis Treaty with Spain.
Confined white settlements in Florida to Pensacola and St. Augustine with the remainder occupied by Creek Indians.

1823 – Treaty of Camp Moultrie.
Commissioner Gadsden urged the removal of Indians from Florida altogether. This treaty is the division between modern Creeks and modern Seminoles.

1832 - Treaty of Payne's Landing
Removal of any remaining Creek Indians to Mississippi. After the Seminole's Treaty at Payne's Landing, Creeks now in Alabama located in Northwest Florida. There are some records of Creeks who emigrated or agreed to emigrate through the Abbott Parsons Census Records.

1832-1833 Treaty of Washington & Treaty of Fort Gibson. Provisions obligating the Creek Nation to move from their traditional homes to land west of the Mississippi River. Not all Creeks agreed to leave Creek territories - ancestors of the Muscogee Nation of Florida have remained at or near their traditional homelands from treaty times to the present.





Attachment 1: Significant Creek Treaties and Treaty Cessions

Executive Department, Ala.
Tuskaloosa, March 30th 1837

Dear Sir;

With much pleasure, I tender you my sincere congratulations, on the happy and (to you) honorable termination of the War with the Seminole Indians. Whilst assaults were being made, elsewhere, Upon your well winning Just laurels for yourself. The citizens of the southwest can never cease to

appreciate your services, and cherish your fame; nor can I believe you have anything to fear, in regard to either, from your fellow citizens, throughout the Union.

You have doubtless seen that we have had another Creek War. The remnant of the tribe commenced their murders, and depredations, anew, about the first of January; and they have repeated them at intervals up to the present time. I was satisfied from the moment I received the first intelligence, that nothing would restore safety and tranquility, to the inhabitants, but the entire removal of all Indians from the Country; and, therefore, at once urged that course upon the commanding officer at Fort Mitchell, and some of the contractors Finding it necessary to the accomplishment of my views, I called of the Secretary of War, ad interim, for his sanction, and the aid of his authority, about the first of February;
and, in due time, obtained an order from him, for their immediate removal to Mobile Point, where they are to be joined by the warriors, now in Florida, and thence proceed to the country assigned for them West of the Mississippi.

From the best information I can obtain, few of the Indians, who were really hostile, have been killed, or taken. Some of the still remain in the swamps of the Cuba-Hatchee, and the Cowagiee; but the greater portion have fled farther South, and are now in the Hammocks and morasses, which border the Choctawhatchie and Pea River, near the Florida line. I have
received several communications from the quarter-one from the Colo. commanding the militia of Dale County, borne by the late representative from that county, in the Legislature, who is an intelligent & honest man,

Attachment 2: Creek War Letter

which represents the number of warriors at about two hundred. This estimate may be large - but each party, that has been attacked, so far as I am informed, has been able to repel the Citizens, who assembled, and marched against them I have ordered the commanding officer of the Dale county Militia to raise a company of infantry, and station it at a suitable point for repelling the incursions of the enemy; and I have ordered the commanding officer of the troops who have been mustered into service in the Creek county to detach a part of his force to aid in the defence of this part of our southern frontier, if any can be spared from other duties. From recent information, I entertain some doubt, whether sufficient aid can be furnished from that quarter. It is understood that the troops have had some recent skirmishes with parties of hostile Indians, remaining in the nation, which did not eventuate in very decisive victories.

It is, also represented (I believe truly) that a number of the Florida Indians, still remain within the limits of that Territory, near the Choctaw hatchie. It is supposed they have taken no part in the war; yet, it is necessary to the permanent tranquility of the white population, and also to their own welfare, that they should be removed.

Would it not be well, for you to send a detachment to that quarter, sufficient to kill, or capture the fugitive hostile Creeks; and also to remove the small party of Florida Indians? I trust by the time this reaches you, the further services of the Alabama troops will not be necessary in East Florida; and that they may soon be on their return march. If this conjecture be well founded, they could be transported from Tampa, to Pensacola, or Choctawhatchie bay, with great facility, and speedily be in the infested district. I understand the Choctawhatchie is navigable up to the Alabama line; and if so, would greatly expedite the transportation
of the Infantry, and stores of subsistence &c., However, I think Lt.Colo. Cawlfield's Battalion would be competent to the proposed duty; and after dispatching that, they could continue their march homeward through Dale, Pike, Barbour, Russell, & Macon, sweeping the country of the outlying and straggling Creeks, in those counties.

I am very desirous that your operations should result in definite peace, and security, to the whole country, through which you have passed. I feel assured, you are equally anxious for such a result, and shall therefore,

hope my suggestions will meet your favorable consideration.

Should you think it necessary to continue a force, during the summer, at the post in Florida, I trust that duty will not be assigned to the Alabama Volunteers-especially to Lt. Colo. Cawlfield, Battalion. They are from one of the most mountainous,& healthy regions of the South-west; and, If stationed there during the approaching season, would inevitably fall victems to the diseases of the climate. These troops are (as I confidently hope you have found them) brave, generous, and patriotic citizens; and I should most earnestly depreciate their exposure to the hot sun, and humid atmosphere of Florida, for the next four or five months. *

Please let me hear from you at your earliest convenience.

With the highest regard,

I am, Dr Sir;

Your friend & obt svt.

C.C.Clay

Major Gen. Thos S. Jesup,
Tampa Bay Florida.

* I hope you will return through Alabama, and that I shall have the pleasure
of seeing you.

Source: Alabama Department of Archives and History, Montgomery, Alabama. Governor C.C. Clay administrative records, SG6483 folder 8

THE UNITED STATES OF AMERICA,

CERTIFICATE No. 7405

To all to whom these presents shall come, Greeting:

Whereas, Benjamin F. Ward of Walton County Florida

has deposited in the GENERAL LAND OFFICE of the United States, a Certificate of the REGISTER OF THE LAND OFFICE at Gainesville Florida whereby it appears that full payment has been made by the said Benjamin F. Ward according to the provisions of the Act of Congress of the 24th of April, 1820; entitled "An act making further provision for the sale of the Public Lands," for and the acts supplemental thereto for the south-east quarter of the south east quarter of section thirty in township two north of range seventeen west of Tallahassee Meridian in Florida, containing thirty-nine acres and seventy nine hundredths of an acre.

according to the official plat of the Survey of the said Lands, returned to the General Land Office by the SURVEYOR GENERAL which said tract has been purchased by the said Benjamin F. Ward

NOW KNOW YE, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said Benjamin F. Ward and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Benjamin F. Ward and to his heirs and assigns forever.

In Testimony Whereof, I, Chester A. Arthur PRESIDENT OF THE UNITED STATES OF AMERICA, have caused these Letters to be made PATENT, and the SEAL of the GENERAL LAND OFFICE to be hereunto affixed.

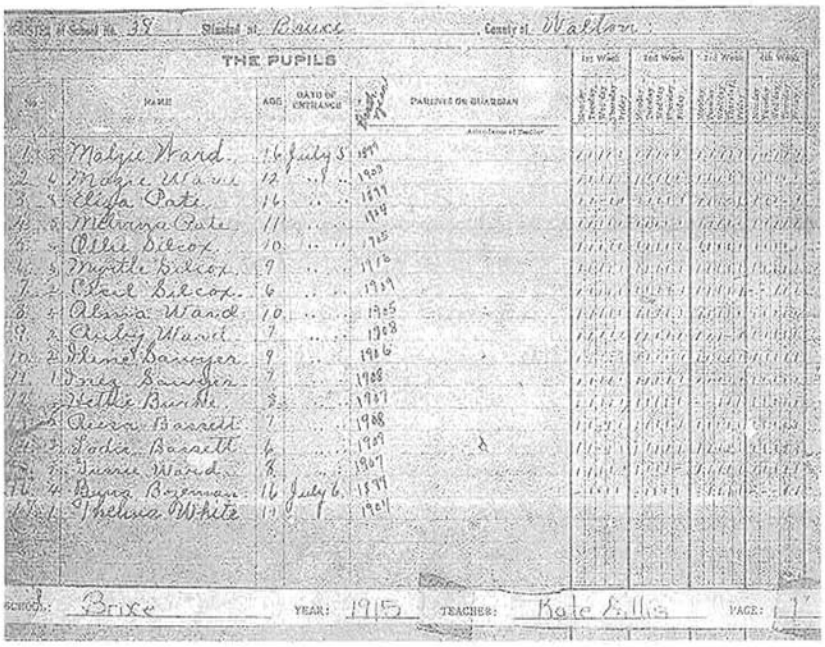
GIVEN under my hand, at the City of Washington, the twenty-fifth day of September in the year of our Lord one thousand eight hundred and eighty-two and of the Independence of the United States the one hundred and seventh

BY THE PRESIDENT: Chester A. Arthur

By Wm. H. Crook, Secretary.

