S. HRG. 113–219

S. 1074, THE THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2013; S. 1132, THE LUMBEE RECOGNITION ACT; AND S. 161, THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS RESTORATION ACT OF 2013

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

OCTOBER 30, 2013

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE

87–270 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
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WEDNESDAY, OCTOBER 30, 2013

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

The Committee met, pursuant to notice, at 2:45 p.m. in room 628, Dirksen Senate Office Building, Hon. Maria Cantwell, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

The CHAIRWOMAN. We will now turn to our legislative hearing, which today is to discuss the Federal recognition legislation of three different jurisdictions that are here today, the Lumbee Recognition Act, S. 1132, S. 161, the Little Shell Tribe Indian Restoration Act of 2013, and the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013, S. 1074.

I know that several of our colleagues wanted to join us today to discuss these various legislative proposals. We have with us our colleague from Virginia, Senator Tim Kaine. If you would like to start off with your discussion or comments about S. 1074, it is a pleasure to have you before the Committee.

And I should just note that I think, Senator Kaine, every time I see him, brings up how important this legislation is. So thank you for being here today.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Legislative Hearing on S. 1074, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013; S. 1132, the Lumbee Recognition Act, and S. 161, the Little Shell Tribe of Chippewa Indians Restoration Act of 2013

This afternoon the Committee is holding a legislative hearing on bills that would extend legislative federal recognition to tribes in Virginia, North Carolina, and Montana.

The first bill is S. 1074, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. This bill would extend federal recognition to six tribes located in Virginia. Those tribes are:

- the Chickahominy [Chick-Ah-HA-Mah-Knee) Indian Tribe,
- the Eastern Chickahominy [Chick-Ah-HA-Mah-Knee],
- the Upper Mattaponi [Mat-ah-PAH–NIGH],
- the Rappahannock [Rap-Ah-HAN-Auck],
- the Monacan [MAH-Nah-Kin], and
- the Nansemond [NAN-See-Mond].

The second bill is S. 1131, the Lumbee Recognition Act. This bill would extend federal recognition to the Lumbee Tribe located in North Carolina.

And the third bill we will hear about today is S. 161, the Little Shell Tribe of Chippewa [CHIP-Eh-Wah] Indians Restoration Act of 2013. This bill would provide federal recognition to the Little Shell Band of Montana.

Normally, Congress prefers to defer to the expertise and process that exists at the Department of the Interior for decisions on federal recognition. However, there can be unique circumstances that preclude tribes from participating in that process. The three bills before us today represent examples of those unique circumstances.

In the case of the Virginia tribes, two historical circumstances have created gaps in records for Indian people and tribes. First, during the Civil War period many records of identification for Indians and other citizens were destroyed or burned. Second, in 1924, the State of Virginia passed the Racial Integrity Act.

That Act prohibited any official documents from identifying Virginia residents as "Indian." That law remained in place until 1967 and resulted in a four-decade gap of records for Indian people in Virginia.

In North Carolina, the Lumbee tribe is the subject of prior legislation in 1956. Although that legislation was not a true reflection of tribal recognition legislation, the Department's hands are tied and the tribe is prohibited from going through the administrative recognition process. So, the only way for the Lumbee to receive recognition is now through Congress.

The Little Shell recognition bill is one that is very familiar to this Committee. Senator Tester has been a tireless advocate for the Little Shell Band and has introduced recognition legislation each session of Congress since becoming a Senator.

In the case of the Little Shell Band, the administrative process just didn't work. The Little Shell Band has been seeking administrative recognition since 1978, the same year the federal acknowledgment regulations became final.

During that 35-year period, the tribe received an initial positive proposed decision on recognition, only to have that decision reversed a decade later to a finding of non-recognition. The Little Shell decision is somewhat of an anomaly in how the administrative recognition process is supposed to work.

Even the Department has recognized this, and in September, they agreed to reconsider the Little Shell decision. Although that decision is pending, it is important for the Committee to examine not only the legislation before us, but to hear from the Band on their experience so we can make sure the process works for the Little Shell and all tribes.

Before I move on to hear other Committee member statements, I would like to add on to Senator Barrasso's remarks on the departure of David Mullon from the Committee.

David has been a critical presence on the Committee for over a decade. My staff and I have always appreciated the bipartisan approach and commitment that David brings to his work on behalf of Indian Country. The entire Committee will miss David's knowledge and expertise and we all wish him well as he leaves the Committee to continue his advocacy for the rights of tribes and Indians throughout the Country.

I am now pleased to recognize Senator Kaine, the sponsor of S. 1074, the Virginia recognition bill, and Senators Burr and Hagan, the sponsors of S. 1132, the Lumbee Recognition bill. Senator Kaine has been a long-time supporter of the recognition of the Virginia tribes.

And Senators Burr and Hagan have lent their continuous, bi-partisan support to the Lumbee recognition bill. I am pleased that the Committee will have the opportunity to hear from all of you today.

Again, I want to thank today's witnesses for their testimony. Your testimony is helpful in determining how the Committee can move forward on these bills. These bills are clearly very important to the affected tribes. Your testimony highlights the struggle that these and many other tribes have in trying to establish their government-to-government relationship with the United States.

I appreciate the work of the Department in conducting a review of the federal recognition regulations and I look forward to a continued dialogue as the Administration proceeds with that process.

STATEMENT OF HON. TIM KAINE,
U.S. SENATOR FROM VIRGINIA

Senator KAINE. Thank you, Madam Chair, and members of the Committee. I very much appreciate the opportunity to be here to talk about this important recognition of Virginia tribes. I want to acknowledge work that has been done on this issue for many years by Congressman Jim Moran. There are also representatives from Senator Warner's office here who have worked hard on the bill as well.

I will begin by apologizing in advance. I don't think I have ever said this before. I cannot put into words how strongly this means to me. So I am going to do my best, but I am not going to be able to describe in words how strongly I feel about this issue. So just take what I say and magnify it by 10 or 100, please.

In 1607, the English began the English settlement of this continent in Jamestown. Earlier efforts by the English to establish settlements had failed, and in North Carolina there had been a Spanish effort to settle Virginia near Williamsburg that had failed. But the Jamestown settlement thrived and became the start of English-speaking civilization in this continent.

Why did they thrive where earlier efforts failed? Well, you can't sugar-coat the story and make it all peace and harmony. It is clear that Jamestown succeeded where earlier efforts had failed because the Virginia Indian tribes saved the English settlers at many points along those earlier decades of their history.

Some of the best known stories of the European interaction with Indians were stories of these Virginia tribes. Pocahontas saving John Smith's life at a point when, if he had been killed, he was the only competent one among the settlers who knew how to help them out. Pocahontas marrying John Rolfe and moving to England for a time. Pocahontas dying in England and her grave is still cared for by the English government in a church in Graves, England.

The stories of these Virginia tribe are told in a permanent exhibit at the National Museum of the American Indian just a few blocks from here. So this is a well known story that we tell to our children they understand. But while America has recognized over 500 Indian tribes, these Virginia tribes have never been recognized by the United States, even though they have lived in distinct communities and maintained their identity for hundreds of years, even to this day.

The bill seeks to rectify this injustice by recognizing these tribes, six tribes that were situated in Eastern Virginia in 1607 and before. The tribes are the Chickahominy, Chickahominy Eastern Division, Upper Mattaponi, Rappahannock, Monacan and Nansemond. Recognition for these tribes was first sought in 1999, and it is overwhelmingly supported by Virginians, by bipartisan Virginia elected officials, by all nine living governors. You will hear from Chief Steve Adkins of the Chickahominy Tribe in a later panel, and many other representatives are here.

Let me address the question of why these tribes have never been recognized. Because this is a very, very troubling and really tragic story. The story of the tribes is a story of triumph and overcoming, but the story of the lack of recognition is a tragic one.

These tribes have explored recognition via the BIA process. But they were told in the late 1990s that because of their peculiar circumstances, there would be no chance of recognition within the lifetimes of any of the tribal leaders who have worked so hard and so long to gain this appropriate recognition. There are two problems.

The first problem is this. The tribes made peace with their neighbors too soon. They made peace with their neighbors too soon. The tribes entered into the treaty at Middle Plantation in 1677 with the English 100 years before there was a United States of America. Federal recognition often relies on or starts on or includes in a significant factor a treaty made between a tribe and the United States. But since the Virginia tribes made peace with the English, they are treated as a sovereign, respected people by the English government, welcomed with the red carpet treatment every time they go to England, but they have never been recognized by their home country, even though members of these tribes have fought proudly under the American flag as American troops in every war from the Revolutionary War through the most recent wars in Iraq and Afghanistan. That is the first reason they have never been recognized.

And the second is if anything, even more tragic. The tribes have had difficulty because of the destruction of their records, their ancestral records. These Virginia tribes are largely located in six counties in Eastern Virginia. Five of the six county courthouses that held their birth, death and marriage records were destroyed during the Civil War. And more cruelly, their remaining records after the Civil War were systematically altered as part of an official Virginia State policy from 1924 to 1967.

In the 1920s, under the grips of a horrific, now-eugenics movement, Virginia passed a statute called the Racial Integrity Act. The Racial Integrity Act compelled that anyone who could not demonstrate that they were Caucasian would be simply labeled "colored" for purposes of all other State law and records. There would be no distinction between an African American, somebody who had emigrated from another nation or a native Virginian. The director of the State Department of Vital Statistics, an individual by the name of Walter Plecker, who sadly stayed in his job way too long, undertook a massive effort over the course of three decades to reclassify Virginia Indians as colored, and altered or destroyed records for nearly 40 years. And this is all documented history about the destruction of these records.

This shameful history in Virginia has stood as a barrier to recognition of these tribes through the normal administrative process. Virginia, under governors prior to me, began to make this right with State recognition of all these tribes in the 1980s. And Virginia governors have unified to now request the recognition of these tribes who number approximately 3,000 to 5,000 people in these six tribes. And all who might potentially qualify for membership would be less than 10,000.

Let me just conclude and say this. I see I have gone a bit over my time. There is a beautiful tradition in Virginia, the day before Thanksgiving every year, that dates back to the 1670s. These tribes come to the governor's mansion in Richmond, and they

present a tribute to the governor to recognize this bond between the Commonwealth and the tribes. And they bring gifts. Usually they come with families and we have a celebration and ham, biscuits and coffee and visit. Family members look forward to it and Virginia governors look forward to it. Then we go out and do a ceremony, it is called a tribute ceremony, in the front lawn of the Virginia governor's mansion in Richmond. We have done it every year since 1677, these tribes paying tribute to the governor of Virginia in a way to honor this friendship.

It is time that we pay these tribes a tribute. Four hundred and six years after the first interaction between the English and these tribes, 336 years after these tribes pledged to live forever in peace with their Virginia neighbors, it is time the government of the United States finally recognizes them. I strongly urge your support for S. 1074.

And Madam Chair, with your permission, I have a son graduating from the Marine Infantry program at Quantico this afternoon, and I am going to depart. But you are going to hear in a much more even powerful way from Chief Adkins on the third panel. I would just ask your favorable consideration of this legislation.

Thank you.

[The prepared statement of Senator Kaine follows:]

PREPARED STATEMENT OF HON. TIM KAINE, U.S. SENATOR FROM VIRGINIA

Chairwoman Cantwell and Ranking Member Barrasso. Thank you for inviting me to be here. I will be submitting a statement for the record and giving brief remarks here today.

I appreciate the Committee's willingness to have this hearing today. I am here to talk about my bill the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013" (S. 1074). This bill would grant federal recognition to six Indian Tribes from the Commonwealth of Virginia.

First, I would like to thank my good friend, Chief Stephen Adkins of the Chickahominy Indian Tribe, Assistant Chief Wayne Adkins and Bill Leighty for being here today and representing the six Virginia Indian Tribes' tireless efforts in seeking federal recognition. For the six tribes in my state, the rigid nature of the administrative recognition process has been a source of delay and frustration and has left a lingering sense of unfairness.

I want to recognize other Virginians in attendance today: Monacan Chief Sharon Bryant; Upper Mattaponi Chief Kenneth Adams; Chickahominy First Assistant Chief Wayne Adkins; Chickahominy—Eastern Division Assistant Chief Gerald Stewart; Monacan Assistant Chief Dean Branham; Chickahominy Tribal Council Member Martha Adkins; Chickahominy—Eastern Division Tribal Council Member Norman Hogge; Upper Mattaponi Tribal Council Member Eunice Adams; Chickahominy Tribal Member Steve Adkins, Jr.; Chickahominy Tribal Member Elwyn Smith; Virginia Council of Churches Executive Director Reverend Jonathan Barton; Samaria Baptist Church Pastor Jay Hurley.

I would be remiss if I didn't recognize Congressman Jim Moran, whose dedication and commitment to this legislation and the six Virginia Tribes has been unrelenting.

This is not a new issue for this Committee. Support for these six Virginia tribes has been voiced many times 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.

These six Indian tribes gained state recognition in the Commonwealth of Virginia between 1983 and 1989. They have received strong bipartisan support from the Virginia General Assembly for federal recognition. Importantly, seven former Virginia governors (including myself) and Virginia's current governor have expressed support for this legislation.

This legislation is critically important, because it is a major step toward reconciling an historic wrong for Virginia and the Nation. 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 their systematic mistreatment over the past century. Legislation was first introduced in support of these six Tribes in 1999.

The identities of the tribal members of Virginia's Indian Tribes were stripped away by Virginia's Racial Integrity Act, a state law in effect from 1924 to 1967. Racial identifications of those without white ancestry were changed to "colored" on birth certificates during that period. In addition, five of the six courthouses that held the vast majority of the Virginia Indian Tribal records needed to document their history to the degree required by the Bureau of Indian Affairs Office of Federal Acknowledgement were destroyed in the Civil War.

Furthermore, Virginia Indians and England signed the Treaty of Middle Plantation in 1677. This predated the creation of the United States of America by just short of 100 years. This Treaty was never recognized by the founding fathers of the United States. Therefore, the Tribes were not granted federal recognition while tribes signing treaties with the U.S. have been recognized.

I understand that there is reluctance from some members in Congress to grant Native American tribes federal recognition through legislation. And these members would prefer that these Tribes go through the BIA administrative process instead.

However, we have heard testimony from the BIA in the past, from various tribes and officials, *time and time again* that the administrative process has proven to be an arduous one due to lack of clear guidelines, cost, lack of resources which have contributed to the current backlog that has resulted in waits as long as 20 years for federal recognition. This has been well documented by repeated GAO studies.

We have heard from the BIA in the past on how they will resolve these issues, but to date—little has been done to fix the recognition process.

Most importantly, 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.

I am proud of Virginia's recognized Indian Tribes and their contributions to our Commonwealth. It has been six years after the 400th anniversary of the first permanent English settlement at Jamestown, it is especially tragic that these tribes still have not received equal status with the 566 other Federally Recognized Tribes in the United States. The Virginia Tribes are a part of us. We go to school together, work together, and serve our Commonwealth and nation together every day. These contributions should be acknowledged, and this federal recognition for Virginia's native peoples is long overdue.

Congress has the power to recognize Native American Tribes. And it has exercised this power in the past. I believe that the Tribes' situation and Virginia's harsh history clearly distinguishes them as excellent candidates for Congressional action. Virginians consider this a matter of fundamental justice.

It is my hope that this Committee will move quickly to approve S. 1074 and the full Senate and House will act upon my legislation, to finally give these six Virginia Indian Tribes the federal recognition that is long overdue.

The CHAIRWOMAN. Thank you, Senator Kaine, and thank you for your testimony. And thank you for your passion about this. As we can see from our agenda items today, and I should just say that the Chair forgot to make opening statements about our panel, and with consultation with our Vice Chairman I think we have just decided to submit for the record.

But I will just summate them to say this, that Congress can play a role when there has been a confusion or conflict about a process moving forward, and certainly we appreciate your passion to bring this issue to our attention. So thank you for being here today.

We will now turn to our colleague from North Carolina, Senator Hagan. Thank you for being here today. We look forward to your comments about S. 1132, which by the way, for our colleagues, has I believe passed out of this Committee before, I think passed out of the House before. But again, never all in consecutive timing. But we certainly appreciate your bringing, S. 1132, the Lumbee Recognition Act. Thank you for being here.