B. W. Clark, Recorder of the General Land Office.

Attachment 3: Patent

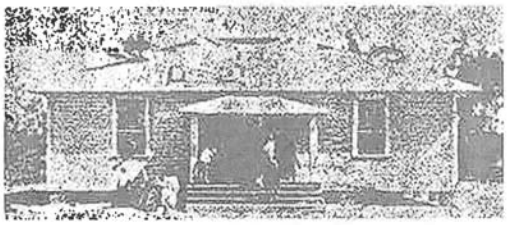


Register of School No. 38 District of: Bruce County of: Walton

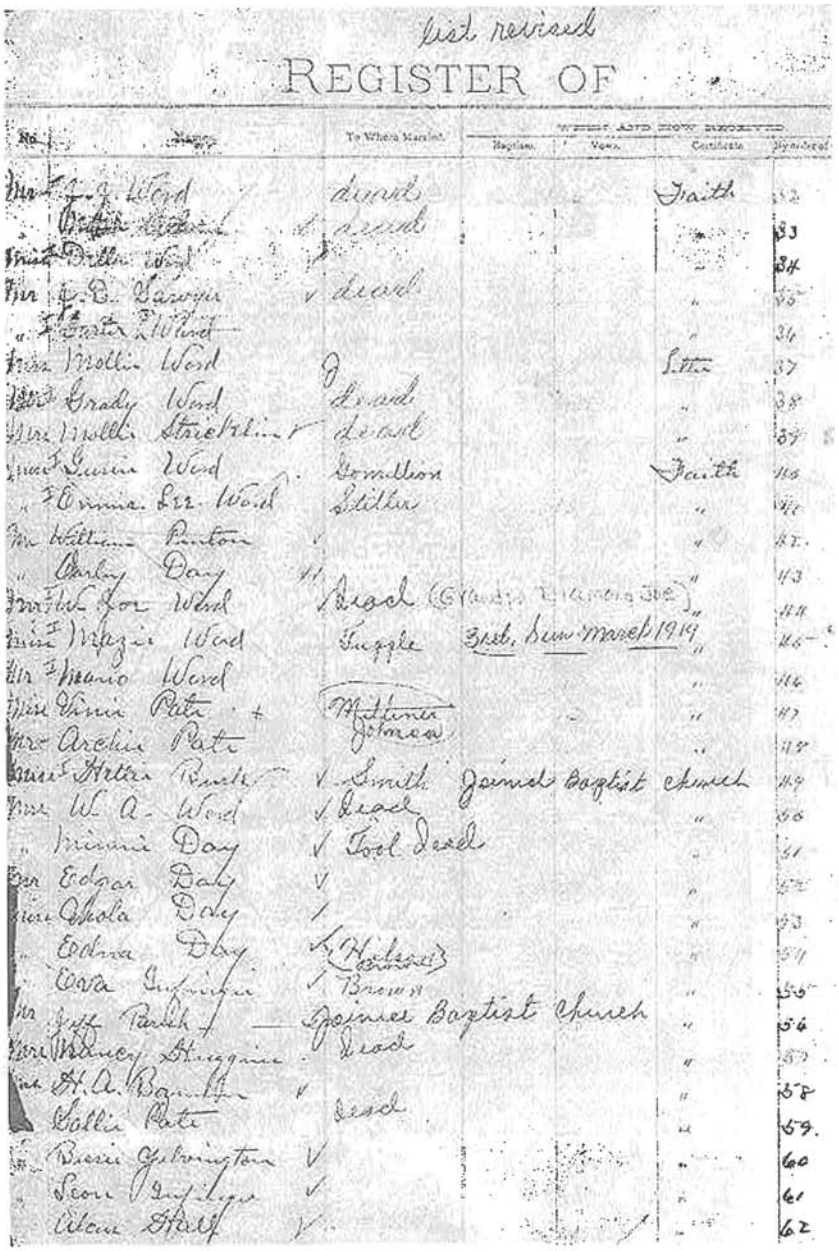
THE PUPILS

No.	Name	Age	Date of Entrance	Parents or Guardian	1st Week	2nd Week	3rd Week	4th Week
1.	Maizie Ward	16	July 5 1909					
2.	Mozie Ward	12	" " 1909					
3.	Eliza Pate	14	" " 1909					
4.	Mariana Pate	11	" " 1914					
5.	Ollie Silcox	10	" " 1915					
6.	Myrtle Silcox	9	" " 1912					
7.	Opal Silcox	6	" " 1919					
8.	Alma Ward	10	" " 1905					
9.	Ardy Ward	7	" " 1908					
10.	Verne Sawyer	9	" " 1916					
11.	Inez Sawyer	7	" " 1908					
12.	Hettie Burke	8	" " 1907					
13.	Reeva Barrett	7	" " 1908					
14.	Lodie Barrett	6	" " 1909					
15.	Irene Ward	8	" " 1907					
16.	Beyna Bozeman	16	July 6 1909					
17.	Thelma White	11	" " 1901					

School: Bruce Year: 1915 Teacher: Kate Ellis Page: 1



Attachment 4: 1915 Register Page from Bruce Creek School House



list revised

REGISTER OF

No.	Name	To Where Married	Baptism	Years	Certificate	Number of
Mr	J. J. Word	dead			Faith	32
	Walter Word	dead				33
Mrs	Della Word					34
Mr	J. B. Vaughn	dead			"	35
"	Foster Word				"	36
Mrs	Mollie Word				Letter	37
Mr	Grady Word	dead			"	38
Mrs	Mollie Strickling	dead			"	39
Mrs	Lucie Word	Demolition			Faith	40
"	Emma Lee Word	Sillian			"	41
Mr	William Panton				"	42
"	Carley Day	dead			"	43
Mrs	Lou Word	Dead (Grady Williams Wife)			"	44
Miss	Mazie Word	Tuggle	Sept. Sun March 1919		"	45
Mr	Memo Word				"	46
Miss	Annie Pate	Mitchell Johnson			"	47
Mr	Archie Pate				"	48
Mrs	Hettie Pate	Smith	Joined Baptist church			49
Mr	W. A. Word	dead			"	50
"	Minnie Day	Tool dead			"	51
Mr	Edgar Day				"	52
Miss	Ola Day				"	53
"	Edna Day	Hickson			"	54
"	Cora Livingston	Brown			"	55
Mr	Joe Parish	Joined Baptist church			"	56
Mrs	Nancy Huggins	dead			"	57
Mr	H. A. Bamlett				"	58
	Lollie Pate	dead			"	59
	Bessie Livingston				"	60
"	Leon Livingston				"	61
	Alice Hall				"	62

Attachment 5: Page from Bruce Creek Church Roll

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

IN REPLY REFER TO:

10/27/71 MUSKOGEE AREA OFFICE

PER CAPITA MUSKOGEE, OKLAHOMA 74401
WARD, ELIZABETH E.
ROLL-EC 11147 APPL-32338

NAOMI ANN DENSON

PRUCE FL 32455

DEAR APPLICANT

YOU HAVE BEEN DETERMINED ELIGIBLE TO SHARE IN THE PER CAPITA DISTRIBUTION OF CREEK JUDGMENT MONEY FROM DOCKET 21.

WE CANNOT AT THIS TIME SAY WHEN THE PAYMENT WILL BE MADE BECAUSE THE ROLL IS NOT FINISHED AND CANNOT BE UNTIL ALL APPLICATIONS ARE ACCEPTED OR REJECTED, ALL NOTICES OF REJECTION RECEIVED BY THE REJECTED APPLICANTS, AND UNTIL ALL APPEALS FROM REJECTED APPLICATIONS ARE DECIDED BY THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR AT WASHINGTON, D.C. THERE WILL BE THOUSANDS OF APPEALS TO BE DECIDED.

WHEN PAYMENT IS MADE, WE DO NOT EXPECT IT TO BE MORE THAN $90 FOR EACH ELIGIBLE PERSON.

WE ARE DOING ALL WE CAN TO SPEED UP THE PAYMENT.

BIRTH CERTIFICATES AND OTHER DOCUMENTS FILED TO SUPPORT YOUR APPLICATION ARE HEREWITH RETURNED UNLESS THEY HAVE BEEN PREVIOUSLY RETURNED.

PLEASE NOTIFY US IN WRITING OF ANY CHANGE IN YOUR ADDRESS.

SINCERELY YOURS,

Frank Sokolik

TRIBAL OPERATIONS OFFICER

Attachment 6: Docket Letter

By Senators W.D. Childers and Thomas

* * * * * * * * * * * * * * *

A resolution recognizing the
Florida Tribe of Eastern Creek Indians.

WHEREAS, the states of Florida, Georgia, and Alabama are comprised of lands that once were the original lands of the confederacy of the Creek Indian Nation, and

WHEREAS, the Creek Indians in Florida, Georgia, and Alabama were a great law-abiding nation composed of people of fixed habits and tastes who loved their homes, and

WHEREAS, the Creeks were known for their civilized society, their hospitality, and their peaceful ways, and

WHEREAS, they were agile hunters, careful preservers of the land, and great craftsman, and

WHEREAS, the Florida Tribe of Eastern Creek Indians continues to govern the Creek Indians in Florida, encouraging and serving the people in the promotion of Creek art, Creek history, Creek language, and Creek culture and in the preservation of historic and significant ancient artifacts and sites, and

WHEREAS, the State of Florida and all of its citizens benefit from the activities of the Florida Tribe of Eastern Creek Indians, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the State of Florida recognizes and honors the Florida Tribe of Eastern Creek Indians and the great history and present accomplishment of a proud and wonderful people.

BE IT FURTHER RESOLVED that a copy of this resolution, signed by the President of the Senate and with the Great Seal of the State of Florida affixed, be presented to the representatives of the Florida Tribe of Eastern Creek Indians as a lasting symbol of the esteem and respect of the members of the Florida Legislature.

* * * * * * * * * * * * * * *

This is a true and correct copy of Senate Resolution No. 657, adopted by the Florida Senate on April 22, 1986.

Harry A. Johnston II
President of the Senate

ATTEST:

Joe Brown
Secretary of the Senate

HOUSE OF REPRESENTATIVES

Resolution 1146

By Representatives Tobiasson, Bass, and Robinson

A resolution recognizing and honoring the Florida
Tribe of Eastern Creek Indians.

WHEREAS, the states of Florida, Georgia and Alabama comprise lands which were the original lands of the confederacy of the Creek Indian Nation, and

WHEREAS, the Creek Indians in Florida, Georgia and Alabama were a great law-abiding nation composed of people of fixed habits and tastes who loved their homes, and

WHEREAS, the Creeks were known for their civilized society, their hospitality, and their peaceful ways, and

WHEREAS, the Creeks were agile hunters, careful preservers of the land and great craftsmen, and

WHEREAS, the Florida Tribe of Eastern Creek Indians continues to govern the Creek Indians in Florida, encouraging and serving the people in the promotion of Creek art, Creek history, Creek language, Creek culture and the preservation of historic and significant ancient artifacts and sites, and

WHEREAS, the State of Florida and all of its citizens benefit from the activities of the Florida Tribe of Eastern Creek Indians, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the House of Representatives hereby recognizes and honors the Florida Tribe of Eastern Creek Indians and the great history and present accomplishments of a proud and wonderful people.

BE IT FURTHER RESOLVED that a copy of this resolution, with the seal of the State of Florida affixed, be conveyed to the representatives of the Florida Tribe of Eastern Creek Indians as a tangible token of the sentiments expressed herein.

This is to certify the foregoing was adopted on May 30, 1986.

James Harold Thompson
Speaker

Allen Morris
Clerk of the House

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Tribal Services - AR
MS: 4660-MIB

JAN 31 2003

Ms. Ann D. Tucker
P.O. Box 3028
Bruce, Florida 32455

Dear Ms. Tucker:

Thank you for transmitting the second portion of the response to the Technical Assistance review letter dated April 11, 1996, from the Muscogee Nation of Florida (formerly Florida Tribe of Eastern Creeks), petitioner #32. The Bureau of Indian Affairs (BIA) received this portion of the response on June 5, 2002.

The Branch of Acknowledgment and Research within the BIA has prepared a preliminary inventory of this submission. Please find a preliminary inventory enclosed.

In accordance with the request signed by the governing body and transmitted with your letter of May 11, 2002, the BIA placed, as of January 29, 2003, petition #32 on the "Ready, Waiting for Active Consideration" list. There are eight petitioners ahead of your group on this list. While the group is on the list, the group's governing body may supplement the petition materials. When the BIA is ready to begin active consideration of this petition (the evaluation leading to the Assistant Secretary - Indian Affairs issuing a proposed finding), we will notify you.