STATEMENT OF HON. KAY R. HAGAN,
U.S. SENATOR FROM NORTH CAROLINA

Senator HAGAN. Thank you, Madam Chairman, and Vice Chairman Barrasso and the entire Committee. Thank you very much for allowing me to participate today.

This is a very important bill for the Lumbee Indian Tribe in North Carolina. I want to thank the Lumbee Tribal Chairman Paul Brooks for being here, and the rest of the Lumbee representatives who have traveled from North Carolina to join us.

I also want to ask that my full statement be submitted to the record.

The CHAIRWOMAN. Without objection.

Senator HAGAN. I am pleased that the Committee is holding this important hearing, and I want to take the opportunity to discuss an issue that is just as important to me as Senator Kaine is about his tribes. The Lumbee Indians are among the earliest North Carolinians. They descended from the coastal tribes of North Carolina. They have lived along the Lumbee River since before our Nation was founded.

During that time, the Lumbee have maintained a distinct community in what is now Robeson County, with more than 40,000 current members in and around the county seat of Lumberton. Because this tribe lacked a formal treaty relationship with the new United States, the tribe has worked for over 120 years to win this recognition that they deserve. And as Madam Chairman said, this has passed in different houses, but we have never been able to get it to a conference.

The State of North Carolina officially recognized the tribe in 1885. And despite generations of uninterrupted self-governing, the Lumbee still have not received full recognition by the Federal Government.

In 1956, the Lumbee Act expressly precluded the tribe from pursing Federal acknowledgment through the Bureau of Indian Affairs administrative process. Thus, while the Lumbee were identified in Federal legislation as a tribe back in 1956, existing law strictly limits the group's ability to access vital services otherwise available to a federally-designated tribe.

As the Senate Indian Affairs Committee has noted, Congress placed only one other Indian tribe in a similar position. In 1965, the Tewa Indians of Texas won recognition in Congress, but were prohibited from pursuing BIA and other Federal services. That was in 1965. Congress recognized the problem and in 1987, passed legislation granting full recognition to the Tewa Tribe. This has left the Lumbee as the only tribe in America that is recognized by the Federal Government while also being forbidden to access critical programs that are available to every other tribe in the Country.

This current Administration has also recognized this basic inequity. At a past House hearing on the bill, George Skibine, who served as Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the time testified, "There are rare circumstances when Congress should intervene and recognize a tribal group. The case of the Lumbee Indians is one such rare case."

So the Lumbee Recognition Act, which I have introduced with my colleague, Senator Burr, would rectify this longstanding inequity and provide the Lumbee with the full recognition that they so clearly deserve. Beyond simple fairness, the issue of Lumbee recognition is critically important to Robeson County, the communities, and they have been one of the hardest hit communities by this recent economic downturn.

The Harvard School of Public Health has found that residents of Robeson County have a lower average life expectancy due to persistent poverty and limited access to affordable health care. This bill will enable the Lumbee to combat these trends through access to critical programs within the Indian Health Service and economic development programs through the Bureau of Indian Affairs.

Some in Congress have argued that the cost of providing BIA and Indian Health Services to the Lumbee will be too high and that the Lumbee recognition will draw down funds that are currently going to other tribes. I understand those concerns, but I want to be clear: the Lumbee do not want recognition on the backs of other tribes. This bill simply ensures that the Lumbee are eligible for the same services as their peers. Funding for these services will be subject to future appropriations and the Lumbee will not dilute support for tribes that currently receive Federal resources.

Federal recognition is about more than Federal resources and creating economic development opportunities for their community. It is about tribal identity and fairness. And it is essential that we ensure that current and future generations of Lumbee are no longer treated as a second class tribe.

Madam Chair, I urge the Committee to work on this bill, to approve this important legislation without delay. Thank you, Madam Chairman.

[The prepared statement of Senator Hagan follows:]

PREPARED STATEMENT OF HON. KAY R. HAGAN, U.S. SENATOR FROM NORTH CAROLINA

Good Afternoon. I'd like to thank Chairwoman Cantwell, Vice Chairman, and the entire Committee for allowing me to participate in today's hearing. Additionally, I'd like to thank Lumbee Tribal Chairman Paul Brooks and the rest of the Lumbee representatives who have traveled from North Carolina to be here.

I am very pleased the Committee is holding this important hearing and I want to take this opportunity to discuss an issue that is vitally important to North Carolina's economy, and to the heritage and cultural identity of more than 40,000 Americans.

The Lumbee Indians are among the earliest North Carolinians. They descended from the coastal tribes of North Carolina and have lived along the Lumber River since before our nation was founded.

During that time, the Lumbees have maintained a distinct community in what is now Robeson County, North Carolina, with more than 40,000 current members in and around the county seat of Lumberton.

Tribe members have worked diligently throughout the generations to sustain a strong tribal society.

Each and every Lumbee can trace his or her ancestry to the Tribe's base roll, which is comprised of school and church records and early 20th-century census data. This common ancestry has bound the tribe for generations and established the Lumbee as a longstanding, distinct community in southeastern North Carolina.

Nearly two-thirds of the tribe live within fifteen miles of Pembroke, where they start families and businesses, run for tribal office, and attend the annual July 4th parade.

The Lumbee fought alongside the American Colonists during the Revolutionary War, and helped shape North Carolina's history.

But because the tribe lacked a formal treaty relationship with the new United States, the tribe has worked for over 120 years to win the recognition they deserve.

As has been noted by the Senate Indian Affairs Committee, "The Lumbees have a longstanding history of functioning like an Indian tribe and being recognized as such by State and local authorities. Since 1885, the Lumbees have maintained an active political relationship with the State of North Carolina."

The State officially recognized the Tribe in 1885, and established a separate school system for Lumbee children.

With initial enrollment limited to children who could demonstrate at least four generations of Lumbee descent, this autonomous school system has remained in place for over 100 years.

And in the late 1800s, the State of North Carolina established the Indian Normal School to train Lumbee teachers for the Tribe's school system. This school has been in continuous operation since that time and has grown into the University of North Carolina at Pembroke.

Religion and culture have also remained strong in the Lumbee community, with more than 130 Lumbee churches in Robeson County.

Despite generations of uninterrupted self-governing, the Lumbee still have not received full recognition by Federal Government.

Instead, Congress in 1956 enacted the Lumbee Act, which simultaneously recognized the tribe, but DENIED tribal members access to federal services.

The Lumbee Recognition Act—which I have introduced with my colleague from North Carolina, Senator Burr—would rectify this longstanding inequity, and provide the Lumbees with the FULL recognition that they so clearly deserve.

Beyond simple fairness, the issue of Lumbee recognition is critically important to the North Carolina economy, and to counties and communities that have been hardest hit by the recent economic downturn.

Because the 1956 Lumbee Act forbid the Lumbee from pursuing the federal resources available to every other recognized tribe in the country, the Tribe does not have access to critical services through the Bureau of Indian Affairs and Indian Health Service.

The Harvard School of Public Health has found that residents of Robeson County have a lower average life expectancy due to persistent poverty and limited access to affordable health care.

Our bill will enable the Lumbee to combat these trends through sustained economic development and quality health services.

It will allow members of the Lumbee tribe to access critical programs through Indian Health Services, and will help treat and prevent chronic illnesses that negatively affect the quality of life in the region.

With a healthier population, and access to federal programs, the Tribe can focus on economic development. Robeson County—and the surrounding counties of Scotland, Hoke, Bladen, and Columbia—continue to experience unemployment rates that are among the highest in North Carolina.

Economic development programs through the Bureau of Indian Affairs will allow the tribe to create jobs where they are needed most, and will support a true economic recovery in this distressed region.

Some in Congress have argued that the cost of providing BIA and Indian Health services to the Lumbee will be too high, and that Lumbee recognition will draw down funds that are currently going to other tribes. I certainly understand these concerns.

But, I want to be clear—the Lumbee do NOT want recognition on the backs of other tribes.

This bill simply ensures that the Lumbee are ELIGIBLE for the same services as their peers. Funding for these services will be subject to future appropriations, and the Lumbee will not dilute support for tribes that currently receive federal resources.

Some also argue that the Lumbee do not need Federal recognition because they can apply for acknowledgement through the Bureau of Indian Affairs administrative process. But let me be clear about this: the Lumbee have been prohibited from being considered by this process.

This is because the Lumbee were unfortunate enough to win partial recognition during a time when the BIA was actively working to terminate longstanding relationships with tribes and roll back federal services for Native Americans across the country.

The 1956 Lumbee Act expressly precludes the tribe from pursuing federal acknowledgment through the Bureau of Indian Affairs administrative process. Thus, while the Lumbee were identified in federal legislation as a tribe more than 50

years ago, existing law strictly limits the group's ability to access vital services otherwise available to a federally designated tribe.

As the Senate Indian Affairs Committee has noted, Congress placed only one other Indian tribe in a similar position. In 1965, the Tiwa Indians of Texas won recognition in Congress, but were prohibited from pursuing BIA and other federal services.

Congress recognized this problem, and in 1987 passed legislation granting full recognition to the tribe. This has left the Lumbee as the only tribe in America that is recognized by the Federal Government while also being forbidden from accessing critical programs that are available to every other tribe in the country.

The Administration has also recognized this basic inequity. At a past House hearing on the bill, George Skibine, who served as Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the time, testified that, "There are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case."

I agree. It is long past time for the Lumbee to receive the full federal recognition they deserve.

Federal recognition is about more than federal resources and creating economic development opportunities for this community. It is about tribal identity and fairness. And it is essential that we ensure that current and future generations of Lumbee are no longer treated as a second-class tribe.

I urge the Committee to work quickly to approve this important legislation without delay.

The CHAIRWOMAN. Thank you, Senator Hagan, and thank you for being here and testifying on behalf of this legislation. We appreciate you and your advocacy.

Does anybody have any questions for our colleague?

If not, I know that your colleague, Senator Burr, was on the other side of the Capitol and is on his way here. I was going to see if in that process, we might turn to S. 161 to see if there are any comments from our colleagues on the Little Shell bill, and when Senator Burr arrives, we will give him a chance to speak on behalf of this legislation as well.

Senator HAGAN. I am sure he will want to.

The CHAIRWOMAN. Thank you.

Senator Tester, would you like to make a comment about S. 161? If not, we will move on to other things.

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

Senator TESTER. I would, very briefly. I think Assistant Secretary Washburn is next up. But I would just say this, first of all, welcome, Chairman Gray. This isn't the first time the Little Shell has been in front of this Committee, but this is the first time Chairman Gray has been in front of this Committee. The Little Shell have been seeking recognition, I will just say for generations. It has been over 35 years. They have received recognition and they have had that decision revoked. It tends to be, we will just call it a Ferris wheel, for lack of a better term.

The Montana legislature, when I was in it, as a matter of fact, passed a resolution recognizing the Little Shell. The other tribes in the State of Montana recognize Little Shell. The only entity that doesn't recognize Little Shell is the Federal Government. I have had this conversation with Assistant Secretary Washburn before, we need to keep working at this, get the process streamlined so things can happen in a positive way.

With that, thank you, Madam Chair.

The CHAIRWOMAN. Thank you, Senator Tester. Again, thanks for this legislation.

I think what we will do is now turn to Assistant Secretary Washburn and have him come before the Committee. As I said, when Senator Burr arrives, perhaps after the Secretary has answered questions, we will have him be able to make a statement as well. So again, thank you for being here. We appreciate your time before the Committee and your service.

STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. WASHBURN. Thank you, Madam Chairwoman. It is an honor to be here. Vice Chairman and Senator Tester, thank you.

Let me add my praise for David Mullon today quickly. David is one of the best that I've worked with. Senators are very busy, so it is very important to have good staff. And David Mullon has embraced the spirit of bipartisanship that guides this Committee so well, and it has been a real honor to work with him. I am fortunate that I am going to continue to be able to work with him in his new job, and I wish him Godspeed in that job. So thank you for that.

I am here to talk about the three bills that would extend Federal Government-to-government relationship to several tribal groups. This is a matter that I have spoken with some of you about previously. The Part 83 process, our Federal recognition process, has been criticized quite a bit over the years as expensive, inefficient, burdensome, intrusive, less than transparent and unpredictable. And some of those criticisms have come from Senator Tester.

So when I arrived in this position, Secretary Salazar asked me to look at this area. After having met with Senator Tester, I knew it was important. So I have been working on it, my staff and I, Deputy Assistant Secretary Larry Roberts and I, and other staff have worked really hard to develop a process first to roll this out, so that everybody gets a chance to comment on it, especially tribal groups through tribal consultation. We are in that process.

So we are working to try to make the process more transparent, more timely, more efficient and more flexible, while maintaining the rigor of the process. We are working, again, working hard to do that. I would add that Larry Townsend, who is here, has worked closely with the National Congress of American Indians to help us with this. We have had a lot of support from NCAI for this effort, which is nice, which is very impressive, because National Congress of American Indians largely serves federally-recognized tribes that are already recognized, so they don't have to do this. But they are extending a hand to the tribes that haven't reached that point yet. So we are grateful for that, it is heartwarming.

So let me first move quickly to the Lumbee Recognition Act. This bill especially I think is appropriate for Congress to act upon, because Congress in 1956 already enacted legislation with regard to this tribe that we have interpreted, our sister department interpreted precludes the Department of Interior from doing anything as far as recognizing this tribe. So we support the Lumbee Recognition Act, S. 1132, and we have a couple of minor concerns that we hope would be addressed, but we generally support the bill. So I

would say that one of those concerns is the bill asks us to verify the membership of the Lumbee Tribe, and that is more than 40,000 people and perhaps 55,000 people. That would be a lengthy process, and a difficult process and might take a small army of people to accomplish. So that makes us a little bit nervous.

But again, we think it is a matter of justice that the Lumbee Tribe be recognized and be brought into the tent. We support that bill.

Let me move secondly to the Little Shell bill, S. 161. We do not oppose this bill. This is currently before me, so I am not going to say very much about it. But I will say that it was Senator Tester's description of the situation of Little Shell that convinced me that it was very, very important that we take a look at this whole process. And indeed, we listened to Senator Tester and his comments when we put together our own discussion draft for how to reform this process.

One of his complaints about the Little Shell process is that he felt they were sandbagged. They had a positive finding and it was put out for comments. He didn't see any negative comments come in, and yet the finding was reversed. And that does cry out for more transparency.

So one of the things that was in our discussion draft is if we put out a positive finding and we get no negative comments, then that finding should hold. We haven't accepted that yet, that is in the discussion draft. But that is something that we put out there for conversation. And we have gotten a heck of a lot of comments. Our next stage will be to go to a proposed rule and get more comments and more tribal consultation that has issues like that in it.

So we do not oppose S. 161, the Little Shell Tribe of Indians Restoration Act of 2013.

Now, let me turn to S. 1074, Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. We are neutral on this bill. These groups are all petitioners in our process, a process that we are desperately trying to improve. Because we haven't seen their applications yet, they haven't been finalized, we are not taking a position on the bill. We are remaining neutral on whether Congress should go ahead and enact this bill, but we stand ready to assist in any way we can and we will continue to work on their applications until Congress should act.

So I think that probably is enough for me to say. I am happy to answer any questions, or turn it over to other witnesses who have arrived.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Madam Chair Cantwell, Vice-Chairman Barrasso and members of the Committee. My name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration's testimony on three legislative bills that would federally recognize several groups that are seeking, or have sought, or are precluded from seeking federal recognition under the Department's regulations at 25 C.F.R. Part 83: S. 1132, the "Lumbee Recognition Act", S. 1074, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013," and S. 161, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2013."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities of the United States. Under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. 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 recognizes certain legal rights under federal law.