If you have any additional questions, please feel free to contact the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street, N.W., MS 4660-MIB, Washington, DC 20240.

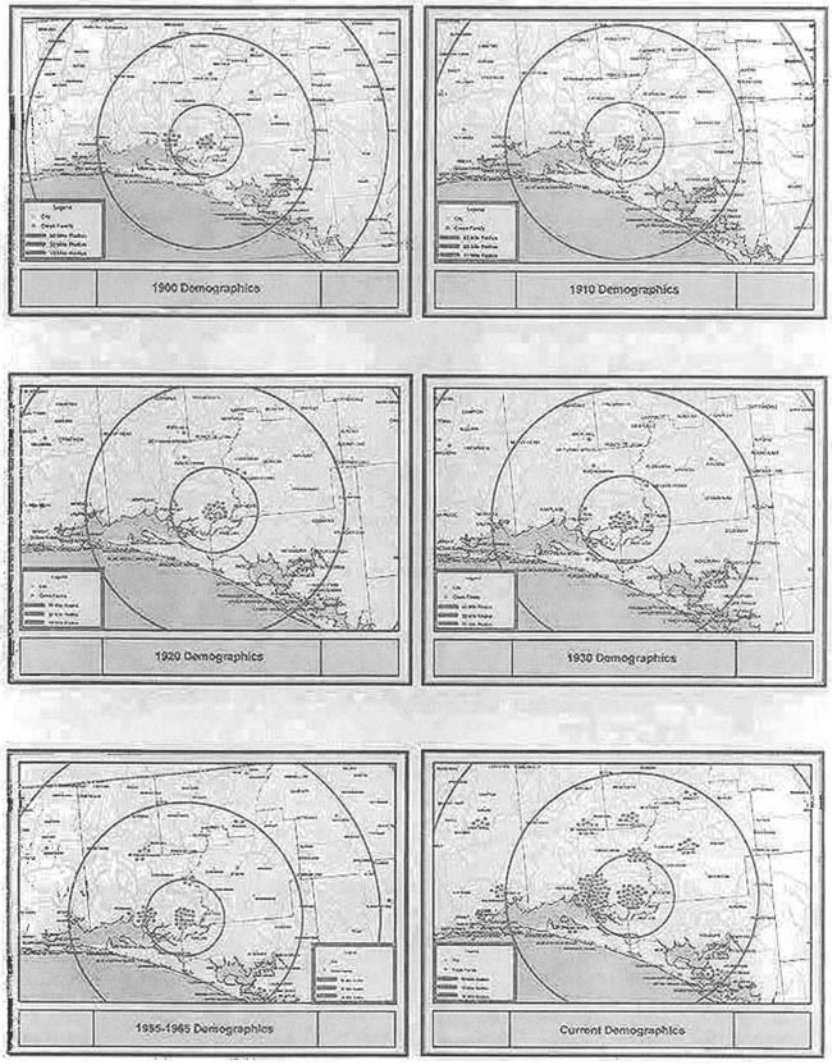
Sincerely,

R. Lee Fleming

Chief, Branch of Acknowledgment
and Research

Enclosure

Attachment 8: Letter dated January 31, 2003 from R. Lee Fleming, DOI/OFA



Attachment 9: Tribal Demographics 1900-Present

COUSHATTA TRIBE
OF LOUISIANA
Office of the Tribal Council

David Sickey
Council Member

July 12, 2004

Ms. Ann Tucker, Chairwoman
Muscogee Nation of Florida
6 Lakeshore Drive
Shalimar, FL 32579

Dear Ms. Tucker:

It is with pleasure that I extend my support in your tribe's efforts towards federal recognition and the chance to improve the lives of your members through programs and services. Your tribe is deserving of the government-to-government relationship extended to other tribes by the federal government and the right to your own governance.

With this status your people will be able to address the urgent need for health care, education, housing, recreation, elder care and programs to promote the youth of your community.

I have knowledge of your people and community during my visits and I have seen firsthand the presence of your continued existence as an Indian community and the governing process in administering programs and services to your people. I have also attended tribal and community meetings where you continue to conduct your government traditionally with elders as leaders in giving advice and counsel. There is no question of your identity and your status as Indian people possessing a legitimate and viable tribal government.

Again, I offer my support without reservation and encourage you to call upon me if I can be of assistance in your petitioning process, as well as other areas of mutual interest. Please know that the Coushatta people stand ready to assist you and your people in all your future endeavors.

Sincerely,

David Sickey
Tribal Council Member

337•584•1545 337•584•1556 (fax) PO Box 99 Elton, LA 70532

Attachment 10a: Coushatta Letter of Support

Frances Battise
1000 Union, #201
Seattle, WA 98101

July 10, 2004

Ms. Ann Tucker, Chairwoman
Muscogee Nation of Florida
6 Lakeshore Drive
Shalimar, FL 32579

Dear Chairwoman Tucker:

This letter is to offer my support in your efforts to gain federal recognition for your people and join others who are in support of this process.

As the former Chairwoman of the Council of the Alabama-Coushatta Tribe of Texas and serving on the council, I am deeply aware of the struggles you face in trying to bring changes that will provide your people a chance to establish a government to government relationship and enabling your people to self-govern and establish a foundation for the youth of your tribe. Your tribe is deserving of the recognition as a community of Creek people who we consider brothers and sisters and certainly our ancestry.

During my visits to your tribe, I witnessed an Indian community working together and living in a distinct community and maintaining a pattern of life common to our tribe and others in the Southeast. Your traditional style of government and culture remains a viable part of your people and is evident that your identity has not been lost.

As you proceed in your recognition process, the Alabama-Coushatta people of East Texas are in support and stand by you in your journey towards tribal sovereignty.

Sincerely,

Frances Battise

Frances Battise

Attachment 10b: Alabama-Coushatta Letter of Support

ATTACHMENT 2

received the largest number of votes, shall be permanently the County Site of said County, and that the locating Commissioners elected under the act of 1849, be and are hereby exempt and declared free of all duties under said act.

1852. Permanent location.

[Passed the House of Representatives, December 29, 1852. Passed the Senate, January 1, 1853. Approved by the Governor, January 10, 1853.]

CHAPTER 554.—[No. 75.]

AN ACT to repeal An Act to provide for the removal of the Indians now remaining in Florida beyond the limits of the State. Approved January 20, 1851.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That an Act to provide for the removal of the Indians now remaining in Florida beyond the limits of the State: Approved 20 January 1851, be, and the same is hereby repealed.

Repeal.

[Passed the Senate, December 24, 1852. Passed the House of Representatives, January 3, 1853. Returned by the Governor with his Veto. Reconsidered in both Houses, and passed by the requisite Constitutional majority.]

CHAPTER 555.—[No. 76.]

AN ACT to provide for the Final Removal of the Indians of this State, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That from and after the passage of this act, it shall be unlawful for any Indian or Indians to remain within the limits of this State, and any Indian or Indians that remain or may be found within the limits of this State, shall be captured and sent West of the Mississippi: *Provided*, That the Indians and half-breeds residing among the whites, shall not be included in the provisions of this section: *Provided, further*, That nothing shall be authorized under this act in violation of the Constitution of the United States: *And provided, also*, That any Indian or Indians so captured may be turned over and delivered to the commandant of any Military Post, or Agent of the United States, which may be most convenient, and that the Indians thus captured be transported beyond the Mississippi River by the officers and authority of the Federal

Indians, capture of.

Proviso.

1832. Government; but if the Indians so tendered to the United States officer are refused, then this proviso shall be wholly inoperative.

Volunteers.

SEC. 2. *Be it further enacted*, That the Governor be and he is hereby required to raise one Regiment of Mounted Volunteers, and one Regiment of Infantry, each Regiment to consist of not more than one thousand men, to be organized, provided for, equipped and disposed of as hereinafter provided; and said Regiment shall have the same number of officers, and each officer shall have the same rank which is now prescribed by the Militia Laws of this State, and to be armed in such manner as the Commanding Officer may think the exigencies of the service may require.

Brigadier General, election of.

SEC. 3. *Be it further enacted*, That said Regiment of Volunteers as aforesaid shall compose one Brigade, and shall be commanded by a Brigadier General, to be elected by the joint vote of the General Assembly, who shall be commissioned by the Governor, and shall be entitled to the same staff officers as an officer of similar rank in the United States Army; and the Governor of this State shall confer, by Brevet Commission, from time to time, such additional rank on the said Brigadier General as may be required to command such additional force as may from time to time be ordered in the service, as hereinafter provided.

Officers.

SEC. 4. *Be it further enacted*, That said officers, except staff officers and the Commanding Officer, shall be elected by the Volunteers of the several Companies, Regiments, and Batalions to be raised under the provisions of this act, and shall be commissioned by the Governor of this State.

Tender to General Govern't.

SEC. 5. *Be it further enacted*, That the Governor be and he is hereby required to tender said Brigade to the General Government, for the removal of the Indians, and to raise any greater or larger force that the General Government may require to remove said Indians West of the Mississippi.

Refusal of.

SEC. 6. *Be it further enacted*, That should the General Government refuse to receive said Volunteer force, or fail to notify the Governor of their acceptance of the same at the earliest practicable time, it shall be the duty of the Governor forthwith and without delay to secure the frontier settlers, and to employ the said Brigade in carrying out the provisions of this act, in that part of the Peninsula of this State now in the occupancy of the Indians.

SEC. 7. *Be it further enacted*, That for the purpose of

providing for [the] subsistence, forage, transportation, and pay of the Volunteers authorized to be raised by the second section of this act, the sum of five hundred thousand dollars be and the same is hereby appropriated, and the Governor is hereby authorized to borrow such sum from any of the Funds of this State, or from any other source, and to execute bonds for the payment of the same, at a rate of interest not exceeding six per cent. per annum: *Provided*, The said State bonds can be sold at par: *And provided*, Said bonds shall be made payable ten years from the date thereof: *And provided, also*, That the interest accruing thereon shall be paid semi-annually, and ten per centum of the annual revenue of the State shall be pledged for the redemption of said bonds. 1852. Subsistence, &c. Loan.

SEC. 8. *Be it further enacted*, That each officer shall report to his senior in command, and the Brigadier General to the Commander-in-Chief of this State, and said Brigade shall be governed by the rules and articles of war, and regulations of the United States. Rules.