We note that the authority to acknowledge a tribe has been delegated to the Secretary of the Interior to act in appropriate cases. As the Committee is aware, the process has been subject to criticism over the years. Some have criticized the Part 83 Process as expensive, inefficient, burdensome, intrusive, less than transparent and unpredictable. The Department is aware of these critiques and, as we have previously indicated, we are reviewing our existing regulations to consider ways to improve the process to address these criticisms. Based upon our review, which includes consideration of the views expressed by members of Congress, former Department officials, petitioners, subject matter experts, tribes and interested parties, we believe improvements must address certain guiding principles:

- *Transparency*—Ensuring that standards are objective and that the process is open and is easily understood by petitioning groups and interested parties.
- *Timeliness*—Moving petitions through the process, responding to requests for information, and reaching decisions as soon as possible, while ensuring that the appropriate level of review has been conducted.
- *Efficiency*—Conducting our review of petitions to maximize federal resources and to be mindful of the resources available to petitioning groups.
- *Flexibility*—Understanding the unique history of each tribal community, and avoiding the rigid application of standards that do not account for the unique histories of tribal communities.

This past summer, the Department released a discussion draft on potential revisions to the Part 83 regulation. We received numerous helpful comments. We are working through comments received and plan to proceed with a proposed rule for publication in the Federal Register. This will open a second round of consultation and the formal comment period to allow for further refining of the regulations prior to publication as a final rule. The timing for publication of a final rule depends upon the volume and complexity of comments and revisions necessary to address those comments, but our hope is to have a final rule published in 2014.

While the Department's process is a rigorous one that we hope to further improve, we also recognize that it is sometimes appropriate for Congress to engage in recognition of Indian tribes. Thus, we are happy to provide our views on the individual bills under consideration.

S. 1132, the "Lumbee Recognition Act"

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

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

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been deprived of the ability to seek Federal acknowledgment through administrative means.

Given that it is Congress that has specifically addressed the Lumbee Indians on a previous occasion and has barred Interior from undertaking this review, only Congress can take up the matter of federal recognition for the Lumbee Indians. We support S. 1132 with amendments as discussed below.

S. 1132 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department's acknowledgment regulations. The Office of Federal Acknowledgment has received letters of intent to petition from six groups that may overlap with each other. In addition, we have identified over 80 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be the "Lumbee Tribe". Therefore, we recommend Congress clarify the Lumbee group that

would be granted recognition under this bill based on the group's current governing document and its current membership list. Not doing so could potentially expose the Federal Government to unwarranted lawsuits and possibly delay the recognition process for the other groups of Indians in Robeson and adjoining counties not enrolled in the Lumbee Tribe.

Under S. 1132, any fee land that the Lumbee seeks to convey to the United States to be held in trust shall be considered an "on-reservation" trust acquisition if the land is located within Robeson County, North Carolina. The current language in the bill implies that the Secretary has the authority to take land into trust; however, the bill does not expressly provide that authority. Section 4 of the bill should be amended to clarify that Congress intends to delegate authority to the Secretary to acquire land in trust for the Lumbee Indians.

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

Under S. 1132, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Lumbee Tribe." The legislation, however, does not address the State's civil regulatory jurisdiction, which includes jurisdiction over zoning, and environmental regulations. Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. Under the provisions of this bill, the "Lumbee Tribe," which the Department understands includes over 40,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by other Federally recognized Indian tribes. In our experience verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller tribes. While we believe there are approximately over 40,000 members, we do not currently have access to the Lumbee's membership list and thus do not have the appropriate data to estimate the time to verify them nor do we know how many Lumbee members may be eligible to participate in Federal needs based programs. Moreover, S. 1132 is silent as to the meaning of verification for inclusion on the Lumbee group's membership list roll.

In addition, section 3 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs for programs administered by the Department of the Interior and the Department of Health and Human Services is the President's Budget. Finally, the Department notices that some text in S. 1132 may have been inadvertently omitted. In 2009, H.R. 31, an almost identical "Lumbee Recognition Act," included several passages of "Whereas," language in Sec. 2 (3) after "clauses:" that is not in the current S. 1132.

S. 161, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2013"

S. 161, the Little Shell Tribe of Chippewa Indians Restoration Act of 2013 would acknowledge the Little Shell Tribe of Chippewa Indians of Montana. This group, Petitioner #31 in the Department's Federal acknowledgment process, submitted its letter of intent to the Department in 1978, and completed documenting its petition in 1995. A Determination against the federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana was issued on October 27, 2009, and published in the Federal Register on November 3, 2009, 74 Fed Reg. 56861. The decision is not final and effective for the Department because the Little Shell Tribe filed a request for reconsideration before the Interior Board of Indian Appeals (IBIA) on February 1, 2010. On June 12, 2013, the IBIA affirmed the Determination against acknowledgment and referred issues to the Secretary. On September 16, 2013, the Secretary referred those issues to the Assistant Secretary as possible grounds for reconsideration of the affirmed Determination. The current deadline for reconsideration of these matters is 120 days from September 16, 2013. The Little Shell petitioner also requested that the Department suspend reconsideration of the petitioner pending the enactment of revised acknowledgment regulations. These requests are under review.

As we noted above, under the United States Constitution, Congress has the authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States. For this reason, we do not oppose enactment of S. 161.

S. 1074, "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013"

S. 1074 would provide Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, all of which are currently petitioners in the Department's Federal acknowledgment process.

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

Given that we are awaiting more information and have not concluded our own review as to the merits of recognition for these groups, we have not developed views on the merits of Congressional recognition in this instance.

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

The CHAIRWOMAN. Thank you, Assistant Secretary Washburn.

Does the Vice Chairman have any questions? I can start with my questions if that is easier.

I have several questions for you, both about the process, but I feel like I want to get some input for the record on these current bills. Has the Department ever considered undertaking a review of the 1989 Solicitor opinion on the Lumbee legislation and barring it from the administrative process?

Mr. WASHBURN. It has. It hasn't taken any final action on that, but it has looked at that opinion a bit over the years. And it could be reconsidered. It hasn't been reconsidered yet, and that is outside my lane.

The CHAIRWOMAN. Okay. So do you think that is an open question?

Mr. WASHBURN. Well, Congress acted to create the situation that Lumbee is in. So I think it is appropriate for Congress to be the one to act to address that situation otherwise, or specifically address, specifically ask us to do something different. So I don't want to undermine movement in this bill. If Congress is inclined to enact this bill, I think that is probably the best approach. But we would be happy to look at that issue if we need to.

The CHAIRWOMAN. And on the Virginia bill, S. 1074, does the Department recognition process allow for any kind of consideration of unique historical circumstances?

Mr. WASHBURN. It is very much focused on historical circumstances. It is quite, well, let me say the people who do this work are historians and ethnologists and anthropologists. So it is very much a history-driven process.

The CHAIRWOMAN. But has anybody ever looked at that, the historical process is usually about the nexus to the land and the history of the region and how far it is and where the tribal hunting grounds were. In this case the historical contexts we are asking people to consider is the notion that by action of the State at the

time, basically records were destroyed. So that is a unique historical circumstance. Does the current process allow for that kind of consideration?

Mr. WASHBURN. Probably not adequately, to be quite honest. So we are looking at those criteria to try to figure out how can we make the process more fair. It needs to be a rigorous process, because people need to have trust in the outcome. But it shouldn't be so rigorous that it is unfair. We need to take those kinds of considerations into account whenever we are making a decision. So we are looking at the individual criteria, many of which do have to do with historical circumstances. So that is one of the things we have taken up as far as our reform process.

The CHAIRWOMAN. And Secretary Jewell did announce a reconsideration for the final determination on the Little Shell. How would you describe that process for reconsideration? What is the process for that?

Mr. WASHBURN. Well, it has been sent back to me. That was in mid-September, and I have 120 days to act, to reconsider three or four very specific issues that were not subject to the Interior Board of Indian Appeals appeal, things that they could not consider. However, we have also been asked basically to stay this consideration while we reform our process. Because if we end up changing our criteria, which we may well do, they shouldn't be rejected on old criteria that still remain in place. So it strikes me as a fairly reasonable request to ask us to hold until we finish the reform process. We have that under consideration right now.

The CHAIRWOMAN. Okay. Does the Vice Chairman, Senator Barrasso, do you have a question?

STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING

Senator BARRASSO. Just maybe two, Madam Chairman, if I could. The Committee has received testimony over several Congresses in the past that have been critical of the recognition process, lack of due process, failure to consider unique tribal histories are among some of the criticisms that we have heard. How do you draft regulations that address due process and the unique history of the tribal petitioners? Any suggestions on that?

Mr. WASHBURN. Well, let me just say this. We used a robust process to go at this. So we started, we had a whole bunch of people meet together over several weeks, multiple meetings each week, and we came up with all kinds of ideas that we could find. And then we reviewed them and tried to find the best ideas to move forward.

One of the things, there is a due process issue but there is also a timeliness issue. So one of the things we would like to do is have expedited positive findings and expedited negative findings so that we don't necessarily have to go through the third degree if things are leaning a certain way. Because these things take so long. So we need to make sure the process is fair, but also that we move in a timely way.

Senator BARRASSO. Madam Chair, I see that Senator Burr is here, so I am just going to put the rest of my questions into writing. Thank you, Madam Chairwoman.

The CHAIRWOMAN. Thank you.

Senator Tester?

Senator TESTER. You can go to him if you want and then come back again, whatever you want.

Mr. WASHBURN. I would be delighted to yield for a few moments and stick around.

The CHAIRWOMAN. Well, Senator Burr, it is your lucky moment. Thank you for being here. The Assistant Secretary is willing to yield to you. Thank you for being here in support of the Lumbee Recognition Act.

STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Thank you, Chairwoman Cantwell, Ranking Member Barrasso. Senator Tester, you and I are absent from another one right now, so I know you want to get down to it.

I appreciate the Committee's time and effort regarding the Federal recognition of the Lumbee Tribe. I would like to thank my colleague, Senator Hagan, Representatives Richard Hudson and Mike McIntyre for their passion and their dedication to this issue. These individuals have been relentless in their pursuit for Federal recognition for the Lumbees, and I appreciate all of their hard work.

It is good to see my Lumbee friend, Paul Brooks, here today. I am confident that the Committee will find his testimony very informative, if you haven't already had it.

As many of you know, the Lumbees have been part of North Carolina's history for centuries. They have served their communities as farmers, doctors, lawyers, small business owners and bankers. They have provided their Country with sheriffs and clerks of court, served our State as legislators and judges, and have protected our Nation by serving in the United States armed forces.

I understand that Congressional recognition is viewed by some as unnecessary. But I want to be clear that the Lumbees are in a unique situation. In 1956, Congress designated the Indians "residing in Robeson and adjoining counties of North Carolina" as "Lumbee Indians of North Carolina." In the Lumbee Act of June 7th, 1956, however, this Act also prevented the Lumbees from being eligible for any services performed by the Federal Government or any benefits derived by law on behalf of other recognized tribes. When the Bureau of Indian Affairs established its process for formal recognition, the Lumbees were effectively denied from pursuing this option. In 1989, the Department of Interior decided that the 1956 Act prevented the Lumbee from being considered for Federal recognition under the BIA process.

Therefore, the limited Federal recognition of the Lumbees in 1956 has been as much a detriment as a benefit. It is my hope that Congress will consider the difficult position the Lumbees have been in since 1956 and fulfill its commitment to achieve fairness and justice in the recognition process.

In fact, Congress has taken action to fulfill such a commitment previously. In 1987, Congress enacted special legislation to recognize the Tewa Tribe of Texas, a tribe that was similarly prevented from gaining recognition through the BIA process, due to a previous act of Congress. As a result of the Tewa's Congressional rec-

ognition, the Lumbees find themselves as the only tribe in the United States which is prevented from gaining recognition through the BIA process. Although some members of this Committee may prefer to change the BIA recognition criteria to allow Lumbees to avail themselves to this process, I believe that option is simply too little too late.

And let me say if I could, Madam Chairman and members, what we have put this tribe through is disgraceful. The way this issue has been footballed around in Congress, one can't apologize to a group of Americans any more than the Lumbees deserve an apology. Apologies won't suffice now. Only recognition.

And in North Carolina, our State motto is *esse quam videri*, and translated from Latin, "to be rather than to seem." I find no better example of this motto than the plight of the Lumbees. They are here today to be a federally-recognized tribe, rather than to seem to be one.

So I appreciate the opportunity, Madam Chairman, I appreciate your kindness in letting me work in with a schedule that I know we all deal with. Before I leave, I would ask, I know there is at the desk the testimony of Congressman Richard Hudson. I would ask unanimous consent that it be included in the record as well. I thank the Chair and the Committee for this time.

The CHAIRWOMAN. Without objection, those statements will be entered into our Senate record. Thank you for being here on behalf of the Lumbees. I am sure they greatly appreciate it, and thank you for your passion.

I know you and I have spoken about this several times over the last couple of years. As I mentioned in the hearing prior to your being here, this is action that the Committee has taken in the past, and the House has taken, but you are right, it is time for us to take it all consecutively and get something done.

So thank you for being here. Unless my colleague has a question for you?

Senator TESTER. All my questions will be directed at Assistant Secretary Washburn, but now that you have taken care of the Lumbees, Senator Burr, you can go take care of the veterans.

[Laughter.]

The CHAIRWOMAN. Thank you. Senator Tester?

Senator TESTER. Thank you, Madam Chair. I really appreciate the fact that the Department is looking to make updates. I am going to get to that in a minute.

A former chairman of this Committee, Byron Dorgan, always felt that it was important that the Department do their job of recognition and felt like if Congress gets into this position of doing Federal recognition, it becomes more of a political football. And it is much more effective to take the politics out and really have the Department look at the facts and the criteria that they are based around. That is part of why I am glad you are updating the party of three.

But it does bring up an interesting question. And that question is, not to put you on the spot, but you are here on the spot, that question is, is the general proposition, are there circumstances where it is appropriate for Congress to act and take that power away from you in certain circumstances? And if so, what are those circumstances?

Mr. WASHBURN. Thank you, Senator.

Honestly, I believe that Congress has sort of an equal responsibility here. I know that we have a process and we have a process that is loaded up with PhDs and genealogists and historians and that sort of thing. It is a very rigorous administrative process. I think the Congressional process is probably a little different than that. It is more like who is for this and who is against it. Those are the kinds of things you consider.

But Congress has the same trust responsibility that we have, and in fact, Congress has the ability to define the trust responsibility to Indian tribes. So I think that Congress has the right to do so and in appropriate situations should do so.

Senator TESTER. Thank you. You released a preliminary discussion on Part 83. You have been holding consultations, thank you for that.

At a hearing in 2009, and again in 2011 before this Committee, we were informed that a draft had been completed, and correct me if I am wrong, we were informed that it had been completed yet we didn't see a draft until 2013. Why was there such a delay in releasing the draft for discussion?

Mr. WASHBURN. I can't tell you that, Senator. Because I just don't know. I don't know why that one didn't move forward. But I will tell you, we didn't really start with that draft. When Larry Roberts and I got to the Department, now I did get very clear instructions from Secretary Salazar that, you need to look at this. We have been making promises that we haven't met, so you need to look at this. But we sort of started from scratch and said, what can we do here. And we consulted our experts in the Office of Federal Acknowledgment, but we also consulted much more widely than that. And again, we are trying to have a very open process. We have put a lot of ideas out there in the discussion draft, and if we adopt every one of them, some people are going to blow a gasket.

So it is about putting a lot of ideas out there and then seeing which ones are most useful. That is where we are right now.

Senator TESTER. And those final, most useful ideas would be put in the final version of the Part 83.

Mr. WASHBURN. That is right, first in the proposed rule, and then we will get more comments and do more consultation, and then ultimately a final rule, hopefully.

Senator TESTER. So interestingly enough, I serve on the Banking Committee, and we just had a conversation with the SEC about proposed final rules. I will ask you the same question I asked them. When can we expect a final rule on Part 83?

Mr. WASHBURN. Our hope is to get through this whole process in about 24 months. The government shutdown put us sideways for a little while, and we have had people ask for extensions of time. The Connecticut Congressional delegation asked for additional time to comment on our discussion draft. We gave it to them, because that seems to be the reasonable thing to do when people ask for more time in good faith. So we have been willing to grant more time. We hope to have a proposed rule out some time after the first of the year. We got a lot of comments on our discussion draft, and we have to carefully go through those and make sure, we will see

which of the comments make sense and which ones we can incorporate.

Senator TESTER. Okay. I think it is true, with any rule, I think you need to be deliberate and you need to be thoughtful. But you also need to get it done. I should have started this whole conversation expressing my appreciation for the work you do.

Mr. WASHBURN. Thank you.

Senator TESTER. Because I think you do good work. And along that good work line, you talked about you deferred it because you are redoing part of it. Where is Little Shell at in process in your agency? Can you tell me?

Mr. WASHBURN. It is on my desk for consideration of sort of three additional issues that had not been finally addressed by the Interior Board of Indian Appeals. The Interior Board of Indian Appeals upheld the negative finding that was reached through the long process. And then it went to the Secretary, and the Secretary has sent it back to me to ask me to look at three additional issues. But again, also with the request that we put it on hold, that comes from the Little Shell Tribe, that we put this on hold while we figure out how we are going to change the criteria.

And actually, again, there is some sense in that. Because if we change the criteria in such a way that they would succeed, we ought to wait. So we haven't made a final decision, but that may be where this is headed.

Senator TESTER. I am picking up what you are laying down. I appreciate it. I ran over, and I appreciate that, Madam Chair. I will put the others in written form for you to answer. Thank you. Thank you, Secretary Washburn.

Mr. WASHBURN. Thank you, Senator.

The CHAIRWOMAN. Secretary Washburn, before you leave, hearing my colleagues' concerns, and yes, this whole process is a complex one, going back to, well, my former colleague, the chairman of the Committee, Chairman Dorgan and the process in 2009 and his oversight hearings on the regulation process. So one could say, yes, this is a long, drawn-out process. When you then throw in obviously the case of delaying various recognitions based on it, you can see the complexity.

But I wanted to bring up, I have also heard from several tribes, though, about lessening the burden of recognition. Just as I was mentioning the historical context, the uniqueness of the Virginia case juxtaposed with the historical hunting grounds and everything else. In this case, we obviously want a smoother, clearer Bureau of Indian Affairs process based on evidence and criteria and policy. And at the same time, we don't want to weaken what is the burden of recognition as it relates to how other tribes have been recognized as well. So I don't know if you can comment on some of the concerns that people have had in the draft discussions about too much weakening of recognition standards.

Mr. WASHBURN. Thank you, Madam Chairwoman. I have to say, I guess, that weakening, to some people, seems reasonable to others. So for example, there is a question of how do you treat State-recognized tribes, that is, tribes that have been recognized already by the State and/or tribes that have had a State-recognized reservation for many years. Those tribes seem, they already have sub-

stantial recognition if the State, the government that they have been working with, is recognizing them and they have a reservation. That ought to carry some weight in the process. That is one of the things we have looked at.

So that would be a change in the recognition that would maybe make it a little less rigorous for those tribes. But those are tribes that have substantial legitimacy because they have long been recognized. So those are some of the things we have been looking at, and many others. And I mentioned the sort of automatic final determination. If we have a proposed determination that is positive, and we get no negative comments, that should become an automatic positive final determination, that kind of thing. So we have a bunch of different ideas.

Concerns, anybody, any group that is opposed to someone that is petitioning, so some State and local governments, have had various concerns. I think in part because they ultimately don't like the potential that a group that they are opposing could become recognized. So we need to consider those comments as well, and we will in good faith.

We are getting all kinds of comments and they are kind of all over the map. And we are carefully going through them right now.

The CHAIRWOMAN. I am trying to follow all of that. I guess I would ask the question again this way, are you concerned that you could go too far, do you understand the point that some people think you could go too far the other way?

Mr. WASHBURN. Yes, ma'am, I do. We don't intend, again, it needs to be a rigorous process. It really needs to be the case that on the far side of this, when we have made a decision, people have faith in that decision. So it does need to have rigor. We do have PhD historians and genealogists and anthropologists looking at these things. It is a fairly scientific type process. We need to make sure that people know that the experts have looked at this with rigor and come up with a conclusion.

So we don't intend to make it a rubber stamp process. We think it needs to be rigorous. So we will be attuned to that.

We have seven criteria, and they tend to be fairly rigorous, very rigorous criteria now. We don't intend to make them lighter, we intend to make the process more efficient.

The CHAIRWOMAN. Thank you for that. And I want to add my comments to Senator Tester's, we certainly appreciate the process and your hard work and attention on it. Actually today's hearing is not really about the review of your Federal recognition review process, it is about these particular bills that are, in my opinion, unique for very specific reasons. A legislative approach is being considered. But perhaps we will have you back at the Committee at some future date to talk specifically about your proposals and changes. We very much appreciate the attention to this particular area of Indian Affairs.

Again, thank you for being here today and for your testimony on these legislative bills.

Mr. WASHBURN. Thank you, Madam Chairwoman.

The CHAIRWOMAN. Thank you.

We will now turn to our third panel and hear from the Honorable Stephen Adkins, Chief of the Chickahominy Indian Tribe from

Charles City, Virginia; the Honorable Paul Brooks, Chairman of the Lumbee Tribe of North Carolina; and the Honorable Gerald Gray, Chairman of Little Shell Tribe of Chippewa Indians of Montana, Black Eagle, Montana. So thank you all very much or being here and for your patience today, of us going through our executive session and colleagues coming to support your legislative proposals. We are very happy to have you before the Committee today. Chief Adkins, I think we will start with you.

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

Mr. ADKINS. Thank you, Madam Chairwoman Cantwell and Ranking Member Barrasso and other distinguished members of this Committee, Senator Tester, for inviting me here today to provide testimony in support of Senate Bill 1074.

This bill was introduced by Senators Tim Kaine and Mark Warner. The bill would extend Federal recognition to the Chickahominy Indian Tribe Eastern Division, the Monacan Indian Nation, the Nansemond Indian Tribe, the Rappahannock Indian Tribe, Inc., the Upper Mattaponi Indian Tribe and my tribe, the Chickahominy Indian Tribe. These six tribes gained State recognition in the Commonwealth of Virginia between 1983 and 1989. And in 1997, we began to look ahead to Federal recognition.

It may surprise members of the Committee that these tribes are not currently recognized. After all, our tribes are proud descendants of the colonial era tribes whose beneficence was the main reason the first permanent English settlement at Jamestown survived the rigors of a strange new environment. But Madam Chair, while you and most Americans may know the early history of our tribes, the fact that we were so prominent in early history, and then so callously denied our Indian heritage, that is a story that most don't want to remember or recognize.

The relationships between the tribes and the settlers were tested over the 17th century and several treaties were drawn. The culminating treaty, the Treaty of 1677, also referred to as Articles of Peace, the culminating treaty, this treaty would be sufficient to allow us recognition as sovereign tribes. But because it was signed while Virginia was still a colony and the crown still reigned, the government of the United States has failed to honor it.

We were invited to England in commemoration of the 400th anniversary of the first permanent English settlement at Jamestown as guests of the Queen. Our tribes saw first-hand how reverently the crown still holds the Treaty of 1677. It is our hope, Madam Chair, that you will embrace the spirit of the Articles of Peace and affirm our sovereign relationship with the United States of America.

We are also seeking recognition through an act of Congress rather than the BIA, because actions taken by the Commonwealth of Virginia during the 20th century annihilated our nations. Not through blood as in the 17th century, but through papers, as State registrar Walter Aspey Plecker sought to systematically erase all history of Virginia Indians. In 1924, Virginia enacted the Racial Integrity Act. This law forced all segments of the population to be registered at birth as either white or colored. Those with a single

drop of non-white blood were considered to be colored for the purposes of the Commonwealth.

The policies established by Plecker made it illegal to designate Indian on a birth certificate or to give an Indian child a traditional Indian name. The official practice of the Commonwealth of Virginia was to erase the existence of Indians through statutes and legislation. This has made the administrative process nearly impossible. Anthropologists have said there is no other State that attacked Indian identity as directly as the laws passed during that period of time in Virginia. This law stayed in effect nearly half my life, until 1967, a date so recent that only one member of this Committee, Senator Schatz, was born after its repeal.

As part of the Indian Reorganization Act in 1934, the United States Government officials contacted the Commonwealth of Virginia regarding its Indian population. Mr. Plecker advised that there were no Indian tribes in Virginia. Despite Plecker's response, Federal officials visited Virginia Indian tribes and substantiated our existence. But no action was taken, and we remained unrecognized.

We believe the petition process would not understand this history and would not be able to see beyond the corrupted documentation that legally denied our Indian heritage. Given the realities of the Office of Federal Acknowledgment and the historical slights suffered by the Virginia Indian tribes for the last 400 years, the six tribes referenced in S. 1074 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

As chiefs of our respective tribes, we do not want our families or our tribes to let the legacy of Walter Plecker stand. We 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.

Madam Chairwoman, passage of this bill would honor the treaty our ancestors made with the early colonists and the crown. And it would show respect for our heritage and identity that has never before been acknowledged.

Finally, let me say there is never, there is never a wrong time to do the right thing. Our people were introduced to Christianity by the settlers and despite the abuses of the messengers, we heard the message. And we believe in the saving grace of Almighty God. We believe that God placed you here, Madam Chairwoman, Senator Barrasso, Senator Tester and others, placed you here today to do the right thing, to acknowledge these six Indian tribes as sovereign nations. Esther 4:14 states it clearly, and I won't quote that today, but you have the power to do the right thing. And yes, you were placed here for such a time as this.

Madam Chairwoman, I appreciate the opportunity to testify before you today. I would ask that my written testimony be submitted in record today also. Again, thank you and thank the Committee.

[The prepared statement of Mr. Adkins follows:]

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

Thank you Chairwoman Cantwell, ranking member Barrasso, and other distinguished members of this Committee for inviting me here today to provide testimony in support of S. 1074. The bill, introduced by Senators Tim Kaine and Mark Warner and entitled the *Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013,* would extend Federal Recognition to the Chickahominy Indian Tribe-Eastern Division, the Monacan Indian Nation, the Nansemond Indian Tribe, the Rappahannock Indian Tribe, Inc., the Upper Mattaponi Indian Tribe and my Tribe, the Chickahominy Indian Tribe.

It may surprise members of the Committee that these tribes are not currently recognized. After all, our tribes are proud descendants of pre-colonial era tribes who were the keepers of this land when the settlers arrived in 1607. In fact, it was through the beneficence of these tribes that the first permanent English Settlement at Jamestown survived the rigors of a strange new environment. It was a complicated history: tribes were sometimes at peace and trading as friends with the settlers, while at other times things were more contentious.

I could tell you, Madame Chair, the much publicized story of the 17th Century Virginia Indians, but you, like most Americans, know our first contact history. Well-known is the story of Chief Powhatan and his daughter Pocahontas, her picture being in the United States Capitol building with her English husband John Rolfe. I often say this country is here today because of the kindness and hospitality of my forebears who helped the English colonists at Jamestown gain a foothold in a new and strange environment.

But while you, and most Americans, may know the early history of our tribes, 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. I, and those Chiefs here with me, stand on the shoulders of tribes like the Papsehegh, a tribe wantonly destroyed by Lord Delaware in 1610. We stand on the shoulders of leaders like my predecessor, Chief Arthur Lonewolf Adkins, who died in 2001 and who was among the delegation advised by the Assistant Secretary of the Department of the Interior in 1999 that many of the delegation would pass away before federal recognition would be achieved administratively.

Madame Chairwoman, the government of the United States of America currently offers to us an administrative route to achieve formal recognition, which many have encouraged us to seek. Yet this is impossible for our tribes to accomplish, owing to actions taken by the governments of the United States and of the Commonwealth of Virginia.

You see, you know the early history of our tribes and our relationships with the settlers. You know that relationships between the tribes and settlers were tested over the 17th century and several treaties were drawn. The culminating treaty signed between the settlers and the Virginia Indian Tribes to enable the two peoples to peacefully coexist is the Treaty of 1677 (also referred to as the Articles of Peace or the Treaty of the Middle Plantation). This treaty detailed the rights of sovereign tribal governance, the relationship between the Indians and the colonists, and fishing, hunting and trading rights.

This Treaty would be sufficient to allow us recognition as sovereign tribes, if it were recognized by the government of the United States. But because the Treaty was signed in 1677, while Virginia was still a colony and the Crown still reigned, the government of the United States has failed to honor this treaty.

Madame Chairwoman, I would like to pause for a moment just to reiterate that last statement. Our tribes are not recognized as legitimate because the treaty was not signed by the United States government, a government that would not come into existence for nearly one hundred years. Because our ancestors achieved a peaceful settlement with the settlers, our recognition as sovereign tribes is denied. We were invited to England in Commemoration of the 400th Anniversary of the First Permanent English Settlement at Jamestown. We were guests of the Queen. Our Tribes saw first-hand how reverently the Crown still holds the Treaty of 1677. It is our hope that you will embrace the spirit of the Articles of Peace and affirm our sovereign relationship with United States of America.

We are also seeking recognition through an act of Congress rather than the BIA because actions taken by the Commonwealth of Virginia during the 20th Century annihilated our nations, not through blood, as in the 17th century, but through paper. The Commonwealth of Virginia, through its agent, Walter Ashby Plecker, sought to systematically erase all history of Native Americans.

In 1924, Virginia's state legislature enacted The Racial Integrity Act. This vile law forced all segments of the population to be registered at birth in one of two cat-

egories: white or colored. Enforced byWalter Plecker, a rabid separatist and the director of the Virginia Bureau of Vital Statistics, the official policy of the Commonwealth eliminated Indian, Mexican, and Asian as a race. Those with a single drop of non-white blood were considered to be "Colored" for the purposes of the Commonwealth.

Sadly this tells only a part of the story. The policies established by Plecker made it illegal to designate Indian on a birth certificate or to give an Indian child a traditional Indian name. The law stayed in effect until 1967, a date so recent that only one member of this committee, Senator Schatz, was born after its repeal. This law made it necessary for my parents to travel to Washington D.C. on February 20, 1935 in order to be married as Indians.

The official practice of the Commonwealth of Virginia was to erase the existence of my people through statutes and legislation. Not only is the Treaty of 1677 disregarded, but the destruction of documents regarding our existence during the Civil War and other periods of early history pales in comparison to the State-sanctioned indignities heaped upon my people under the hand of Walter Ashby Plecker. This has made the administrative process nearly impossible. Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Indians in Vital Records (a practice that was supported by the state's Establishment when the eugenics movement was endorsed by leading state universities). The effect of this period and the racial policies of the State meant that Indian people were targeted—it was feared that they would dare to try to claim their heritage and seek extra protection outside the state or with the Federal Government. Violations put doctors and midwives at risk of up to one year in jail. Our anthropologist says there is no other state that attacked Indian identity as directly as the laws passed during that period of time in Virginia. No other ethnic community's heritage was denied in this way. Our State, by law, declared there were no Indians in the State in 1924, and if you dared to say differently, you went to jail or worse. That law stayed in effect half of my life.

We have been asked why many of us do not have traditional Indian names. Quite simply, the law said we couldn't, and the law said that we weren't Indian. Our parents weighed the risks and decided violating The Racial Integrity Act was not worth the risk of going to jail.

In addition, as part of the Indian Reorganization Act in 1934, United States government officials contacted the Commonwealth of Virginia regarding its Indian population. The state registrar, Mr. Walter A. Plecker, advised there were no Indian Tribes in Virginia. Despite Plecker's response, Federal Government officials visited Virginia tribes, conducted interviews, and photographed people, places and things, thereby substantiating our existence. But no action was taken, and we remain unrecognized.

We are seeking recognition through Congress because we believe the petition process would not understand this history and would not be able to reconcile this State action with our heritage. We feared the process would not be able to see beyond the corrupted documentation that legally denied our Indian heritage. Many of the elders in our community also feared racial backlash if they tried, and for good reason.

Our parents lived through the Plecker years and carried those scars to their graves. When I approached my father and his peers regarding our need for state 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 Indians who had risked marrying in Virginia, and those 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 these Virginia Indians.

The story I just recounted to you is very painful and I do not like to tell that story. Many of my people will not discuss what I have shared with you, Chairwoman Cantwell, but I feel you need 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. Subsequent to state recognition, George Allen, as governor, learned our story. In 1997, he passed the statute that acknowledged the aforementioned discriminatory laws and allowed those with Indian heritage to correct their records with costs to be borne by the Commonwealth. At that juncture, we began to look ahead to federal recognition. In 1999, we were advised by the Assistant Secretary—Indian Affairs that many of us would not live long enough to see our petition go through the administrative process, a prophecy that has come true—we have buried three of our chiefs since then.