SEC. 9. *Be it further enacted*, That there shall be a Quartermaster, and Commissary to each Regiment, who shall be governed and directed by the rules for the government of the Subsistence and Quartermasters department in the Army of the United States: And also a paymaster who shall be governed by the rules and regulations, by which Paymasters in the United States Army are governed: *Provided*, That should the United States, fail or refuse to accept the services of said Troops, the Comptroller of this State, shall be, and is hereby authorized, and required to issue warrants upon the Treasury of this State, for all accounts arising or to arise, in consequence of the provisions of this Act, and which shall have been properly vouched, and approved by the proper Military Officers. Quartermaster, &c. Proviso.

SEC. 10. *Be it further enacted*, That the Governor is hereby authorized, and he is required to cause proper accounts, and vouchers, for all expenditures made, and expenses incurred, on account of the removal of the Indians under this Act, to be made, and to call on Congress to make an appropriation to reimburse the State for the same. Accounts vouchers.

SEC. 11. *Be it further enacted*, That the Governor be, and he is hereby required to cause the officers, commanding the different Divisions, Brigades, Regiments, Battalions, and Companies in this State, to organize their re- Militia.

1852. spective commands immediately, to be held in readiness, and subject to the orders of the officer commanding the Volunteer forces for the removal of the Indians: *Provided*, That the Governor shall not commence actual operations within the Indian boundary until the fourth day of May next, and not until he is satisfied that the General Government has determined not to remove said Indians by force, or otherwise: *Provided, further*, That if actual hostilities shall be commenced by the Indians before that time, then the foregoing proviso, shall be of no force or effect.

Proviso.

SEC. 12. *Be it further enacted*, That the Troops, and officers raised under the provisions of this Act, shall not be entitled to, nor receive pay from the State, until they have received orders to march into the Indian Territory for the protection and defence of the same.

Pay.

[Passed the Senate, January 11, 1853. Passed the House of Representatives, January 12, 1853. Returned by the Governor with his Veto. Reconsidered in both Houses, and passed, by the requisite Constitutional majority.

CHAPTER 556.—[No. 77.]

AN ACT to amend an act in relation to the appointment of Commissioners and Overseers of Roads.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That hereafter all Commissioners and Overseers of Roads shall hold their offices for one year, and until their successors are appointed and qualified, instead of two years.

Term of office.

SEC. 2. *Be it further enacted*, That so much of the law in relation to the appointment of Commissioners and Overseers of Roads as entitle them to hold their offices for two years, be and the same is hereby repealed.

Repeal.

[Passed the House of Representatives, December 24, 1852. Passed the Senate, December 28, 1852. Approved by the Governor, December 31, 1852.]

CHAPTER 557.—[No. 78.]

AN ACT to repeal an act in relation to Pilotage for the Port of Key West.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That an act intitled an act in relation to

Repeal.

tioned in the last preceding section, shall be paid by the person or persons who shall enter a claim as the owner or owners thereof. Expenses.

[Passed the House of Representatives, December 10, [illegible]. Passed the Senate, December 23, 1852. Approved by the Governor, Jan[illegible]n, 1853.]

Chapter 538.—[No. 59.]

AN ACT to prevent the trading with the Indians in this State.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That from and after the first day of April next, it shall not be lawful for any person or persons to sell, barter, give, loan, or in any manner furnish to any of the Indians now remaining within the limits of this State, or to any negro belonging to or residing with said Indians, any spirituous liquors, powder, lead, or any goods, wares, or merchandise of any description. Indians, unlawful trading with.

Sec. 2. *Be it further enacted*, That from and after the first day of April next, it shall not be lawful for any person or persons to purchase from the said Indians or negroes, either with cash, promises, goods, wares, or merchandise of their produce, either of skins, hides, beeswax, horses, cattle, hogs or any manufactured articles.

Sec. 3. *Be it further enacted*, That any person or persons violating the provisions of this act, shall be subject to fine not less than five hundred dollars and imprisonment not less than six months, at the discretion of the jury, and shall moreover be disqualified from exercising or holding any office of profit or trust in this State or serving as jurors. Punishment

Sec. 4. *Be it further enacted*, That any [person or persons making] gift, sale, barter or furnishing spirituous liquors, powder, lead, goods, wares and merchandise to any of the aforesaid Indians or negroes within the limits now allowed or allotted to the Indians, contrary to the true intent and meaning of this act, shall be indictable before the Circuit Court of any County of the State, as may be most convenient to the parties, under the same rules and regulations as are now provided by law in other cases: *Provided, however*, That the trading with Indians as contemplated by the provisions of the foregoing sections, shall not prevent any of the half breeds or persons descending from Indian mothers now residing among the whites, from transacting and doing all lawful matters and things with Indictable, when. Proviso.

1852.

white citizens as they could or might have done before the passage of this act: *And be it further provided*, That nothing in this act shall be so construed as to prevent any person or persons from purchasing the property of any Indians who may be about to emigrate.

[Passed the Senate, December 28, 1852. Passed the House of Representatives, December 28, 1852. Approved by the Governor, January 5, 1853.]

CHAPTER 539.—[No. 60.]

AN ACT to regulate the practice in Criminal Prosecutions.

Conclusion.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That from and after the passage of this Act, in all cases wherein the Defendant upon his trial produces no testimony, he shall, by himself or Counsel, be entitled to the concluding argument before the Jury, as is now the practice in the trial of civil cases.

[Passed the House of Representatives, December 24, 1852. Passed the Senate, December 29, 1852. Approved by the Governor, January 5, 1853.]

CHAPTER 540.—[No. 61.]

AN ACT amendatory of the several Acts now in force in this State in relation to Trading with Negroes.

Negroes, trading with.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That it shall not be lawful for any person by himself, agent, servant or slave, to sell or give any spirituous or vinous liquors to any negro within this State, in any quantity. Any person violating the provisions of this Act, shall be subject to indictment, and upon conviction, be fined not exceeding one hundred dollars, or imprisonment not exceeding three months, at the discretion of the Court: *Provided*, That this Act shall not be so construed as to forbid owners from giving their own slaves spirituous or vinous liquors.

[Passed the House of Representatives, January 5, 1853. Passed the Senate, January 7, 1853. Approved by the Governor, January 10, 1853.]

1852. *Representatives of the State of Florida in General Assembly convened*, That it shall not be lawful for any Indian Agent, Officer of the Army, or other person or persons, to remove out of the limits of this State any negro or negroes, mulatto or mulattoes, which may come in with the Indians, or be taken with them, or which are now or may be taken hereafter within the present temporary limits of the Indians, as assigned by General Worth, without first advertising the same for at least six weeks in some newspaper published at the capital of the State, fully describing said negro or negroes, mulatto or mulattoes, and producing them at Hillsborough Court House at least three weeks before the expiration of said six weeks of advertising, so that any person or persons claiming may have opportunity to institute legal proceedings, and have the title settled by Judicial decree: *Provided*, That this act shall not extend over the negro or negroes now accompanying the delegation of Indians from the West, or which may hereafter accompany any delegation of Indians from the West of the Mississippi for the purpose of affecting the removal of the Seminoles.

Negroes, removal of.

Proviso.

SEC. 2. *Be it further enacted*, That if any person or persons shall violate this act, he or they shall be liable to indictment for a misdemeanor, and on conviction thereof shall be punished by imprisonment for at least six months, or a fine not exceeding five hundred dollars, at the discretion of the Jury, and be liable for double damages sustained by any person or persons by reason thereof.

Punishment.

SEC. 3. *Be it further enacted*, That in all cases of a claim to any negro or negroes which may come in or be taken with the Indians, as mentioned in the first section of this act, the person or persons making such claim may enter the same before any Justice of the Peace of Hillsborough County, who shall, within ten days from the time such claim is entered, summon a jury to try the same, and if, upon such trial, the party claiming such negro or negroes shall establish, by proper evidence, his ownership of the same, to the satisfaction of the jury, they shall so return in their verdict, and the said Justice shall thereupon order that such negro or negroes be delivered to the person or persons claiming the same, and the Sheriff of said County shall execute the order of the said Justice in the same manner as he is authorized to execute any order, judgment, or executions issuing out of the Circuit Court.

Claim. Trial of.

SEC. 4. *Be it further enacted*, That the expenses of ad-

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ATTACHMENT 3

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION, Petitioner,	)	
vs.	)	DOCKET NO. 21
THE UNITED STATES, Defendant,	)	

MOTION

C. W. McGhee, Ruby Z. Weatherford, John V. Phillips and John Williams, as members of and on the relation of The Perdido Friendly Creek Indian Band of Alabama and Northwest Florida Indians, by one of their attorneys, Claude Pepper, move this Commission for leave to file the attached Supplement to Statement of Specific Points of Law and Authorities in Support of Motion for Leave to Intervene.

C. W. MCGHEE, RUBY Z. WEATHERFORD, JOHN V. PHILLIPS AND JOHN WILLIAMS, AS MEMBERS OF AND ON THE RELATION OF THE PERDIDO FRIENDLY CREEK INDIAN BAND OF ALABAMA AND NORTHWEST FLORIDA INDIANS, BY

CLAUDE PEPPER
One of their Attorneys of Record
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 1951, one copy of the above Motion was served upon Mr. Paul N. Niebell, 1201 19th Street, N. W., Washington 6, D. C., Attorney for Petitioner, and one copy was served on Mr. Ralph A. Barney, Department of Justice, one of the Attorneys for Defendant, by mailing.

THOMAS V. LEFEVRE

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION, Petitioner,	)	
vs.	)	DOCKET NO. 21
THE UNITED STATES, Defendant,	)	

SUPPLEMENT TO STATEMENT OF SPECIFIC POINTS OF LAW AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

II. (Continued)

APPLICANTS FOR INTERVENTION HEREIN ARE A TRIBE, BAND OR OTHER IDENTIFIABLE GROUP WITHIN THE MEANING OF THE INDIAN CLAIMS COMMISSION ACT.

* * * * * *

5. At the hearing on applicant's Motion for Leave to Intervene, question was raised as to whether applicants are a "tribe, band or other identifiable group" within the meaning of the Indian Claims Commission Act.

These terms are nowhere defined in the Act itself. Since they are not self-defining, having, especially in the case of the phrase "other identifiable group", no precise meaning, recourse to the legislative history is necessary, to establish what Congress meant by them.

No clue is given in the Committee Reports of the 79th Congress which enacted the Indian Claims Commission Act, other than the general one implicit in the broad purposes of the Act to dispose of all Indian Claims.

The legislative history of the Indian Claims Commission Act did not begin, however, with the 79th Congress. The plan for a Commission to remedy the unfortunate situation of the Indian Claims had been under Congressional consideration at least since 1934. (See Senate Bill S.3444, 73rd Congress, 2d Session). This bill provided for a "Court" to negotiate settlements with "any Indian tribe or any band of Indians".