Given the realities of the Office of Federal Acknowledgement and the historical slights suffered by the Virginia Indian Tribes for the last 400 years, the six tribes referenced in S. 1074 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

As Chiefs of our respective 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 Tribes 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 and our parents experienced. We want our veterans, the descendants of veterans who gave the ultimate sacrifice in the defense of this country, our tribal elders who have gone before, and those who struggle for recognition today to know their efforts have not been in vain. We, the leaders of these 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.

I would like to quote a statement made by Chief Powhatan to John Smith, a statement that has almost been forgotten but ironically still has relevance today:

> Why should you take by force that which you can have from us by love? Why should you destroy us who have provided you with food? What can you get by war? . . . I therefore exhort you to peaceable councils . . .

Madame Chairwoman, passage of this bill would give us the peace that Chief Powhatan sought, would honor the treaty our ancestors made with the early Colonists and the Crown, and would show respect for our heritage and identity that has never before been acknowledged.

Finally, there is never a wrong time to do the right thing. Acknowledging these six Indian Tribes as sovereign nations is the right thing to do. You have the power to do it. Perhaps you were placed here for such a time as this.

The CHAIRWOMAN. Thank you, Chairman Adkins.

We will now turn to the Honorable Paul Brooks. Thank you very much for being here as well, Mr. Chairman.

STATEMENT OF HON. PAUL BROOKS, CHAIRMAN, LUMBEE TRIBE

Mr. BROOKS. Good afternoon, Chairwoman Cantwell and other distinguished members of the Committee. Thank you for the opportunity to present a testimony on S. 1132, a bill to provide recognition to the Lumbee Tribe of North Carolina.

I am Paul Brooks, Chairman of the Lumbee Tribe, which has a membership of 55,000.

My statement is based on historical research and first-hand knowledge prior to becoming chairman. I have served in different leadership roles in the tribe. I serve on the tribe's Federal Recognition Committee. The tribe has a long and proud history. It has been recognized as an Indian tribe by the State of North Carolina since 1885, and at the same time established a separate school system for tribal members. The tribe was given the exclusive authority to manage its own educational affairs.

In 1887, tribal leaders petitioned the General Assembly to establish the Indian Normal School. The members were trained there to become teachers in the tribe's schools. That school exists today as the University of North Carolina at Pembroke, and is part of the State's 16 university systems.

The tribe has enjoyed a long, strong relationship with the State, and that relationship continues today. Present Governor Pat McCrory has openly supported the tribe's Federal recognition effort. The tribe began its first fight for Federal recognition in 1888, when tribal leaders petitioned Congress for educational aid. The

petition was denied based solely on economic consideration. The Department of Interior didn't have sufficient funds to assist the tribe.

Since that time, numerous bills have been introduced to recognize the tribe. Repeatedly, Interior has opposed these bills. There have been 12 Federal commission reports on the history and status of the Lumbee Tribe. Each report identifies the Lumbees as an Indian tribe and recommends the Federal Government provide services. However, Federal officials did not implement any of the recommendations. Services were not denied because we were an Indian tribe, but because of insufficient funds to provide funding.

In 1956, Congress passed the Lumbee Act. As with other bills, this was one intended to recognize the tribe, just as the State had done in 1952 under the name Lumbee. The Department opposed the bill and insisted the bill be amended to make sure the tribe was not eligible for services. Congress amended the bill and the Department requested and enacted the law they gave with one hand and took away with the other hand. The 1956 Act prohibited services to the tribe. Since the passage of this Act, we have been considered second class Indians by the Department of Interior and even by some in Indian Country.

In 1987, the tribe submitted a petition to go through the fact process. However, because of the termination language in the Act, the solicitor's office issued an opinion in 1989 stating the tribe was ineligible to petition for recognition through the administrative process. Therefore, the only remedy for the tribe is for Congress to act.

The Lumbee Tribe is now the only tribe in the Country trapped in this legal limbo. Congress should correct this situation for the Lumbees by the enactment of S. 1132, just as Congress has done in the past. Because Congress placed the Lumbee Tribe in this legal limbo by the 1956 Lumbee Act, only Congress can restore the tribe to full Federal recognition. As a result, Congress must act to resolve the status of the Lumbee Tribe. The 100 years of Congressional and administrative deliberation on the tribe's history has produced a compelling record of the tribe's existence. This record includes the explicit statement by Interior in 1934, based on a report by anthropologist John Swanton, that the Lumbee descended from the Cheraw and other coastal North Carolina tribes. Because of this record, there is no need for further study by the Department on the tribe's status. The proposed bill restores the Lumbee Tribe to full Federal recognition by amending the 1956 Act in keeping with the tribe's long history of self-determination and establishing the historic territory of the tribe as a service area and does not create a reservation.

Consistent with general policy, respecting internal tribal matters, the bill authorizes the Secretary of the Interior to review the Lumbee tribal role but only for the purpose of determining that members meet the tribal enrollment criteria. Finally, the bill reflects the longstanding relationship between the tribe and the State of North Carolina by granting the State civil and criminal jurisdiction of the Lumbee Indians, just as it exists today.

It is time for Congress to finish what it started in 1956 and extend full recognition to the Lumbee Tribe. The proposed bill would

accomplish this. Our people deserve fair treatment, and we believe that this bill deserves the support of this Committee, and such an honorable committee that I am looking at today. Thank you very much.

[The prepared statement of Mr. Brooks follows:]

PREPARED STATEMENT OF HON. PAUL BROOKS, CHAIRMAN, LUMBEE TRIBE

Good afternoon Chairwoman Cantwell, and other distinguished members of the Senate Committee on Indian Affairs. First, let me thank you for the opportunity to appear before the Committee to present testimony on S. 1132, a bill to provide recognition to the Lumbee tribe of North Carolina. My name is Paul Brooks and I am the Chairman of the Lumbee Tribe, which has a membership of 55,000. The tribe is located in southeast North Carolina, and the tribal territory includes the counties of Robeson, Scotland, Hoke and Cumberland. We are governed by a Constitution adopted by the tribal membership, which consist of three branches of government: the executive branch, the legislative branch, which includes a 21 member Tribal Council representing fourteen districts throughout the tribal territory, and the judicial branch. My statement is based on historical research, and first-hand knowledge. Prior to becoming Tribal Chairman, I have served in different leadership roles within the Lumbee Tribe. I was Chairman of the non-profit organization, Lumbee Regional Development Association, Inc., the entity who once administered federal and state programs for the benefit of the tribal membership, and was in charge of the tribe's efforts to obtain federal recognition. I served on the on the tribe's Federal Recognition Committee, and was a major supporter of the tribe's efforts to adopt a tribal constitution. In addition, I served as Chairman of the North Carolina Commission of Indian Affairs, an agency created by legislation to assist the state's Indian communities in a wide range of social, legal, political, economic, and cultural concerns.

The Lumbee has been recognized as an Indian tribe by the State of North Carolina since 1885. Legislation was passed to recognize the Lumbee tribe and naming it Croatan, at the same time establishing a separate school system for the benefit of tribal members. The law also established Indian School Committees made up of tribal members who were empowered to determine the eligibility of students to attend, and hire their own teachers. Tribal members were given the exclusive authority to manage its own educational affairs. The authority of the school committees to determine student eligibility was challenged by the local school board, and in 1890, the North Carolina Supreme Court reaffirmed the Committee's exclusive authority to determine who could attend the Indian schools. The schools were improperly funded, and in 1887, tribal leaders petitioned the North Carolina General Assembly to establish the Croatan Indian Normal School to be used to train tribal members to become teachers in the tribe's school system. This petition prompted the General Assembly to pass legislation, which created the teaching institution, and provided funding for the operation of the school. That school continues to exist today as the University of North Carolina at Pembroke, and is an integral part of the state's sixteen University system.

The tribe has enjoyed a strong relationship with the State of North Carolina, and that relationship continues to exist today. Legislation has been passed through the years to protect the tribe's identity, acknowledge their status as an Indian tribe, and maintain and preserve their culture. They have worked with the tribe in their efforts to obtain federal recognition, and that commitment continues.

The tribe began its fight for federal recognition in 1888, when forty-four tribal leaders petitioned Congress for educational aid. This petition was signed by most of the same tribal leaders who had petitioned the North Carolina Legislature in 1887. The petition ultimately was sent to the Department of the Interior for its consideration; however, their response was to deny the tribe's request for assistance based solely on economic considerations. The Department felt they had insufficient funding to take care of the Indian tribes to whom they were responsible, and could not assist the tribe. The petition resulted in the first federal bill being introduced in the U.S. House of Representatives on behalf of the Lumbee tribe. Congressman John D. Bellamy introduced the bill in 1900, appeared before the House Committee on Indian Affairs to present an overview of the tribe, and gave the same presentation to the full House; however, the bill did not pass.

Since 1900, there have been numerous bills introduced in both the U.S. House of Representatives and the US Senate; however to no avail. Repeatedly, the Depart-

ment of the Interior has opposed bills by Congress to recognize the tribe and our bills failed.

Our people have also tried to get federal recognition from the Department of the Interior. After Congress passed the Indian Reorganization Act (IRA) in 1934, the tribe attempted to qualify for federal recognition only to be subjected to a ludicrous exercise in pseudo-science. The Federal Government sent an anthropologist who took physical data on members of the tribe in our attempt to qualify under the IRA. Data was taken on their hair, eyes, ears, nose, lips, teeth and head, as well as blood type and general body measurements. Tribal members felt this was an insult, and there was very little participation. Out of the two-hundred applicants, only twenty-two Lumbee were certified as one-half or more Indian blood. The Department eventually refused to take land into trust for these individuals; the tribe could not organize under a constitution and did not become recognized under the Indian Reorganization Act. This is only one of twelve federally commissioned reports on the history and status of the Lumbee tribe. Each report identified the Lumbee as an Indian tribe, and recommended that the Federal Government should provide services; however, federal officials did not implement any of the recommendations provided by those they sent to conduct studies of the Lumbee tribe. In every instance, the tribe was denied services not because we were not an Indian tribe, but because there was insufficient funding to provide services to the Lumbee.

In 1956, Congress finally passed a bill for the Lumbee. As with other bills, this one was intended to recognize the tribe, just as the State had recently done, under the name Lumbee. Once again, the Department opposed the bill and insisted that, if enacted, the bill should be amended to make sure the tribe was not eligible for Indian services. Congress amended the bill as the Department requested and enacted a law that gave with one hand and took away with the other. The 1956 Lumbee Act gave us the name we had sought for so long, the giving of a name being thought by our people to be official recognition, and the 1956 Lumbee Act prohibited the application of federal Indian statutes to the tribe. Since the passage of the Act, we have been considered second-class Indians: by the Department of the Interior and even by some in Indian country.

In 1987, the tribe submitted a documented petition to the Bureau of Indian Affairs in accordance to the Federal Acknowledgment regulations; however, because of the termination language in the 1956 Act the Solicitor's Office at the Department of the Interior issued an opinion in 1989 stating the tribe was ineligible to petition for federal recognition through the administrative Federal Acknowledgment Process. Therefore, the only remedy for the tribe is for Congress to take action.

There are those who feel the Lumbee Act should be repealed or amended to make the tribe eligible for the Acknowledgment Process; however, Congress itself reconsidered the status of the only other tribe in precisely the same position as the Lumbee Tribe; the Tiwa of Texas. In a 1968 statute that was modeled on the 1956 Lumbee Act, Congress designated and recognized those Indians as the Tiwa Indian of Ysleta, Texas, but included the same termination language as that in the Lumbee Act. In 1987, well after the Department of the Interior had established its Federal Acknowledgment Process, Congress fixed this problem for the Tiwa. It enacted the Ysleta Del Sur Pueblo Restoration Act, which restored the federal trust relationship with the Tiwa and the federal Indian services for the Tiwas. The Lumbee Tribe is now the only tribe in the country trapped in this legal limbo. Congress should correct this situation for the Lumbee Tribe by the enactment of S. 1132, just as Congress has already corrected the situation for the Ysleta Del Sur Pueblo.

Because Congress placed the Lumbee Tribe in this legal limbo by the 1956 Lumbee Act, only Congress can restore the Lumbee Tribe to full federal recognition. The 1989 Solicitor's opinion concluded the termination language of the 1956 Lumbee Act makes the tribe ineligible for the administrative acknowledgment process. As a result, Congress must act to resolve the status of the Lumbee Tribe, and Congress can do so with full confidence the tribe meets the criteria for federal acknowledgment. The hundred years of congressional and administrative deliberation on the Tribe's history has produced a voluminous and compelling record of the Tribe's existence. This record includes an explicit statement by the Department of the Interior in 1934, based upon a report by the eminent anthropologist John Reed Swanton that the Lumbee descend from the Cheraw and other coastal North Carolina tribes. Because of this record, there is no need for further study by the Department of the Interior on the Tribe's status. Congress should treat the Lumbee Tribe just as it did the Ysleta Del Sur and enact S. 1132, a comprehensive recognition bill.

The proposed bill restores the Lumbee Tribe to full federal recognition by amending the 1956 Lumbee Act. In keeping with the Tribe's long history of self-determination, it establishes the historic territory of the tribe as a service area and does not create a reservation. Consistent with federal policy respecting internal tribal mat-

ters, the bill authorizes the Secretary of the Interior to review the Lumbee tribal roll, but only for the purpose of determining that members meet the Tribe's enrollment criteria. Finally, the bill reflects the long-standing relationship between the Tribe and the State of North Carolina by granting the state civil and criminal jurisdiction over Lumbee Indians, just as it exists today.

It is time for Congress to finish what it started in 1956 and extend full recognition to the Lumbee Tribe. The proposed bill would accomplish this. Further, it does so in a responsible way in keeping with current federal Indian policy. Our people deserve fair treatment, and we believe that this bill deserves the support of this Committee.

The CHAIRWOMAN. Thank you, Mr. Chairman, and thank you for being here and for your advocacy. I know this has been an ongoing issue, so I certainly appreciate your continuing to push for this legislation.

We will hear last from Chairman Gray. Thank you for being here.

STATEMENT OF HON. GERALD GRAY, CHAIRMAN, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS

Mr. GRAY. Thank you, Senator.

Good afternoon. My name is Gerald Gray and I am the chairman of the Little Shell Tribe of Chippewa Indians of Montana.

Chairwoman Cantwell, Vice Chairman Barrasso, thank you for holding this important hearing today and providing the Little Shell with this opportunity to testify. I also want to extend a special thank you to Senator Tester, who has been the Little Shell Tribe's great champion for so many years, and who, together with our good friend, Senator Baucus, has made this possible, S. 1161, the Little Shell Band of Chippewa Restoration Act of 2013.

The Little Shell Tribe began the administrative recognition process in 1978, which means that we have been in the Department of Interior's administrative Federal acknowledgment process for more than 35 years, which has meant lost services, emotional scars for generations of Little Shell members. Thirteen years ago, we believed we saw the light at the end of the tunnel when Assistant Secretary Gover issued a proposed finding in favor of restoring Federal recognition to the Little Shell Tribe.

The issuance of Assistant Secretary Gover's proposed finding began a public comment period during which the Department received no negative comments on the proposed recognition of our tribe. The State of Montana, all affected local governments and all of Montana's federally-recognized tribes support the Little Shell's recognition.

Even so, in November of 2009, the Department inexplicably reversed Assistant Secretary Gover's positive findings and denied restoration of the Little Shell Tribe. We appealed the negative decision to the Interior Board of Indian Appeals on several grounds. The BIA in turn referred several questions to the Secretary of Interior as provided by the regulations which govern the administrative appeal process.

On September 16th, 2013, the Secretary exercised her discretion in favor of the tribe when she referred five serious questions to the Assistant Secretary instructing that "Based on the nature of the five alleged grounds, particularly with regard to due process concerns and questions regarding burdens of proof, I am exercising my

discretion to request that you reconsider the Little Shell final determination."