At the first Session of the 74th Congress, Senate Bill S.2731 was introduced, considered by the Senate Committee on Indian Affairs, which recommended its passage, and was passed by the Senate on April 22, 1937; it did not pass the House. This bill sought to create a Commission with the duty to "investigate all claims against the United States of any Indian tribe, band, or other communal group". During the hearings on this bill before the Committee, there was discussion of the meaning of the term "communal group". (Hearings before the Committee on Indian Affairs, United States Senate, Seventy-fourth Congress, First Session, on S.2731).

Commencing on Page 36 of the report of hearings, the discussion among Mr. John Collier, Commissioner of Indian Affairs of the Interior Department, Members of the Committee, and others, explored thoroughly the meaning of the language then used. As the Commission doubtless knows, the Interior Department played a major role in sponsoring and drafting this legislation. This discussion, which is the only one we have been able to find anywhere of the scope of the terms used in the Act, is so important that we respectfully commend it to the attention of this Commission and set it forth as follows for its convenience:

> "THE CHAIRMAN. Mr. Arnold has submitted an amendment. On page 2, line 12, after the word "band" insert the following language: "or class having a common right or claim".

" The purpose evidently is to extend the opportunity for filing claims to a smaller number of Indians than a tribe or a band, by providing that a few Indians having a common right or claim might submit such claim.

Has the Department any suggestion to make as to the advisability of having that amendment?

"MR. COLLIER. The only reason that occurs to me why it might be inadvisable would be that it would permit a small group of Indians with individual claims to form themselves into such a class, which would force the adjudication of these innumerable individual claims into the Commission. The Commission has a big job, anyhow.

"SENATOR FRAZIER. Unless something of that kind is included, how are these little bands that are away from the tribe to be taken care of?

"MR. COLLIER. The bands are covered in "tribe, band, or other communal group," However, say there are three or four allottees who have a grievance and who have received patents in fee. They could not just band together into a group of litigants and come together before the Commission. There is no objection to their coming except that it would enormously increase the labors of the Commission.

"THE CHAIRMAN. As I understand the theory of this bill, it is not intended to give individual Indians a right to come into court; is that correct?

"MR. COLLIER. Not as drawn. If that were done, certainly the court would have to be indefinitely enlarged, so that they could handle all that business.

"THE CHAIRMAN. If this bill should become a law as now drawn, it would force upon the Commission a responsibility in the earlier stages of its existence to define "tribe" and define "band", so it will be up to the Commission itself to say just how many Indians and what kind of Indians would be necessary to form a tribe, and the same thing as regarding forming a band.

"MR. COLLIER. I do not know why these Choctaws would not come right under the Commission. They are a segregated group. If they are now by themselves, the fact they were once parties to a treaty in common with the Oklahoma Choctaws would not be relevant. They certainly are a communal group, and they would come right under this bill.

"STATEMENT OF J. E. ARNOLD

"MR. ARNOLD. Are the Mississippi Choctaws considered a group or a band?

"MR. COLLIER. They are that, quite definitely so.

"MR. ARNOLD. Has that been determined? It is an undetermined question.

"MR. COLLIER. It is a question that this Commission would resolve, and it would resolve, it seems to me, in the affirmative; certainly it would. They have definitely a collective interest. They all suffered together, did they not?

"MR. ARNOLD. I hardly agree with you, but that interest has not been determined. The object of that amendment is to bring them before this Commission.

"MR. COLLIER. I think they are before the Commission. The trouble with that amendment is that that brings not only them before the Commission but any number of other individual claimants of all sorts and kinds.

"MR. ARNOLD. We might find a difference of opinion when the Commission is created.

"MR. COLLIER. If you want to get them in, put in a specific reference to the Choctaws, but do not adopt omnibus language that will bring in all the individual cases before the Commission.

"MR. ARNOLD. What about the smaller groups of Indians in Polk County, Tex.? There are two or three groups down there.

"MR. COLLIER. They certainly are a group. Look at California. There we have a case where all the Indians are involved in one litigation, but that does not mean that any one of the scores of particular tribes or bands in California may not have claims over and above what they are litigating now. It would certainly come before this Commission. It certainly does not mean, for example, that only the Sioux Tribe as a whole could appear before the Commission. Any settlement of the Sioux Tribe could appear before the Commission, because it is a communal group. I am certain, in the case of the Mississippi Choctaws, they would be defined as a communal group.

"MR. ARNOLD. The object of this amendment was to broaden the litigation so that there would not be any hair splitting.

"MR. COLLIER. There would not be any hair splitting, but I do not know why you should broaden it by any definition that would allow any two Indians with individual claims just to get together, and then they can force the Commission

to dispose of all these hundreds of thousands of matters of individual Indian business, unless the committee wants to do that. If you are going to do that, you have to create more machinery; if it is to become an agency for settling individual claims as well as these group claims, then it has to be enormously increased in personnel.

"MR. ARNOLD. There is a group of those Choctaws in Louisiana.

"THE CHAIRMAN. It is obvious that the word "band" is intended to mean a fewer number of Indians than a tribe.

"MR. ARNOLD. Yes.

"THE CHAIRMAN. A band of Indians really might be a group of Indians belonging to different tribes, if they happened to live in the same section of the country — Sioux, Choctaws, Chickasaws, Creeks, and whatnot. They might not belong to any one particular tribe, any more than one or two of them, but banded together they would constitute a band of Indians. So it occurs to me that until we have a definition of the word "band" it will not be necessary to try to define a smaller group, because a band of Indians could be a very small number.

"MR. ARNOLD. Pardon me. I believe the Court of Claims has defined that word "band" somewhere.

"THE CHAIRMAN. Under the terms of this bill it would be up to the court immediately to define "band" if the request were raised. Until the courts have determined or defined the term, it might be advisable to let this stand because it might be determined in such a way as to satisfy all the Indians who were to come in.

"MR. COLLIER. Certainly the Seminoles of Florida, who were once part of the Seminoles of Oklahoma, are now a band, at least, and a communal group. They would come in here in a hurry with their own claims, that have been accumulating long since they were split off from the Oklahoma Indians.

"SENATOR FRAZIER. There are several bands in Florida.

"THE CHAIRMAN. At least three different groups.

"MR. COLLIER. And they might have separate claims.

"SENATOR FRAZIER. Under your definition of this, each one of those bands would be eligible to come in under this bill?

"MR. COLLIER. Oh, yes; I think surely they would.

"THE CHAIRMAN. I think the language of the amendment is intended only to define the term "band." I believe that the word "band" is broad enough to cover the language of the amendment. It occurs to me that when the court has a chance to pass upon it and a chance to define it, then, if this definition is not satisfactory, sometime in the future we can take up an amendment to define the term "band" in such a way as to satisfy those who might be out of court, if advisable.

"MR. ARNOLD. All right, Senator. The only object of that amendment was that we would not have any quibbling or hairsplitting in coming before the Commission.

"THE CHAIRMAN. It would be a matter of proof, anyway, either under the wording of the amendment or under the word "band." I believe you would have a better chance under the word "band." For the present, it occurs to me this is broad enough, until we find it is not.

"MR. BLAIR. May I ask a question, please, Mr. Chairman? The term "band" has been defined at one time by the Court of Claims, indicating a group of Indians belonging to a particular tribe, smaller than the tribe, but which has been recognized by the Government as a band or as a particular group, as a part of a tribe. This bill refers to "or other communal group." The question I wanted to ask is: Does that mean a communal group composed of all of one tribe, or a communal group composed of various tribes, so located geographically as to form a group?

"MR. COLLIER. Yes. It was intended to go even beyond the definition of "band", but your question is a little broad, because it means the Government or any branch has negotiated with that group. That alone would bring the Mississippi Choctaws into it. There may be other cases of groups of Indians who have a common grievance, who have suffered a common loss of land through laches or error of the Government. It is intended that they, if only a local village, shall be able to come in.

"MR. BLAIR. Regardless of that tribal relation?

"MR. COLLIER. Yes. The communal group is intended to go very much further than the definition of "band." I am

confident it will bring all these legitimate cases in.

"THE CHAIRMAN. Let me give two illustrations that will serve to make clear the point that you raise. In my section of Oklahoma we have three different groups of Indians that have the same legal rights, the Kiowas, Comanches, and Apaches. The three tribes are joined together in a certain area, and they all stand on an equality before the law. Their lands were disposed of at one time, and they were joined together, and they participated together in the returns from the sale of their lands. From the date that they were so joined to the present their rights are common.

Now, we might have a few Apaches, a few Comanches, and a few Kiowas form a band. Their rights would all be the same, but it would be a smaller number than either tribe.

Then take in northern Oklahoma we have the Wichitas, the Caddos, and various bands, about 13 different tribes, remnants of different tribes, associated there on an equality before the law. A few of those Indians of each tribe might get together. Their rights would be in common, but they might not be satisfied with what was given to the larger group, and they would want to prosecute a claim for the benefit of the smaller group. That is what I had in mind by stating that a number of Indians of different tribes might get together. I doubt if you could take a Choctaw and a Seminole and a Creek, all having a different status before the law, and put them into a group and give them the right to go into the Court of Claims. I cannot conceive of any case they might have. But where fewer Indians than a tribe, or a group of tribes, have a common status before the law, I do think they ought to have the right to come in and assert the claim. Through that they might open up a case and bring in a larger number. That might be possible.

"SENATOR STEIWER. Can the chairman advise the committee whether it was the purpose of the author of the bill, to exclude consideration of claims of individual Indians?

"THE CHAIRMAN. We just mentioned that before you came in, Senator Steiwer. Mr. Collier stated that if that were done, it would necessitate a very substantial increase in the personnel of the court and the business of the court.

"SENATOR STEIWER. That is, if individual claims were not permitted within the jurisdiction of the Commission?

"THE CHAIRMAN. Yes; and the bill was not drawn to authorize the court to entertain individual claims, the smallest

number being a band.

"SENATOR STEIWER. I think that point would be well taken, that it would impose a very great burden upon the Commission if it were charged with the responsibility of examining individual claims.

While I have interrupted, may I ask what is the significance of the word "communal" in line 12?

"MR. COLLIER. It simply means a community. It is an attempt to go beyond the limitations of the meaning of "band", which has been imposed by this single definition, and to take a simple group of Indians who have a common interest, who have suffered a common injury, but who may not heretofore have been recognized by any branch of the Government.

There is a big group of Indians, the Croatans, as they are called, down in North Carolina. It is not certain that they could qualify as a band, because never heretofore has the Government recognized them in any way; yet there are thousands of them. They are a communal group.