As our appeal was proceeding, Assistant Secretary Kevin Washburn announced that the Department would undertake a review of Federal regulations which govern the administrative Federal acknowledgment process. He issued a decision draft of proposed revisions which, if adopted, will make the administrative acknowledgment process fairer and lead to more just results.

The Little Shell Tribe of Chippewa Indians is deeply grateful to Assistant Secretary Washburn for this undertaking. As this Committee so well knows from its own experience in overseeing the Federal acknowledgment process, genuine reform of the administrative process is long overdue. I would ask that you please refer to my written testimony for detailed examples of why we support proposed reforms.

While we support Assistant Secretary Washburn's efforts to reform the recognition process, there is no certainty as to when or even if these regulations will be adopted. That is why the Little Shell Tribe urges Congress to delay no further in exercising its Constitutional authority to restore my tribe's recognition through legislation. Even a reformed administrative process cannot address the inherent additional issues which all newly-recognized tribes must face: the acquisition of homeland, the designation of service areas and the navigation of the brutal complications caused by the *Carcieri* decision. The Little Shell Tribe Restoration Act of 2013, on the other hand, effectively resolves all those issues for my tribe, and by doing so, provides certainty, not just for us, but also for our non-Indian neighbors.

We continue to enjoy the full support of other federally-recognized tribes in Montana, also of Governor Bullock and all the local communities near us. And just in fact, two days ago, we received a statement of support from Montana Attorney General Tim Fox. This is why the full Montana Congressional delegation supports our legislation. We ask that the Committee also support S. 161, and that in turn, it do whatever it can to ensure that the legislation is acted favorably upon by the United States Congress.

Until our recognition is restored, the historical wrongdoings committed against my people will continue unabated into the 21st century. Again, I am deeply grateful for your time today and I am happy to answer any questions.

[The prepared statement of Mr. Gray follows:]

PREPARED STATEMENT OF HON. GERALD GRAY, CHAIRMAN, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS

Introduction

My name is Gerald Gray, and I am the elected Chairman of the Little Shell Tribe of Chippewa Indians. On behalf of the Little Shell Tribe I urge Congress to enact The Little Shell Tribe of Indians Restoration Act of 2013, S. 161. Further, I ask that this written testimony be included in the record of this hearing.

The Little Shell Tribe of Chippewa Indians of Montana (Tribe) has been involved in the federal acknowledgment process since 1978. To put that into perspective, the Tribe has been in the process for all or parts of five decades. We still do not have a final determination and no indication of when a final determination might be rendered. We urge Congress to end the Tribe's ordeal by legislatively recognizing the Tribe. The Tribe already has suffered too long from the brutalizing effects of the Bureau of Indian Affairs' administrative recognition process—and forcing it to wait

any longer only prolongs the historical injustices already endured by a Tribe that has no federally protected land base on which it can protect its heritage and culture, and provide desperately needed services and housing for its people.

I. Overview of the Procedural History of the Tribe's Participation in BIA's Federal Acknowledgment Process

On July 14, 2000, twenty-two years after starting the process, Kevin Gover, the Assistant Secretary—Indian Affairs ("AS–IA"), signed a "Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana." 65 Fed. Reg. 45,394 (July 21, 2000) ("PF" or "Proposed Finding"). After summarizing the evidence under each of the criteria, the Assistant Secretary concluded that "*the petitioner should be acknowledged to exist as an Indian tribe*."[1] *Id.* at 45,396 (emphasis added). However, on November 3, 2009, after an administration change, the Acting Principal Deputy, Assistant Secretary—Indian Affairs reversed course and issued a Final Determination (FD) against recognition of the Little Shell Tribe of Chippewa Indians of Montana (Tribe), thereby reversing the favorable proposed finding. 74 Fed. Reg. 56,861. The Acting Principal Deputy reversed Assistant Secretary Gover's Proposed Finding despite the fact that in the interim no negative comments were received on the PF, and despite that fact that *the State of Montana, all affected local governments, and all Montana Tribes, as well as others, expressly supported Little Shell's recognition.*[2]

The Tribe appealed to the Interior Board of Indian Appeals (IBIA) on several grounds within its jurisdiction, as set forth in 25 C.F.R § 83.11 (d)(9). On June 12, 2013, the IBIA rejected the Tribe's arguments based on those grounds. The Tribe also raised arguments outside the jurisdiction of the IBIA that were referred to the Secretary of the Interior under § § 83.11 (f)(2) and (g)(2). 25 C.F. R. § 83.11 (f) (2) which provides that the Secretary has the "discretion to request that the Assistant Secretary reconsider the final determination on [the] grounds" referred by the IBIA. On September 16, 2013, the Secretary of the Interior granted the Tribe's request on all grounds and referred five serious questions to the Assistant-Secretary, stating: "Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am Exercising my discretion to request that you reconsider the Little Shell Final Determination." (Exhibit A attached). The five questions sent back to the Assistant-Secretary for reconsideration are as follows:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?

2. Should reconsideration be granted based on the allegation that application of criterion § 83.7 (a) is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of section 83.8, were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous Federal acknowledgment?

4. Should reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(e)?

5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

As to these questions, the Secretary concluded that "The allegations in these grounds suggest that further review by your office would ensure that the Depart-

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[1] Relying largely on the summary under the proposed findings, the Montana Supreme Court held that the Little Shell Tribe met the criteria of *Montoya v. United States*, 180 U.S. 261 (1901) for common law recognition as a Tribe. *Koke v. Little Shell Tribe of Chippewa Indians of Montana, Inc.*, 315 Mont. 510, 68 P.3d 814 (2003).

[2] Two third party comments were received. One was moot and the other comment simply requested explanation of certain matters. George T. Skibine, "Summary under the Criteria and Evidence for Final Determination Against the Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana," 15–16, (Oct. 27, 2009)("FD").

ment's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition."

Earlier this year, and prior to the referral of these questions to the Secretary, the Assistant Secretary for Indian Affairs made an important announcement of "Consideration of Revisions to Federal Acknowledgment Regulations." (Copy attached as Exhibit B). Because the Little Shell FD is not yet final agency action, the Tribe requested that it be provided the same opportunity to suspend further consideration of its petition until the revised regulations are promulgated. This request was also addressed by the Secretary who concluded that, "In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations."

During the decades that the Tribe has been subjected to the administrative recognition process, it has consistently highlighted its concerns about the defects in that process and the profound injustices those defects often cause. After years of having its concerns fall on deaf ears, the validity of the Tribe's complaints shows signs of finally being addressed by the depth and breadth of the proposed amended regulations. Nevertheless, these proposed regulations are not yet adopted, and the Tribe has no way to know when or even if they will be. The United States owes an obligation to the Little Shell Tribe and its people, and that obligation already has been too long overdue in its fulfillment. Accordingly, the Little Shell Tribe respectfully urges the United States Congress to exercise its constitutional power to restore federal recognition to our Tribe, and finally to deliver us from the misery that for five decades has been our lot with the current version of the Bureau of Indian Affair's federal acknowledgment process.

II. The Ways in Which the Current Administrative Federal Acknowledgment Process Has Failed the Little Shell Tribe

For the purpose of demonstrating to Congress that the current administrative process is woefully defective, and that to avoid further injustice Congress must step in to recognize the Tribe, the Tribe provides below additional information related to the five questions raised by the Tribe and referred by the Secretary to the Assistant Secretary.

1. The Regulations Denied the Tribe Due Process; The Draft Regulations Implicitly Recognize the Need for More Due Process Protection in the Administrative Acknowledgment Process

Before the Final Determination on the Tribe's petition, an OFA staff member made an additional, extensive field trip to visit the Tribe, during which 71 individuals were interviewed. FD page 49, fn 38. In addition, scores of other documents were obtained and relied upon in the FD. *Id.* There is no provision in the regulations for petitioners to review documents under such circumstances and the FD was issued without the Tribe having had the chance to review and respond to this evidence.[3] The FD specifically indicates that the OFA relied on "evidence that the Department researchers developed during their verification research." 74 Fed. Reg. 56,862.

There are substantial benefits that flow from federal recognition. § 83.2 provides that "Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States . . . " Given the importance of the benefits which flow from recognition, tribes have a right to due process in the recognition process. *Kelly v. Railroad Retirement Board,* 625 F.2d 486, 490 (3d Cir. 1980); *Marconi v. Chicago Heights Police Pension Board,* 836 N.E. 2d 705, 725–26 (Ct. App. Ill. 2005).

While the Tribe's direct contention that it had a right to see and comment on all evidence before a FD issued is not addressed by the draft regulations, there are proposed changes which reflect a realization that the present regulations do not provide adequate due process. § 83.10 (n)(2) provides for the opportunity for a hearing on the "reasoning, analyses, and factual bases for the proposed finding, comments and responses. The Office of Hearings and Appeals (OHA) or Assistant Secretary for In-

[3] Indeed, the Tribe was required to file a FOIA request to even obtain the materials which should have been provided to it as a matter of course. It then had to wait months to get the materials, was denied access to some materials, and was required to pay costs of over $5000 to receive the documents that were provided. The IBIA's pondering over what was received and when, is irrelevant since all materials were received after the time in which the Tribe could have commented prior to the FD. 57 IBIA at 127, n. 21.

dian Affairs (ASIA), written in the proposed regulations as "[OHA or AS–IA?]," may require testimony from OFA staff involved in preparing the proposed finding. Any such testimony shall be subject to cross-examination by the petitioner." Exhibit B. These suggested revisions are consonant with the Tribe's contentions and the Tribe has suggested, in comments on the preliminary discussion draft regulations, that the final regulations require that petitioners receive all documents on which a FD is based, with an opportunity to comment before issuance of the FD.

2. Criterion 83.7 (a) Is Arbitrary, Capricious, and Contrary To Law. The AS–IS Evidently Realizes This As the Draft Regulations Propose Deletion of This Criterion

25 C.F.R. § 83.7 is titled "Mandatory criteria for Federal acknowledgment." Failure to meet any criterion results in a negative Final Determination. 74 Fed. Reg. 56,861. Criterion (a) requires a showing that "The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900." While such a showing may constitute evidence that a tribe exists, it cannot be a mandatory criterion. The unacceptability of (a) as a mandatory criterion is demonstrated by a simple thought experiment. Imagine that a tribe definitively satisfies the other six criteria—in other words, demonstrates tribal existence in every meaningful sense. Imagine further, that they have not been referred to as a tribe, or even as a collective by unknowing outsiders "on a substantially continuous basis since 1900". They would be denied acknowledgment under the regulations. That result cannot possibly be the law, as it would clearly violate the equal protection clause of the Constitution which requires those similarly situated to be treated similarly. *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 439 (1985). It would also violate Congressional legislation requiring that all tribes be treated equally. Federally Recognized Indian Tribe List Act of 1994, PL 103–454 (1994).

The AS–IA has apparently conceded this issue by proposing, in the draft regulations, to delete criterion (a). See Exhibit B, § 83.7(a). The Secretary has also requested reconsideration of criterion (a).

3. The OFA Applied The Incorrect Standard To The Question of Previous Federal Acknowledgment

The FD indicates that to show previous federal acknowledgment, and so avail itself of the relaxed standards of proof contained in § 83.8, the Tribe had to show not merely that its existence was previously acknowledged, but that it had a previous government-to-government relationship with the United States. 74 Fed. Reg. 56,863. The latter requirement runs afoul of the regulations and the policy underlying those regulations and will be the subject of comment on the preliminary discussion draft regulations. The Discussion Draft Regulations propose some excellent improvements in streamlining the process if a petitioner demonstrates previous federal acknowledgment.

The draft regulations provide in § 83.8 (d) (2) and (3) that if previous federal acknowledgment is shown, then community § 83.7 (b) and political influence § 83.7 (c) need only be shown for the present time. These are excellent proposals and should be adopted in the final regulations. Further changes must be made to clarify what must be shown to establish previous federal acknowledgment. The present regulations have been interpreted by OFA to require that a petitioner show not only that its existence was previously acknowledged, but also that it had a previous government-to-government relationship with the United States. See, e.g., 74 Fed. Reg. 56,863.

The Tribe has submitted comments on the discussion draft regulations arguing that this needs to be done and is hopeful that its views will ultimately prevail on this issue as it has so far on the other issues. In this regard, it is significant that this issue relates to burden of proof, which was an area given special emphasis, as noted previously, in the Secretary's referral to the Assistant Secretary. See Exhibit A.

4. The Final Determination Imposed A Higher Burden of Proof Than Should Have Been Required, Had Historical Circumstances Been Properly Taken Into Account. The Discussion Regulations Propose Significant Changes in The Criteria That Must Be Met

Kevin Gover, the then AS–IA, in issuing a preliminary finding in favor of the Tribe, indicated that the historical circumstances, in large part caused by U.S. policy, dictated that the proof of criteria under the regulations be interpreted in light of those circumstances. The FD did not adequately allow for historical circumstances. In vindication of the Tribe's position throughout the years, the discussion draft regulations propose sweeping changes in the criteria themselves in recognition of the complexity of tribal histories cause by US policy. Even the proposed

changes are inadequate, but are a vast improvement and vindicate the Tribe's constant urging that complex historical situations must be taken into account.

The draft regulations propose substantial changes to criterion § 83.7 (b), community, which are in general salutary, but the final regulations need to go further. The draft regulations change the requirement that a petitioner show that a "predominant portion" of the petitioning group comprise a distinct community to a showing that an unspecified, "(XX)," per cent do so, and changes the timeframe for such a showing from historic times to from 1934. The proposal to eliminate the reference to "predominant portion" is a good one, but the proposal to insert a percentage is fundamentally flawed. A percentage arrived at in the abstract cannot do justice to the complexity on the ground. Rather, a determination should be made "based on an overall evaluation of the totality of the evidence" and a favorable finding "should not be precluded because of some gaps in the record." The determination should be governed by the "substantial evidence" test, with the evidence viewed in the light most favorable to the petitioner, and taking into account historical circumstances and any adverse effects of federal actions or policy.

The present definition of community refers to "consistent interactions and significant social relationships within its membership". The present regulations distort this definition when they set forth the types of evidence that can be presented to meet the criterion of community, by references to "significant rates of marriage", "significant rates of informal social interaction which exist broadly among the members of the group", "a significant degree of shared or cooperative labor . . . ", "evidence of strong patterns of discrimination . . . "; "Shared sacred or secular ritual activity encompassing most of the group"; cultural patterns shared among a significant portion of the group . . . ". These qualifiers distort the meaning of the definition which does not imply any specified portion of the community must engage in any specific activity. Rather, it just requires consistent interaction and relationships of significance "within the membership". Few recognized tribes today could meet the arbitrary standards imposed by the qualifying terms contained in the references to the types of evidence listed. It is best to list the types of evidence without the qualifiers which seem to introduce arbitrary standards at every turn and then to make a determination based on the totality of the evidence.

Likewise the draft regulations propose changes in the ways in which community can be definitively shown. The present provisions provide that community can be shown by demonstrating 50 per cent in-marriage, 50 per cent sharing of distinct cultural patterns, or 50 per cent concentration in residential areas. The draft regulations delete the reference to 50 per cent and instead indicate an unspecified, "[XX]," per cent. § 83.7 (b) (2). If percentages for definitive showings of community are ultimately adopted, it should be made clear that these percentages do not imply that something close to those percentages is needed to establish community absent such a definitive showing.

§ 83.7 (c) (2) provides that political influence can be shown by "demonstrating that group leaders and/or other mechanisms exist or existed which:

> (i) Allocate group resources such as land, residence rights and the like on a consistent basis;
>
> (ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;
>
> (iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;
>
> (iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor."

The draft regulations propose a new "(v) Show a continuous line of group leaders and a means of selection or acquiescence by a majority of the group's members." This is a good revision if the word "majority" is deleted and with that change should be adopted.

Proposals for criterion (c), political influence, likewise changes the relevant period for which political authority is measured from historic times to 1934. § 83.7 (c). This is an important step in the right direction, but once again adopts an arbitrary criterion. 1934 is obviously based on the date of the passage of the Indian Reorganization Act (IRA), but that Act contemplated actions related to recognition occurring after that date, and that factor should be reflected in the final regulations. In addition, the situation on the ground may be such, that starting from 1934 does not adequately do justice to the Tribe's situation, and in that case the regulations must be flexible enough to deal with the history and context of each Tribe. Once again, the decision must be made based on the totality of the evidence without the present

qualifiers attached to the type of evidence, such as "significant numbers of members", "most of the membership". If, the evidence provides "substantial evidence" of political influence, then the criterion must be considered met.