"SENATOR STEIWER. Do you feel if you used the word "group" without any qualifying word you would take in more territory than you would want to take in?

"MR. COLLIER. You might, because that might throw you over to the people who have made themselves into a group, a lot of individual claimants who had formed themselves into a group merely in order to get into this court.

"SENATOR STEIWER. Yes; a small, miscellaneous group.

"MR. COLLIER. Yes; because I doubt if there is a case anywhere where an Indian has a claim that he cannot find another Indian that has that kind of a claim. It would be merely the lumping of that kind of claims. We do not want these innumerable, heterogeneous Indian claims put on the doorstep of the court if we can help it. Some qualifying word — maybe "communal" is not the right word — which indicates a historic identity, or an identity of habitat, makes the thing a communal group, a group with historic identity, and not just a detached group of people who got together and made out they were a group so as to get into this court.

"SENATOR STEIWER. The essential thing is that they have a common claim, is it not?

"MR. COLLIER. Yes; a common claim of a group character.

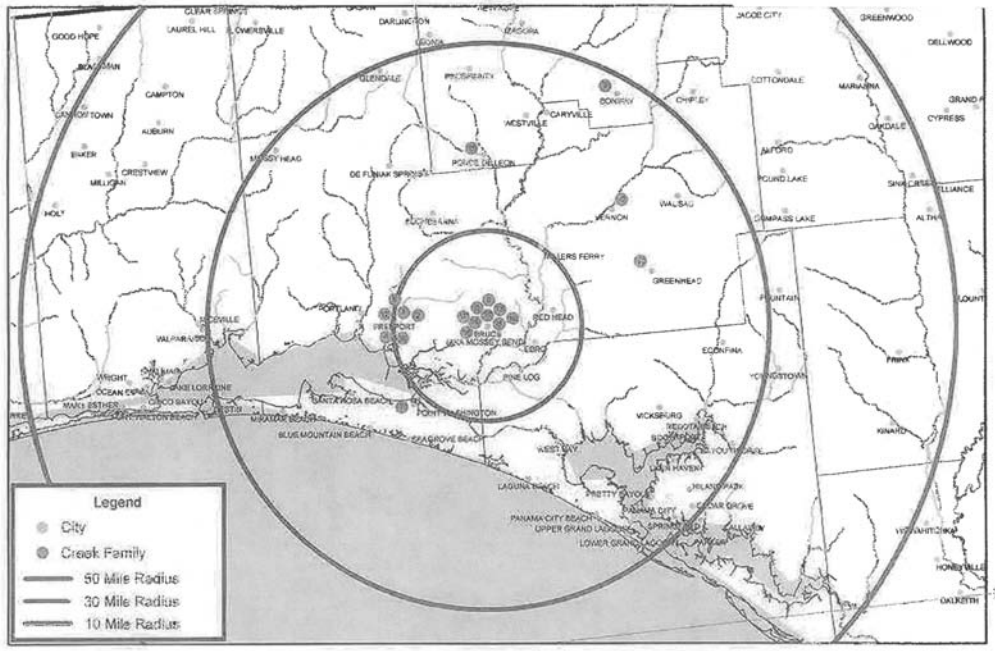
******************** (Underscoring supplied).

In S.4234 and S.4349, introduced at the 3rd Session of the 76th Congress, the term "communal group" was amplified to "identifiable communal group". We are unable to find any contemporaneous explanation for this change. S.1111, introduced in the 2d Session of the 77th Congress, perpetuates this change.

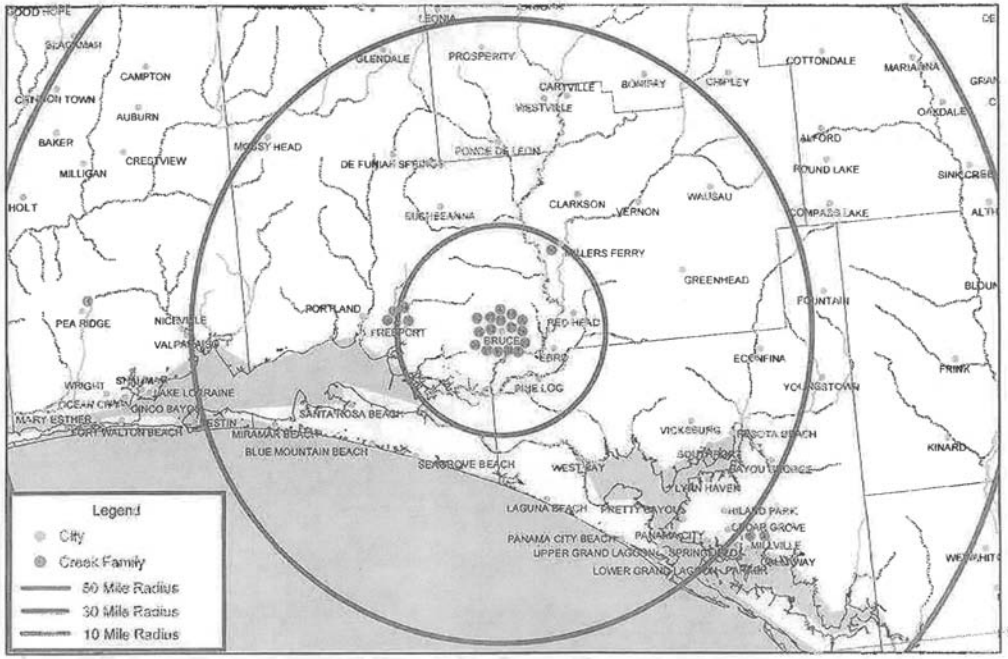
No consideration was given to creation of the Commission during the war. In H.R.1198 and H.R.1341, introduced at the 1st Session of the 79th Congress, and H.R.4497, introduced at the 2d Session of the 79th Congress, the term "other identifiable group" supplanted "other identifiable communal group". We have likewise found no contemporaneous explanation of the reason for dropping the word "communal". It appears, however, that the change from "communal group" to "identifiable group" broadens the class of claimants, and eliminates even the requirement that the group be communal in character, so that the language finally employed truly carries out Mr. Collier's concluding statement in the above quoted report of hearings, that the essential thing is that the claimants have "a common claim of a group character".

The foregoing legislative history makes it clear that your applicants, having a common claim of a group character, are a group entitled to sue. Their historical identity as Creeks and their present geographical identity bring them well within the definition of groups entitled to be heard before this Commission.