5. The Reversal of the Favorable PF Despite A Stronger Record, and No Negative Comments, Is Arbitrary, Capricious, and Contrary To Law. The Draft Regulations Implicitly Agree With That Conclusion

As noted previously, no negative comments of any consequence were received as to the favorable PF, despite years for people to complain. In fact, substantial time and money were invested in strengthening the petition. To reverse the favorable PF under such circumstances is arbitrary, capricious and contrary to law. Cf. Mobile Communications Corp. of America v. F.C.C.. 77 F.3d 1399, 1407 (D.C. Cir. 1996).

The draft regulations implicitly recognize the force of the Tribe's argument and would resolve the issue in the Tribe's favor. Exhibit B, § 83.10 (m) provides:

At the end of the period for comment on a proposed finding, "[OHA or AS–IA?]" *will automatically issue a final determination acknowledging petitioner as an Indian tribe* if the following are met (emphasis supplied):

(1) The proposed finding is positive, and

(2) "[OHA or AS–IA?]" does not receive timely arguments and evidence challenging the proposed finding from the State or local government where the petitioner's office is located or from any federally recognized Indian tribe within the state.

As noted, no substantive negative comments were received from anyone, and all local and state governments and Indian Tribes in Montana support the acknowledgment of the Little Shell Tribe. *See* 74 Fed. Reg. 56,862, FD at 15–16, and PF at 9. Under such circumstances, as recognized in the draft regulations, an automatic favorable final determination would be warranted, not reversal of a proposed favorable finding.

Conclusion

The Little Shell Tribe of Chippewa Indians applauds Assistant Secretary Kevin Washburn for finally addressing the serious, long-identified flaws and failures of the current administrative federal acknowledgment process, a process that repeatedly has been criticized by the Senate Indian Affairs Committee as broken. The regulations as presently written have subjected the Tribe to a continuing, serious miscarriage of justice that has stretched now over five decades. The arguments the Tribe has made as to the defects in the system are largely vindicated in the discussion draft regulations. It is crucial that the process of amending the regulations go forward expeditiously and be strengthened along the lines the Tribe has argued.

However, it is not known how long the process of amending the regulations will take, what shape the ultimate regulations will have, or even whether they will ever be adopted. The Tribe already has waited too long for restoration of its recognition. The Tribe must not be asked to continue to wait in limbo for several more years while it waits to see what happens to the regulations. Again, the Little Shell Tribe of Indians respectfully urges Congress to end the Tribe's ordeal by extending federal recognition to the Little Shell Tribe through enactment of the Little Shell Tribe of Chippewa Indians Restoration Act of 2013.

EXHIBIT A

THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 16 2013

Memorandum

To: Assistant Secretary – Indian Affairs

From: Secretary

Subject: Request for Reconsideration of Determination Against Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

The Little Shell Tribe of Chippewa Indians of Montana (Little Shell; petitioners) petitioned for federal acknowledgment via the regulations at 25 C.F.R. part 83. The Department published a Final Determination against acknowledgment. Little Shell asked the Interior Board of Indian Appeals (IBIA) for reconsideration of the Final Determination. The IBIA denied the petitioner's request for reconsideration with respect to grounds over which the IBIA has jurisdiction. *In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana*, 57 IBIA 101. The IBIA also identified five alleged grounds for reconsideration over which it does not have jurisdiction pursuant to the regulations, and referred those issues to me in accordance with 25 C.F.R. § 83.11(f)(2).

On July 16, 2013, the Department received the Petitioner's submission setting out arguments in support of these five points, and also arguing for "suspension" of any further assessment of the petition pending enactment of revisions to the part 83 regulations. The regulations at 25 C.F.R. § 83.11(f)(5) provide that I must determine whether to request a reconsideration of the Final Determination by the Assistant Secretary, and notify all parties of my determination, within 60 days of receiving all comments. The Department received comments submitted by Little Shell on July 16. No other comments were submitted. The 60 day deadline for my determination is Monday, September 16, 2013.

Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am exercising my discretion to request that you reconsider the Little Shell Final Determination.

The IBIA referred five grounds to me that are beyond its jurisdiction:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA during 56 interview sessions, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?

2. Should reconsideration be granted based on the allegation that application of criterion § 83.7(a) in this case is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of § 83.8 were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous federal acknowledgment?

4. Should reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(d), and failed to take into account the complexity of Petitioner's historical circumstances as required by § 83.6(e)?

5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, 57 IBIA 101, 128-31 (2013).

The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition.

In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations.

The current deadline for reconsideration of these matters is 120 days from the receipt of this request. *See* 25 C.F.R. § 83.11(g)(1).

Thank you for your attention to this matter.

EXHIBIT B

OFFICE OF THE SECRETARY
U.S. Department of the Interior

www.doi.gov

News Release

Office of the Assistant Secretary – Indian Affairs

FOR IMMEDIATE RELEASE
June 21, 2013

CONTACT: Nedra Darling
202-219-4152

Washburn Announces Consideration of Revisions to Federal Acknowledgment Regulations

Tribal Consultations and Public Meetings will Begin in July and August

WASHINGTON – As part of President Obama's commitment to strengthen the nation-to-nation relationship with Native Americans and Alaska Natives, Assistant Secretary – Indian Affairs Kevin K. Washburn today announced the availability of a discussion draft of potential changes to the Department of the Interior's Part 83 process for acknowledging certain Indian groups as federally recognized tribes. The discussion draft is intended to provide tribes and the public an early opportunity to provide input on potential changes to the Part 83 process.

The Federal recognition acknowledgment process is the Department's regulatory process by which petitioning groups that meet the regulatory criteria are "acknowledged" as federally recognized Indian tribes with a government-to-government relationship with the United States. There are currently 566 federally recognized tribes in the U.S.

"The discussion draft is a starting point in the conversation with federally recognized tribes, petitioners and the public on how to ensure that the process is fair, efficient and transparent," Washburn said. "We are starting with an open mind and no fixed agenda, and we're looking forward to getting input from all stakeholders before we move forward with a proposed rule that will provide additional certainty and timeliness to the process. In many parts of the discussion draft, we have made no fixed recommendations in order to have the benefit of that input in formulating a proposed rule."

The discussion draft maintains stringent standards for core criteria and seeks comment on objective criteria to be incorporated into the standards. The draft suggests changes to improve timeliness and efficiency by providing for a thorough review of a petitioner's community and political authority. That review would begin with the year 1934 to align with the United States repudiation of allotment and assimilation policies and eliminate the requirement that an external entity identify the group as Indian since 1900.

The discussion draft further suggests providing flexibility to the Department to issue expedited denials and approvals based on the particular facts and unique history of certain petitioners. The draft suggests streamlining the process to promote greater transparency as a petitioner's materials are evaluated by the Office of Federal Acknowledgment and the Department.

The Department is making the discussion draft available for review at http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm. This discussion draft is a precursor to proposed regulatory changes, but is not itself a proposed rule. The Department will accept written comments on the draft until August 16, 2013. In addition to written comments, the Department will hold tribal consultations and public meetings at the following locations:

	Tribal Consultation	Public Meeting		
July 23, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Canyonville, Oregon	Seven Feathers Casino Resort 146 Chief Miwaleta Lane Canyonville, OR 97417 (541) 839-1111
July 25, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Solvang, California	Hotel Corque 400 Alisal Road Solvang, CA 93463 (800) 624-5572
July 29, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Petosky, Michigan	Odawa Casino Resort 1760 Lears Road Petosky, MI 49770 (877) 442-6464
July 31, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Indian Island, Maine	Sockalexis Arena 16 Wabanaki Way Indian Island, ME 04468 (800) 255-1293
August 6, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Marksville, Louisiana	Paragon Casino Resort 711 Paragon Place Marksville, LA 71351 (800) 946-1946

Tribal consultations will be held at each location from 9am to 12pm and public meetings will be held from 1pm to 4pm. After the close of the comment period on the discussion draft, the Department will evaluate those comments as it moves forward in the development of a proposed rule. The Department will seek additional public comment and consult further with tribes after issuing the proposed rule.

The Discussion Draft has been retained in Committee files.

The CHAIRWOMAN. Thank you very much for your testimony. I wonder if you can expand on that, I will just start with you, Chairman Gray, given this history of no opposition or next to no opposition to the previous submission, what is your understanding of why your proposal was under administrative review for approval and then after a time period denied?

Mr. GRAY. I want to defer to counsel.

The CHAIRWOMAN. We would have to get him to come up to the microphone. If that is something you don't have readily with you or can respond to, we can get an answer from you in writing. That would be helpful to the Committee, and we would appreciate that.

Mr. GRAY. Certainly.

The CHAIRWOMAN. Thank you. Chairman Adkins, if you could tell us about, you have made a commitment on part of this legislation, S. 1074, that you are foregoing any possible rights to gaming under the Indian Gaming Regulatory Act as part of this legislation. Is that correct?

Mr. ADKINS. Yes, that is correct.

The CHAIRWOMAN. Why do you believe that compromise is necessary?

Mr. ADKINS. First, let me tell you that philosophically, I don't support gaming. And perhaps if it were allowed and I said, let's bring in a casino, I would be kicked out of my church as well as the tribe. But that is another story. The Virginia delegation, several members of the Virginia delegation strongly oppose gaming and would not support a bill if that provision were in there. So we agreed to take it out because again, the tribes weren't proponents of gaming. But we couldn't have gotten it this far had we kept that provision in it. Even if the provision remained, the Chickahominy Tribe would not game.

The CHAIRWOMAN. Is that just the Chickahominy or the other tribes?

Mr. ADKINS. I think I can speak for those other tribes, too, because we all willingly took it out.

Now, at the end of the day, sovereignty should be sovereignty. So that should not have these qualifications. I would love a clean bill, but I had no problem giving up gaming, except it does chip away at the sovereignty of my tribe and the other tribes on this bill. And it did cause us to incur disfavor with some of the currently federally-recognized tribes.

But even in the face of that, we were able to get a resolution of support from the National Congress of American Indians where many tribes had the option to opine on it and they do support our efforts toward Federal recognition, while they do not support the fact that we gave up the provision for gaming.

The CHAIRWOMAN. Okay, and Chairman Brooks, on your issue, what will it mean for you to be able to exercise authority and jurisdiction over your lands? What would that entail and what do you think, how do you resolve issues and conflict with the State?

Mr. BROOKS. Repeat that again?

The CHAIRWOMAN. Obviously the bill would give you jurisdiction over lands that the United States would take into trust on behalf of the tribe. What are your interests in that regard and how do you anticipate basically resolving any kind of conflicts that would happen with the State of North Carolina?

Mr. BROOKS. I'm not sure that we would have a conflict in relation to that, because basically what we need, economics, education and health. We are not looking at a situation where we are going to be reservated by any mean whatsoever. The territory that we occupy now is basically four counties, Robeson, Hoke, Scotland and Cumberland. And when you think of the way we have survived in the last hundreds of years is by doing our own things.

Today I gave you a statement in relation to education. Education is one of the main things that we survive with. We started with a small group that wanted education to be the pronouncement of

moving forward. That progressed into the University at Pembroke and became one of the 16 campuses for the University system of the State.

So when you look at, I guess the way we work with the State and the State works with us, the problems would probably be very minimal.

The CHAIRWOMAN. Okay, thank you.

Senator Tester, do you have questions?

Senator TESTER. I do, Madam Chair, thank you very, very much. I think, not to put words in Chairman Gray's mouth, but I don't know that I have heard a clear reason for the lack of recognition from the Department. That is part of the problem and that is part of why we have this bill in front of you.

As I said in my opening comments, it is my understanding that the other federally-recognized tribes in Montana as well as the State of Montana support Little Shell's recognition. Is that your understanding too?

Mr. GRAY. Yes, it is, Senator. And also a lot of the counties in which we live also support us.

Senator TESTER. Can you describe the Little Shell's relationship with other tribes in Montana?

Mr. GRAY. We have a really good relationship with all the tribes. We sit at the same table, we are afforded the same opportunities that they are, and they don't object to any of that. And we do sit at the same table.

Senator TESTER. And in fact, Madam Chair, you may remember when we had the meeting at the School of Law in Missoula, Montana, Chairman Gray was there with the other federally-recognized tribes.

Can you describe some of the difficulties you have had as a tribe that can be directly associated with the lack of Federal recognition?

Mr. GRAY. Oh, yes. We are missing out on the services, like all of the federally-recognized tribes are afforded: education, health care, school services. We can't offer our veterans services just due to the lack of economics. And it also poses a problem for us in planning for the future for our people.

Senator TESTER. So the opposite of that was, if you had Federal recognition you could gain all those health care benefits.

Mr. GRAY. Yes.

Senator TESTER. Thank you for being here, thank you for your testimony. I want to thank all of you for your testimony. I very much appreciate it. It is kind of like a history lesson sitting here today. And it is kind of fun to be able to hear what folks have gone through.

I do have a couple questions for you, Mr. Adkins, that my staff didn't prepare for me. So they called this freelancing and they get very nervous when I do this. Are there other federally-recognized tribes in Virginia?

Mr. ADKINS. No, sir.

Senator TESTER. There are none?

Mr. ADKINS. There are none.

Senator TESTER. So there is no gaming compact with the State as far as tribes go?

Mr. ADKINS. No, sir, there are not.

Senator TESTER. Okay, that is interesting.

Once again, thank you all for your testimony. I appreciate, Madam Chair, your having this hearing today. I think it is an important one, it is a difficult one, but very, very important. Thank you all.

Mr. ADKINS. Madam Chair, I would like to make one observation, if I may.

The CHAIRWOMAN. Chairman Adkins, yes, go ahead.

Mr. ADKINS. There is one thing that is very near and dear to our heart, in several museums, the Smithsonian, for instance, there are the remains of Virginia Indians. In some of the colleges in Virginia there are remains of members of my tribe. As a matter of fact, we did some testing on some of the remains, we sent a couple of the crania to the University of Wyoming at Laramie, and the busts were created. When you looked at them, it looked like you were looking at modern-day Chickahominy Indians.

But we are precluded by law from receiving those remains. The Native American Grave Protection and Repatriation Act specifically excludes State-recognized tribes. So we would love to bring the remains of our ancestors back to their respective communities and repatriate them with honor and dignity.

The CHAIRWOMAN. Thank you. If this legislation would pass, then that would be, if S. 1074 passed, that would automatically then occur, is that correct?

Mr. ADKINS. Yes, ma'am, that is correct.

The CHAIRWOMAN. Thank you for bringing that distinction and meaning to what it would do for that particular aspect of being recognized. We appreciate it.

Again, thank you all for your testimony today. The word endurance comes to mind. Not just for a hearing today, but many years of endurance on these issues. So we thank you for your testimony, and obviously this is the first step in the legislative process for this Congress on these issues. But we will be proceeding. So thank you all very much. We are adjourned.

[Whereupon, at 4:00 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. MIKE MCINTYRE, U.S. REPRESENTATIVE FROM NORTH CAROLINA

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

Chairman Cantwell and Ranking Member Barrasso, the members of the Lumbee Tribe and I appreciate your support and willingness to listen again today as the tribe presents its case for federal recognition.

A special thanks to my North Carolina colleagues—Senator Burr, Senator Hagan, and Congressman Hudson for their work and support of this important issue.

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

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

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

Madame Chairman, the record and the facts are crystal clear—the Lumbee Tribe exists as an Indian tribe and has done so over its long history. The Department of Interior has, on several occasions, concluded that the Lumbees are a distinct Indian community. The various names by which the tribe has been known were the result of State law. In no case, except for the name Lumbee, were the names chosen by the tribe itself. All the other names were imposed upon the tribe or chosen for them! Furthermore, the BIA regulations on acknowledgement of Indian tribes specifically provide that changes in names are not relevant to Indian identity.