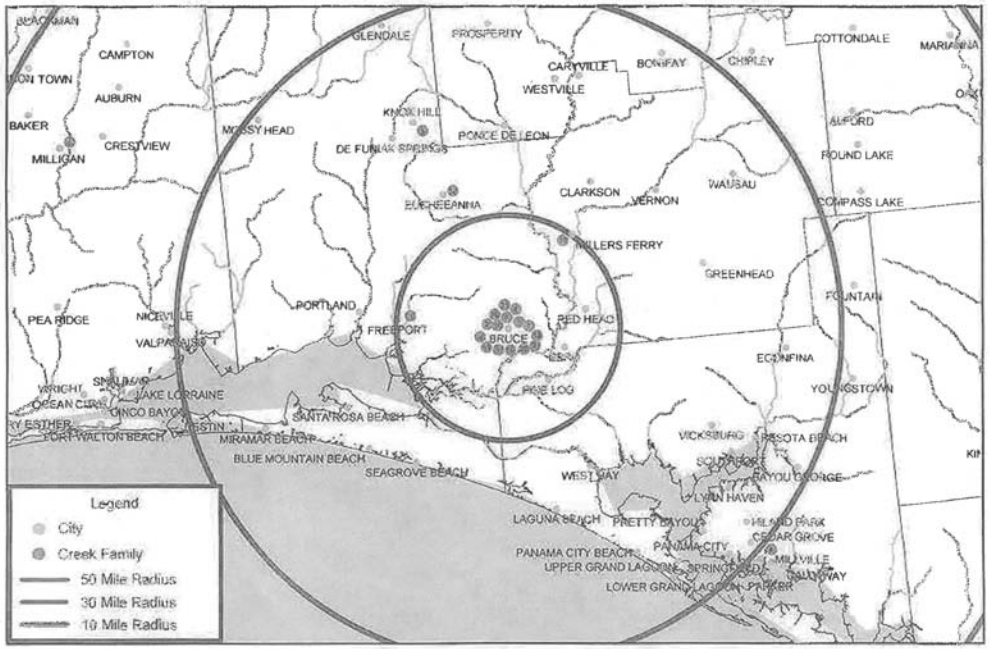
ATTACHMENT 4



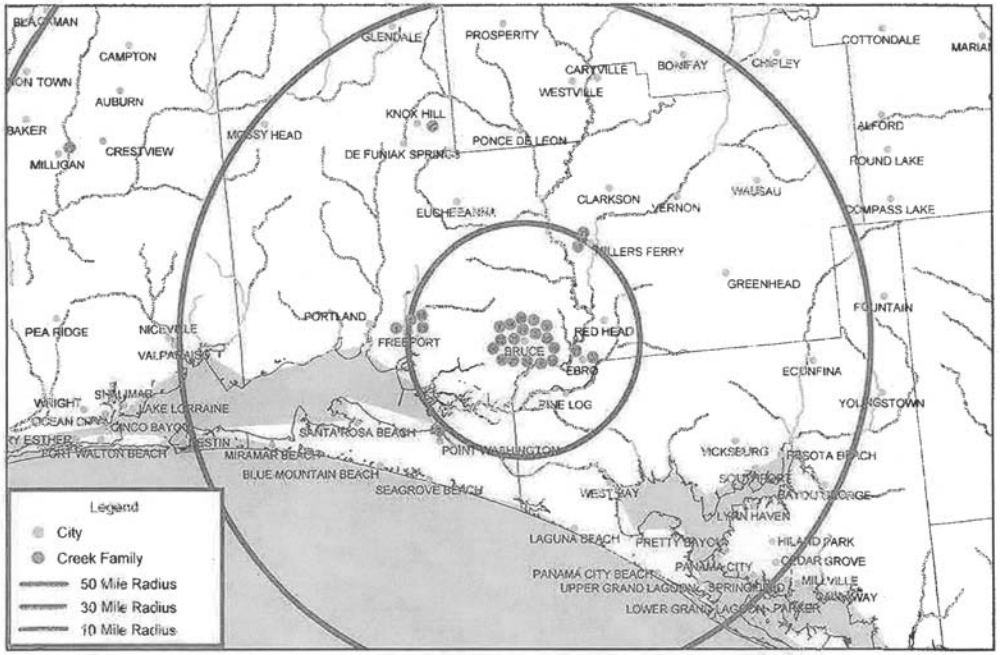
1900 Demographics



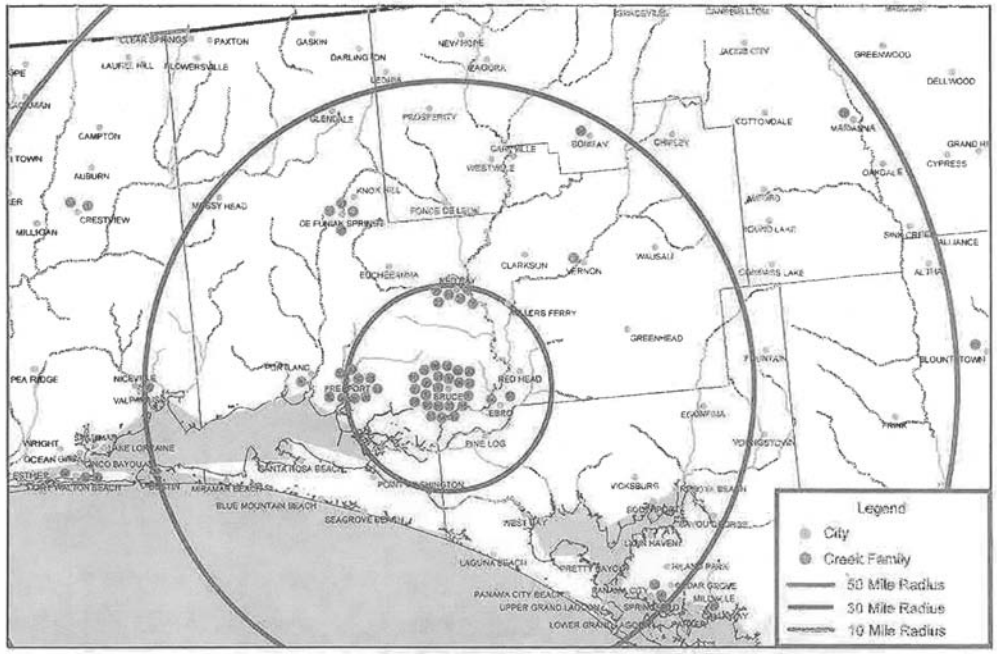
1910 Demographics



1920 Demographics



1930 Demographics



1955-1965 Demographics

ATTACHMENT 5

RESOLUTION 2007-63
A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA SUPPORTING THE MUSCOGEE NATION OF FLORIDA EFFORTS IN OBTAINING FEDERAL RECOGNITION AND TO DESIGNATE THEIR HISTORIC TRIBAL LANDS

WHEREAS, the Muscogee Nation of Florida ("Tribe") is comprised of lineal descendants of persons who were historically part of the Creek Confederacy, which relocated from Daleville, Alabama, and other areas of southern Alabama to the State of Florida between 1812 and 1887;

WHEREAS, the Tribe consisted of those Creek persons settled in the north Florida panhandle in autonomous communities (referred to in the constitution of the Muscogee Nation as "Townships");

WHEREAS, the Tribe is continuing the lifestyle and traditions practiced by the Historic Creek Nation of Alabama and Georgia;

WHEREAS, the Tribe on dissolution of the Creek Confederacy, the ancestors of current members of the Muscogee Nation of Florida relocated and reestablished home sites, traditions, ceremonial centers, tribal government (including through the traditional appointment of tribal leaders), and tribal economy in Walton County and other rural areas of the State of Florida;

WHEREAS, the Tribe has continued to exercise the governing powers of the Nation;

WHEREAS, the Tribe is providing services to members of the Nation; and enjoying the communal lifestyle of the Nation; and some members of the Nation remain on original home sites of their Creek ancestors;

WHEREAS, the Tribe members of the Nation participated in the 1814 Treaty of Ft. Jackson and the Apalachicola Treaty of October 1832;

WHEREAS, the Tribe was included in the Abbott-Parsons Creek Census, dated 1832 and 1833;

WHEREAS, the Tribe members of the Nation have established an ancestral claim to land taken from the Nation by General Andrew Jackson in the aftermath of the War of 1812 pursuant to the 1814 Treaty of Ft. Jackson;

WHEREAS, the Tribe beginning in 1971, the Secretary of the Interior distributed to members of the Nation in 3 actions per capita payments for land claim settlements;

WHEREAS, the Tribe in 1974, the State of Florida established the Northwest Florida Creek Indian Council to manage issues relating to Creek Indians in northwest Florida;

WHEREAS, the Tribe in 1978, the Council held an election for representatives to the tribal government known as the "Florida Tribe of Eastern Creek Indians", which is now the Muscogee Nation of Florida;

WHEREAS, the Tribe in 1986, the Senate and House of Representatives of the State of Florida passed resolutions recognizing the Muscogee Nation of Florida as an Indian tribe;

WHEREAS, the Tribe the community of Bruce in Walton County, Florida, has been a governing center for the Nation for more than 150 years;

WHEREAS, the Tribe in the community of Bruce, the Nation beginning in the early 1860s, used and maintained the Antioch Cemetery, which remains in use by members of the Nation as of the date of enactment of this Act;

WHEREAS, the Tribe between 1895 and 1947, maintained a school that was attended by members of the Nation;

WHEREAS, the Tribe in 1912, established a church that is recognized by the Methodist Conference as a Native American church;

WHEREAS, the Tribe maintained a ceremonial area on Bruce Creek that was attended until the late 1920s;

WHEREAS, the Tribe's ceremonial area of the Nation is located in the community of Blountstown, Florida, 1 of the reservations referred to in the Apalachicola Treaty of October 11, 1832; is the site of continuing ceremonies, such as Green Corn, and traditional events;

WHEREAS, previous local governments have recognized the community of Bruce as the center of tribal government of the Nation;

WHEREAS, the Tribe during the previous 30-year period has received Federal, State, and local grants, and entered into contracts, to provide services and benefits to members of the Nation.

WHEREAS, the Tribe extends its educational programs to local schools and citizen groups throughout the region in an effort to enhance the historical knowledge of our schoolchildren and citizens as to the culture of our local Tribe;

WHEREAS, the Tribe takes numerous displays, artifacts, and other instructional tools to schools and other locations to assist its teaching efforts;

WHEREAS, the various teaching tools have expanded to a point wherein a formal exhibit vehicle is needed to facilitate the transport of these numerous items;

WHEREAS, the Florida Department of State's Division of Historical Museums and Preservation has grant funds available to assist the tribe in obtaining an exhibit vehicle to transport its cultural items;

NOW THEREFORE, BE IT RESOLVED that the Walton County Board of County Commissioners does hereby support the Muscogee Nation of Florida's efforts to obtain Federal recognition from the United States of America and recognizes the Tribe's contribution to Walton County, Florida by the following:

The Walton County Board of County Commissioners fully supports H. R. 2028 and S.514 currently being presented in the 110th Congress of the Untied States.

The Historic Hunting Lands of the Tribe shall be considered to be the as referenced in Exhibit A - Muscogee Nation of Florida Historic Tribal Hunting Grounds.

As recognition of the Tribe's history the area in the State of Florida in which members reside that is bordered on the west by the Escambia River and on the east by the St. Marks River within Walton County, Florida shall be designated as the Muscogee Nation of Florida Township of Bruce tribal lands.

Be it further resolved that a certified copy of this resolution be forwarded to:

Chairperson Ms. Ann Tucker
Muscogee Nation of Florida
P.O. Box 3028
Bruce, FL 32455

U.S. Senator Byron Dorgan
Chairman Select Committee on Indian Affairs
United States Senate 838 Hart Office Building
Washington, DC 20510

U.S. Senator Craig Thomas
Vice-Chairman
Select Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

U.S. Representative Nick J. Rahall II
Chairman Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

U.S. Representative Don Young
Ranking Member
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

U.S. Representative Jeff Miller
Washington D.C. Office
U.S. House of Representatives
1535 Longworth House Office Building
Washington, Washington DC 20515

U.S. Representative Allen Boyd
Washington D.C. Office
U.S. House of Representatives
1227 Longworth HOB
Washington, DC 20515

U.S. Senator Bill Nelson
Washington, D.C. Office
United States Senate
716 Senate Hart Office Building
Washington, DC 20510

U.S. Senator Melquiades Rafael "Mel" Martinez
Washington D.D. Office
United States Senate
356 Russell Senate Office Building
Washington, DC 20510

IN WITNESS WHEREOF, the Board of County Commissioners of Walton County, Florida, unanimously approved this Resolution in regular session on the 24 day of July, 2007, and has caused this resolution to be enacted and executed on this 24 day of July, 2007.

WALTON COUNTY BOARD OF COUNTY COMMISSIONERS

Kenneth Pridgen, Chairman

Kenneth Pridgen

Attest: Kimberly Wilkes
for Martha Ingle, Clerk of Court

CERTIFIED A TRUE COPY
July 25 2007
MARTHA INGLE, CLERK
CIRCUIT COURT-COUNTY COURT
WALTON COUNTY, FLORIDA
BY Kimberly Wilkes
DEPUTY CLERK

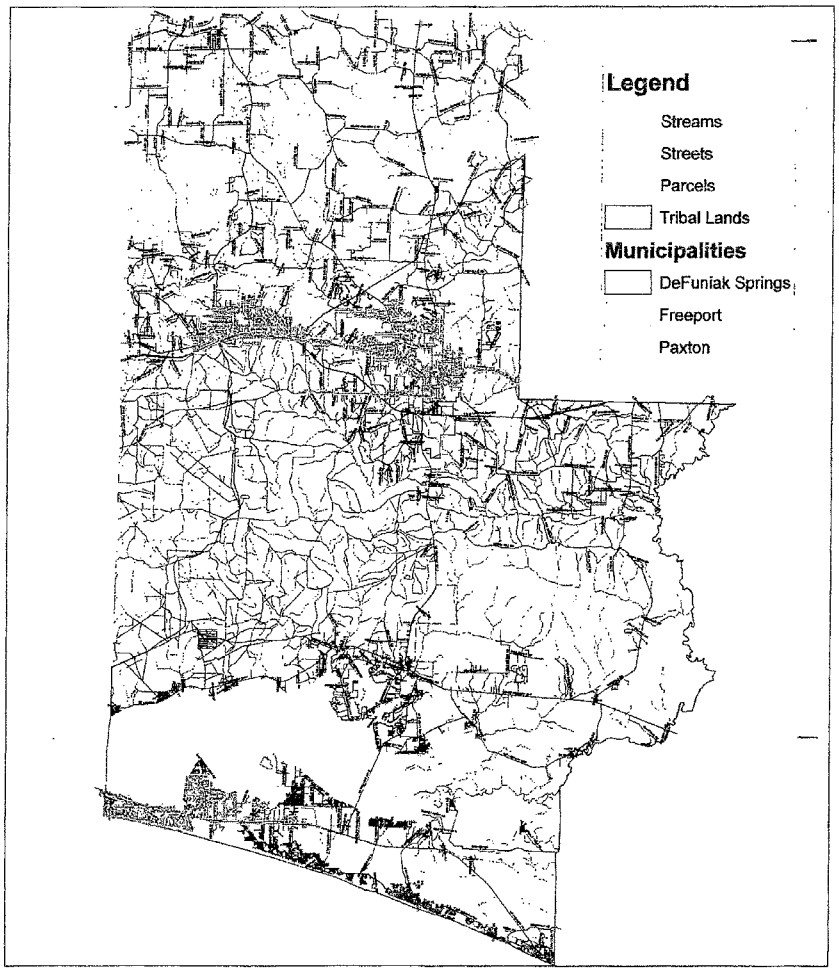
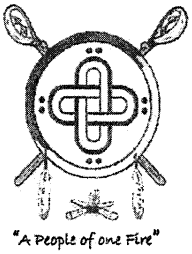