In the late 1500s, when English ships landed on the shores at Roanoke Island on the North Carolina coast, the Englishman discovered Native Americans. Included among those Native Americans were both the Cheraw and Pee Dee Indians, who are direct ancestors of the Lumbee Indians. Later, in 1888, the Lumbees made their first effort at gaining federal recognition. For at least 500 years, Lumbee Indians have been inhabitants of this land, and for over half of the time that our country has been in existence, 119 of the 237 years, the Lumbee Indians have been seeking the recognition and respect that they deserve. As the largest tribe east of the Mississippi and the largest non-recognized tribe in America, it is unfathomable that this tribe of 55,000 people has never been fully recognized by our government.

I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home there virtually every weekend, and I have had the high honor of representing for 16 of my 18 years in Congress approximately 40,000 of the 55,000 Lumbees who live in my home county. In fact, there are more Lumbees in Robeson County than any other racial or ethnic group. The Lumbee Indians, many of whom are in the in the audience today, are my friends, many of whom I have known all my life. They are important to the success of everyday life in Southeastern North Carolina, and their contributions to our society are numerous and endless. From medicine and law to business and banking, from the farms and factories to the schools and the churches, from government, military, and community service to entertainment and athletic accomplishments, the Lumbees have made tremendous contributions to our county, state, and nation. In fact, in my home county, the former sheriff, the current clerk of court, the register of deeds, the school superintendent, several county commissioners and school board members,

and the representative in the state legislature of the area where I live, as well as a number of our local judges are all Lumbee Indians.

Madame Chairman, those contributions have been recognized in the U.S. House through twice passing legislation, on a bi-partisan basis, that I have introduced to grant the Lumbees federal recognition.

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

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

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

PREPARED STATEMENT OF HON. RICHARD HUDSON, U.S. REPRESENTATIVE FROM NORTH CAROLINA

Chairwoman Cantwell, Vice Chairman Barasso, I want to thank you and this Committee for holding this important hearing today and for calling attention to the multiple recognition bills we have before us in Congress.

I want to applaud the Lumbee Recognition bill which my colleague, Senator Burr, has introduced in the Senate and share with you my thoughts on, and commitment to full federal recognition for the Lumbee tribe of North Carolina. This critical piece of legislation which provides recognition to the largest Indian tribe east of the Mississippi has a long history of consideration by Congress and is long overdue.

As the sponsor of the companion legislation in the House and the U.S. Representative for the bulk of the Lumbee population across the state, this is a major priority for my office and for my district.

Full recognition and services for a tribe that has long been recognized as distinctively as Native American, but has consistently and unfairly been denied the benefits that come with federal recognition is just wrong. This is a matter of basic fairness.

As you are aware, Congressman Mike McIntyre and I have introduced similar bipartisan legislation to halt the discriminatory policy against the Lumbee tribe and bring forward equal treatment to more 50,000 people in my home state.

Congress recognized the Lumbees in 1956, but that legislation unjustly prevented them from receiving federal benefits. This is inherently unfair as no other tribe has been subjected to this type of discrimination. The Lumbee Recognition Act would provide the Lumbees with complete recognition and make the tribe eligible for all federal benefits and programs they are entitled to.

This legislation is critically important if you consider the counties with the largest Lumbee populations face unemployment rates that are among the highest in North Carolina. With access to economic development programs recognized in our bill through the Bureau of Indian Affairs, the Tribe could create jobs to accelerate the region's slow economic recovery.

Similar legislation to the Lumbee Recognition Act was introduced in the 108th Congress and all subsequent Congresses. In the 110th and 111th Congresses the bill was passed by the House, and companion Senate legislation was introduced. This bipartisan and bicameral legislation does not require additional budgeting of new funding since it utilizes the existing resources of the Bureau of Indian Affairs.

Granting the Lumbees federal recognition is necessary to creating jobs and revitalizing a region plagued by chronically high unemployment and a slow economic recovery.

As the only federal tribe subjected to the unfair caveat of recognition without benefits, the only path forward to resolve this injustice is through Congressional action. We introduced this bipartisan bill to end this inequitable policy and bring fair treatment to the Lumbee so they receive the same benefits that every other federal tribe currently enjoys.

Thanks to the Committee for the opportunity to speak today and for your efforts on behalf of my constituents.

PREPARED STATEMENT OF HON. TIM FOX, ATTORNEY GENERAL, STATE OF MONTANA

Chairwoman Cantwell, Ranking Member Barrasso and distinguished members of the Senate Committee on Indian Affairs, I thank you for the opportunity to provide written testimony on this important matter. My name is Tim Fox, and I am the Attorney General for the State of Montana. I write to express my strong support of Senate Bill 161, the Little Shell Tribe of Chippewa Indians Restoration Act of 2013, and to urge your approval of this bill.

The State of Montana has long recognized the Little Shell Tribe of Chippewa Indians as a distinct Indian tribe. As Senate Bill 161 finds, the Little Shell Tribe is a political successor to the 1863 Pembina Treaty, which ceded large amounts of what is now North Dakota to the United States. Little Shell members have resided in Montana for over a century, and the Little Shell have sought federal recognition since the 1930s. The State of Montana has actively supported that effort from its inception, and has consistently engaged with the Little Shell Tribe on a government-to-government basis. In 1949, Arnold H. Olsen, one of my predecessors as Montana Attorney General, wrote to the U.S. Commissioner for Indian Affairs criticizing the Bureau of Indian Affairs' failure to assist the Little Shell Tribe. In both 1949 and 1955, the Montana Legislature enacted "Joint Memorials" requesting the federal government to recognize the Little Shell Tribe and to provide them with the much-needed assistance that federal recognition brings. Since that time, the State of Montana has consistently voiced its strong support for the Little Shell Tribe's efforts to achieve the federal recognition it deserves.

This past July, I wrote to Department of the Interior Secretary Sally Jewell to ask her to accord the Little Shell Tribe's recognition petition all due consideration. (A copy of that letter is included with this written testimony as Attachment A.) That recognition petition has been pending before the Department of the Interior since 1978. It is unconscionable that the Little Shell Tribe, a distinct and long-standing political community, has been in limbo in regard to its relationship with the United States for so long. Senate Bill 161 is essential to correcting this injustice and to allowing the Little Shell Tribe to proudly take its rightful place among the Indian tribes formally recognized by the United States government. I urge your strong support of this vital and long overdue act.

Thank you very much for your time and consideration. My office stands ready to provide whatever further assistance it can in securing federal recognition for the Little Shell Tribe.

Attachment A

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

July 26, 2013

Hon. Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Little Shell Tribe of Chippewa Indians

Dear Secretary Jewell:

I write to express my strong support for the Little Shell Tribe of Chippewa Indians of Montana in its efforts to obtain federal recognition. Particularly in light of your Department's recently undertaken process to revise its regulations and criteria for federal recognition, I encourage you to grant the Little Shell Tribe's request to you on July 11, 2013, and allow the Tribe the opportunity to demonstrate its entitlement to federal recognition under whatever revised criteria may be adopted after the conclusion of the present public comment period. Should the current regulations ultimately remain in place, I also encourage you to grant the Little Shell's request for reconsideration of the unfavorable recognition decision rendered in 2009 by your Assistant Secretary for Indian Affairs on the grounds referred to you by the Interior Board of Indian Appeals in its ruling of June 12, 2013. Thank you for your consideration.

Sincerely,

TIM FOX
Attorney General

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

I am a strong advocate of federal recognition for the Virginia Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock and Upper Mattaponi tribes. I have been supportive of federal recognition of these Indian tribes since my time as Governor of the Commonwealth of Virginia.

During my time in the Senate, I have been proud to co-sponsor various legislation seeking recognition for these Virginia tribes, including S. 1074, The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013. I appreciate the Committee convening this legislative hearing and hope you will move quickly to pass S. 1074 and bring this bill to the full Senate for consideration.

This bill is not new to the Committee. The issue has been thoroughly discussed, hearings held and a tremendous amount of information has been compiled over the years. This bill would provide recognition by the United States of America to the Chickahominy Tribe, the Chickahominy Eastern Division Tribe, the Monacan Na-

tion, the Nansemond Tribe, the Rappahannock Tribe and the Upper Mattaponi Tribe. These tribal names may not be as well known to the people of the United States as they are to us in Virginia, but their story is universally known to Americans.

As has been noted in research and in the testimony before this committee, these tribes have the oldest Treaty in the United States; The Treaty of Middle Plantation, signed originally in 1646, amended in 1658 and again ratified in 1677. I know of this history well, because as part of that treaty, the Tribes go to Richmond once a year to present to the Governor of Virginia a "tribute" in lieu of taxes upon their land. I had the honor of receiving the tribes and their families on four occasions as Governor of Virginia. The Tribes have honored their part of the Treaty well. They have also waited patiently for federal recognition. Ironically, the fact that these Tribes ended their hostilities with the early colonists so early in the history of what is now the United States creates one of the barriers that prevented them from being recognized before now.

I realize that some of my colleagues have apprehensions about pursuing legislative recognition when an administrative route was established by Congress in 1978. However, because of Virginia's unique history, this is simply not an option for these Virginia tribes.

While the Tribes of Virginia maintained close knit communities over the years, adopted strict and consistent governance mechanisms and also have maintained their tribal rolls well, there remains a significant gap in the documented history of the tribes as defined by the Office of Federal Recognition (OFA).

The reason for this documentation gap rests with two aspects of Virginia's history that resulted in the destruction of nearly all of the type of documentation that the OFA requires for the completion of the administration recognition process. The burning of Virginia's courthouses during the civil war resulted in the destruction of much of the historical record of births, deaths, marriages and other essential documentation. Lost were virtually all records between 1740 and mid 1860s. In addition, the Racial Integrity Act of 1924 which was passed by the Virginia General Assembly and implemented with passion by Walter Plecker, the Commonwealth's Register of Public Records. Mr. Plecker, took the implementation well beyond what also occurred in other southern states, not only refusing to recognize any race other than black or white, but he penalized local elected officials that did issue birth, death and marriage certificates with "Indian American" designations. In addition, Mr. Plecker removed, altered and reinserted these documents in the central registry in Richmond, essentially eliminating this designation in Virginia records.

Statutory processes, like the Office of Federal Acknowledgment's (OFA) Federal Acknowledgement Process (FAP), should be seen as the primary, most efficient and responsive route to recognition available. Unfortunately, this is not so. The system is broken and the numbers prove this point. While I am supportive of the recently proposed revisions to the FAP, the potential for these changes in no way diminishes the need for this legislation. The delays the Virginia Tribes have already experienced in achieving well deserved recognition should not be compounded by amending the process and requiring them to start over administratively. The Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock and Upper Mattaponi tribes of Virginia should not have to spend any additional time in an attempt to gain the federal recognition they deserved to receive many years ago.

The Virginia Indian Tribes have waited long enough for official recognition. Their record in Virginia is clear. I urge you to pass S. 1074 out of Committee and I look forward to working with my colleagues towards the successful passage of this bill.

Thank you.

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

Dear Chairwoman Cantwell and Vice Chairman Barrasso:

On behalf of the Eastern Band of Cherokee Indians based in Cherokee, North Carolina, I write to express our strong opposition to the Lumbee Recognition Act (S. 1132), legislation that would acknowledge the Lumbees in North Carolina as an Indian tribe. Literally for decades, the Congress has considered similar legislation that would acknowledge the Lumbees as a tribe and rejected every bill. Congress should reject this bill once again.

As the Eastern Band, the United South and Eastern Tribes (USET), and other tribes have said for many years, Congress is not well equipped to evaluate the tribal and individual Indian identity of a group that claims to be a tribe, so the administrative process at the Department of the Interior's Office of Federal Acknowledgment (OFA) the right venue for consideration of the tribal and Indian identity. The OFA is equipped with the experts in genealogy and history to appropriately consider Lumbee tribal and individual Indian identity. To the extent that the Department of the Interior continues to maintain that the Lumbees cannot complete the administrative process because of the 1956 Lumbee Act, it would be appropriate for Congress to clear the way for the Lumbees to complete the process.

The Department of the Interior is going through a rulemaking process to revise the federal acknowledgment procedures. The Eastern Band supports changes to the process that make the process more efficient and transparent, but opposes changes that would lower the standards a group claiming to be a tribe must meet to attain federal acknowledgment. We respectfully urge the Committee to support this policy position.

Thank you for your consideration.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON. KEVIN WASHBURN

As the Committee considers several bills involving the legislative recognition of specific Indian tribes, I would like to follow-up on an ongoing dialogue between my office and the office of the Assistant Secretary of Indian Affairs regarding the Alaska-specific standard for tribal recognition set forth in the Alaska Amendment to the Indian Reorganization Act (Alaska IRA). Assistant Secretary Echo Hawk confirmed by letter to me dated January 31, 2012, that, under the Alaska IRA, Congress provided the Assistant Secretary authority to recognize groups of Alaska Natives as tribes, provided they can show they meet the standard of sharing a "common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district."

In more recent correspondence, you have indicated that your office is actively reviewing the requests of the Knugank Tribe (Dillingham) and the Qutekcak Native Tribe (Seward) to have their federal tribal status affirmed under the applicable

Alaska IRA standards and/or pursuant to agency precedent, so that the Agency would treat them consistently with the 229 similarly-situated Alaska Native tribes.

The tribes involved and the regional Alaska Native organizations supporting them have invested significant resources to clarify their status. Indeed, your office, the BIA Alaska Region and the Office of Solicitor have been engaged in this matter over the past few years. These tribes urgently need a final resolution.

Question. Can you please indicate what steps still remain in order for you to issue a final decision?

Answer. As you note in your question, both applications are currently under active review by our office. Federal recognition decisions are some of the most important decisions issued by the Department, and these applications in particular have significant legal implications for the State of Alaska. We are therefore reviewing these requests with the utmost care and deliberation.

Specifically, we are in the process of assessing the extensive factual and historical background of the Alaska Native groups requesting federal recognition. The Office of the Solicitor will also undertake an independent analysis on the legal framework underlying these requests. Prior to any final determination, the Assistant Secretary-Indian Affairs will carefully consider and evaluate these findings. We expect to continue to work with the Knugank Tribe and the Qutekcak Native Tribe with the goal of issuing final decisions on these applications this year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO HON. KEVIN WASHBURN

I understand that the Secretary of the Interior has asked you to consider Little Shell's request that the Department suspend its consideration of the Tribe's petition for federal acknowledgement pending the promulgation of the revised acknowledgement regulations.

Question 1. Will the revised acknowledgment regulations impact Little Shell's petition? If so, how?

Answer. The Department recently sent a letter to Little Shell accepting their request that we suspend consideration of the Secretary's referral until revisions to the Part 83 regulations are finalized. However, I do not know what the final regulations will entail. The Department did release a Redline Discussion Draft, which was intended to begin the discussion on how the Part 83 regulations might be revised. We received nearly 300 comments from various parties on the Discussion Draft, but I want to reiterate that that Draft was not a Proposed Rule. The Discussion Draft, and the ensuing comments, have been instrumental in getting us to the point where we are now—which is preparing to release a Proposed Rule and begin the next phase toward revising the Part 83 regulations.

It is also very important that the Department not make any assumption on the content of the Final Rule. We must place our trust in the comprehensive consultation process and the notice and comment period for the Proposed Rule. In doing so, the Department is confident that the Final Rule will reflect many different views and concerns which is natural in the process of constructive agency rulemaking.

Question 2. Did the Little Shell petition for federal acknowledgement receive any negative comments to your knowledge?

Answer. In addition to over 10,000 pages of comments by the Little Shell on the proposed finding, the Department received comments from two third parties during the comment period. These two comments could be characterized as negative.

Question 3. If a tribe goes through the Part 83 process and gets a positive proposed finding and no negative comments, is there any reason why that tribe shouldn't be recognized immediately by Congress?

Answer. Congressional recognition is, of course, a separate process than the Part 83 process. As I know you are aware, Congress can act to recognize and Indian tribe wholly outside the Part 83 process. In general, we have no objection to Congress exercising its own authority to make recognition decisions.

The Part 83 process provides for a comment period on both positive and negative proposed findings. It provides also for further evaluation by the Department based on a more complete record for the final determination and provides for requests for reconsideration before the IBIA. In three cases, following IBIA review, positive final determinations were not sustained (Chinook, Pequot, Schaghticoke).

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