Exhibit A
Muscogee Nation of Florida
Historic Tribal Hunting Grounds



Muscogee Nation of Florida
278 Church Rd. Bruce, FL 32455
Ph: 850/835-2078 Fax: 850/835-5691

October 13, 2008

Chairman Byron Dorgan
Vice-Chairwoman Lisa Murkowski
Senate Committee Members
c/o The Senate Committee on Indian Affairs
838 Hart Office Building
Washington D.C. 20510

Dear Chairman Dorgan, Vice-Chairwoman Murkowski, and Senate Committee Members:

On behalf of Muscogee Nation of Florida, I request this letter be placed in my testimony as an addendum in response to comments made by Mr. Lee Fleming, Director of the Office of Acknowledgement in the Bureau of Indian Affairs, at the Committee's September 25, 2008 hearing on Senate Bill 514, the Muscogee Nation of Florida Recognition Act.

Mr. Fleming's statements about my Tribe's application demonstrate that his office has neither reviewed the documents that we have submitted nor has performed even a cursory investigation of documents that relate to the mandatory criteria in 25 CFR 87.7 that are actually available for a Florida tribe. Mr. Fleming's observations following his testimony were taken directly from a 12-page technical review letter that Muscogee Nation of Florida responded to *line by line* at the beginning of this century. Every line of the letter from the Office of Acknowledgement was boldfaced typed and followed by a detailed response to remove any misunderstanding or provide specific clarification. Our response was reviewed, commented on, and assembled with the help of former Chairpersons of the Alabama Coushatta Tribe and the Coushatta Tribe of Louisiana – two Southeastern federal Tribal leaders who understand specific historical and present-day obstacles to tribes in Jim Crow states. Mr. Fleming has never acknowledged that OFA read our response to OFA's letter or the exhibits, volumes of written data and box-loads of genealogy supporting our response that we submitted to OFA. The Tribal Government received a letter that the application was moved to the "Ready, Waiting for Active Consideration" list with an attached list of evidence and documents. To date, there have been no letters that discuss projected timelines, points of contacts assigned to the Tribe, nor even a yearly update. On any given day, we cannot tell you what number we are in line for review. We have checked on status through both House and Senate Committees in the past. Our most recent information had our

Tribe at number 4. With the movement of the one Tribe that meets the new policy letter interpretations, we have been slipped to number 5. As the OFA reviews Tribes in groups of 4, we must now wait for another full cycle of petitions to be completed before we can hope to be reviewed. Muscogee Nation of Florida continues to be trapped in the endless OFA cycle, going round and round again, without any progress, but certainly with more unreasonable, inexplicable delay.

In response to specific allegations made by Mr. Lee Fleming:

First, the membership of Muscogee Nation of Florida and its Tribal Government are not a splinter group from any other Indian Tribe nor have we adhered to any policies or directives that would allow the absorption of our members by another federally recognized Tribe. As specifically stated in our response in the OFA's Technical Review, the leader of our community, Jesse Joe Ward, worked independently from the Bruce Community with Calvin McGhee of Atmore Alabama in the 1950s to enable Creek people in the Southeast to share in the Treaty of Ft. Jackson. Tribal documentation in the Council House of Bruce shows independent contact with New York genealogists, letters from politicians including Claude Pepper, Lyndon Johnson and Spessard Holland, letters from Lenoir Thompson who was representing the legal efforts of Eastern Creek Indians, and letters to and from the Bureau of Indian Affairs as early as 1947. All of these letters were not dependent on nor tied to the participation of the Poarch Band of Creeks. They were community based. Paperwork filed with the Bureau of Indian Affairs after the determination was made that the people of the Muscogee Nation of Florida would share in the Treaty of Ft. Jackson land claim settlement was initiated in the Bruce Community for our people – not through the Poarch Creeks in Alabama.

In the 1970s, our leaders were appointed by the Governor of the State of Florida to serve on a District Council with other Indian leaders. The District Council, a cooperative effort between leaders of communities, also included some of the current leadership of Poarch Band who then lived in Escambia County, Florida. They have since changed their residence to Atmore Alabama, after pursuing a Congressional recognition. The people of the Bruce Indian Community have never voted in elections or lived in Atmore, Alabama, or served on the Poarch Band Tribal Government. We have had our leadership since the removal of the Creek Confederacy in 1834, and we settled in a different state than Poarch Band, where we lived – and still live - as a separate and distinct community. Much like the distinction between England and the United States, we are two distinct people who have lived distinct lifestyles for over 150 years. Therefore, we find it difficult to understand why the Office of Federal Acknowledgement is determined that we have an overlapping governmental structure and should be absorbed. We also find it difficult to understand how and why Mr. Fleming disregards the sovereignty of Indian tribes, whether or not they are federally recognized. We raised this concern in our testimony when we spoke about the improbability of finding fair evaluation in the process.

Second, it is noted that 98 percent of the members of Muscogee Nation of Florida are directly attached to the Bruce Indian Community by church records that date back to 1912 and school records that date back to the late 1800s. These records provide the required 100 plus year baseline roll to document this Indian community. Poarch Band members are not on any of the baseline rolls of Muscogee Nation of Florida To our knowledge, the OFA has

never reviewed the baseline rolls in their entirety – nor have any questions been raised about them to the Tribal Government. When we were instructed to digitize all Tribal data, the General Counsel for the Tribe spoke directly to Lee Fleming, who said that the digitized data could be submitted to OFA when the Tribe was moved to the Active Consideration list. We relied on the advice of Anthropologists who were familiar with the latest internal interpretations of data to completely review and study the membership and community structure, which ensured that the community was soundly defined. All membership records include property records dating back to the time of our arrival in Florida, and a complete demographic profile has been accomplished at considerable cost to this Tribe. After the recognition of the Poarch Band of Creeks in 1981, the Tribe's membership committee began to systematically audit all records to ensure that the crossover memberships cited in Lee Fleming's comments did not exist.

When the State of Florida passed concurrent resolutions recognizing Muscogee Nation of Florida, many Creek people asked to join for assistance with education, social services, and the like. These people are not included in the roster of Muscogee Nation of Florida that we submitted to OFA. There were some members who were able to move membership to the Poarch Band of Creeks because of intermarriages between people in Escambia County, Florida and Escambia County, Alabama. Our Tribe encouraged such members to exercise their rights to services from the Poarch Band, if that was where their community and governmental ties were found since the destruction of the historic Creek Confederacy.

Muscogee Nation of Florida defines its boundaries as the area stated in Senate Bill 514. We have worked constantly to ensure that we have provided evidence to avoid the very issues that Lee Fleming cited. The Bruce Community in Walton County Florida is composed of extended family groups that do not have ties to the Poarch Band of Creeks. *Every adult file that we submitted to OFA contains an affidavit that the member does not belong to any other group.* It is the member's responsibility by Tribal Code to notify the Tribal Government if such a situation does occur. We stand by our current membership roster. Each member on our roster either shared in the Treaty of Ft. Jackson, or is eligible to share in the Treaty, or is directly descended from Creeks listed on the Abbott-Parsons Census of 1832 and of Creek people who arrived in Florida before 1865 to settle in the Bruce Community. Each member on our roster is a descendent of persons on our school and church baseline rolls.

Third, Mr. Fleming stated that we could use birth and death certificates, voting registrations, census documents, and special public records to racially identify this Tribe – despite our testimony and copies of Florida law banning Indians from Florida – as though these actually exist. The documentation demanded by Mr. Fleming is not available in Florida. Most of the County courthouses were burned immediately following the Civil War. Additionally, creating those records over historic time was in violation of Jim Crow laws. Mr. Fleming's demand reaffirms the Office of Federal Acknowledgement's lack of understanding of what Jim Crow laws required. To avoid imprisonment or death; our people had to be white or black. Although we have other forms of proof of our lineage, such as marriage records, church records, and a demographical mapping of our geographic community, Mr. Fleming's unyielding interpretation of the criteria requiring external identification demands sources that would have resulted in the destruction of our people under Florida law. The fact is that Florida had no Indian Commission to offer protection, rights and privileges, nor oversight to Native Americans within

the state. Even in 1971, after the passage of the 1964 Civil Right Act and the receipt of the settlement letter that was sent out by the Department of the Interior on the Treaty of Ft. Jackson, over 300 tribal members had to be racially identified as "Other" to vote because there was no race for Indian. Mr. Fleming has raised an impossible hurdle, which we cannot overcome no matter how much paper we provide to the Office of Federal Acknowledgement.

We ask this Committee to understand the frustration of this Tribe when trying to meet an insurmountable standard that fails to acknowledge historical circumstances and makes us -as a Petitioner - unable to fit neatly into the check boxes that OFA has created. Please also understand our frustration when Mr. Lee Fleming bases his comments on a Technical Review letter without fully reviewing the data that the Muscogee Nation of Florida has made available to him. Statements being made as fact need to be based on the assurance that all the facts are known. Since we are not now under, nor have we ever been under, "Active Consideration," our current data has not been reviewed. Mr. Fleming's comments appear to represent a mind that is already made up – a mind that questions our lineage or has already decided that our tribe will be "absorbed" in spite of Department of Interior settlement letters and community historical records that state otherwise. Our Tribal Government fully understands that legislative recognition brings with it a thorough and fair review of membership records by the BIA. We have welcomed that review for many, many years. The problem is that there has been no review. The system has failed. Mr. Fleming's comments do nothing to address that failure. Our only hope is action by Congress.

Sincerely,

Ann Denson Tucker
Chairwoman

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