

**TESTIMONY OF
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OF THE EASTERN BAND OF CHEROKEE INDIANS**

**LEGISLATIVE HEARING ON S.107, THE LUMBEE FAIRNESS ACT
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE**

November 5, 2025

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

Since before the arrival of Europeans on this continent, the Cherokee have lived in the southeastern part of what is now the United States, in the states of North Carolina, South Carolina, Alabama, Georgia, Kentucky, Tennessee, Virginia, and West Virginia. Since European contact, the Cherokee have faced unending threats to our very existence—including the tragic Trail of Tears, where more than 15,000 Cherokee Indians were forcibly removed by the U.S. Army from our ancestral homelands to the Indian Territory as part of the federal government’s American Indian Removal Policy. Thousands died. Our Eastern Band people call this event “Gay go whoa oh duh nuh ee,” or the “Removal.” We, the Eastern Band of Cherokee Indians, are the descendants of those Cherokees that resisted the Removal in the Great Smoky Mountains and escaped the Trail of Tears, or who were able to return to their homeland in the Smoky Mountains after enduring the Trail of Tears. The Great Smoky Mountains wrapped its arms around us, protected us, and helped us preserve our our lives and our culture. The mountains continue to provide us refuge and resources today.

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

Irrefutable Facts About the Lumbee Group

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

- For over 125 years, the group of people that now calls themselves the “Lumbee Tribe” have sought federal recognition as a tribe from Congress. For over 125 years, Congress has rejected legislation that would federally acknowledge this group as a tribe.
- The group now indentifying as Lumbee has never had treaty relations with the United States.
- The group now identifying as Lumbee has sought federal recognition under different names: Croatan, Cherokee, Siouan, and Cheraw. One of these “tribes,” however, is not even a historical tribe but an Indigenous language group (Siouan).
- The group now calling itself Lumbee does not have a tribal language or tribal culture, according to Lumbee expert testimony before Congress.¹
- Independent experts Dr. Virginia DeMarce, the former Chair of the National Genealogical Society, and Paul Heinegg, an award-winning genealogist and author, have published detailed, pre-1900 research that undermines Lumbee claims to having Native ancestry.⁹ Heinegg summarizes his conclusions concerning Lumbee identity, referring to the Lumbee as “an invented North Carolina Indian tribe.”¹⁰
- The “Lumbee Fairness Act” specifically prohibits the Secretary of the Interior from reviewing the DeMarce and Heinegg research when verifying Lumbee rolls.
- For forty years, the State of North Carolina recognized the Lumbee group as, and the Lumbees held themselves out to be, “Cherokee” Indians.
- The name “Lumbee” does not come from a historic tribe—it comes from the geographical name of the river that runs through Robeson County, North Carolina, and was chosen by vote by this group from a list of options as their most recent identity.²
- The historical record surrounding the identity of the group calling itself Lumbee is replete with falsehoods and inconsistencies. For example, census records for Robeson County from the year 1900 identified families as “Croatan,” but never Lumbee. Confusingly, census records for Robeson County from the year 1910 identified those same families as “Cherokee,” but with the word “Croatan” stamped over the written word “Cherokee.”³ Exhibit 1.
- Unlike the Cherokee, the Choctaw, the Creek, the Seminole, the Shawnee, and many other established Tribal Nations with aboriginal lands in the South and East, the United States

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

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

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

never identified the Lumbee as as a tribe or even Indian and never sought to remove them from their claimed homelands when Indian removal was U.S. policy.

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

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

Defects in Lumbee Tribal Identity Claims

If Congress recognizes groups whose tribal and individual identity as Indians is seriously in doubt, it will dilute the government-to-government relationships that existing federally recognized tribes have with the United States. Although the Lumbees have sought federal recognition under the assumed identities of four different “tribes,”⁴ they have yet to produce evidence demonstrating descent from a historic tribe. In 1955, a Lumbee leader testified to the House of Representatives that the Lumbees are an “‘admixture of seven different tribes of Indians, including the Cherokee, Tuscarora, Hatteras, Pamli and Croatan.’”⁵ To try to trace the Lumbees’ claimed identities is dizzying. We strongly believe that this bill would undermine the integrity of existing federally recognized Indian tribes due to the real problems the Lumbee group has in demonstrating that it is a tribe, including its inability to trace the genealogy of its roughly 60,000 members to a historic tribe.

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

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

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

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

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

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

Lumbee's Self-Identification as "Croatan" Indians

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

The story of how the progenitors of the Lumbee came to live in this area of North Carolina is a multifarious one. In fact, there are almost as many theories as there are theorists. Up until the 1920's, the most persistent tradition among the Indians in Robeson County was that they were descended primarily from an Iroquoian group called the Croatans. This theory, though highly conjectural, is as follows. In 1585, Sir Walter Raleigh established an English colony under Gov. John White on Roanoke Island in what later became North Carolina. In August of that year, White departed for England for supplies, but was prevented from returning to Roanoke for 2 years by a variety of circumstances. When he finally arrived at the colony, however, he found the settlement deserted; no physical trace of the colonists was found.

The only clue to their whereabouts were the letters "C.R.O." and the word "Croatoan" carved in a tree. From this it was surmised that the colonists fled Roanoke for some reason, and removed to the nearby island of Croatoan which was inhabited by a friendly Indian tribe. There, according to the theory, they intermarried with the Indians, and the tribe eventually migrated to the southwest to the area of present-day Robeson County. The theory is lent some credence by reports of early 18th century settlers in the area of the Lumber River who noted finding a large group of Indians—some with marked Caucasian features such as grey-blue eyes "speaking English, tilling the soil," "and practicing the arts of civilized life." In addition, many of the surnames of Indians resident in the county match those of Roanoke colonists.⁷

Lumbee's Self-Identification as "Cherokee" Indians

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

⁷ *Id.* at 26543.

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

The Lumbee group sought recognition from the North Carolina Legislature in 1913 as the “Cherokee Indians of Robeson County.” This legislation was passed, despite the Eastern Band’s opposition, and the group was recognized in North Carolina as “Cherokee” Indians. That continued for 40 years until 1953 when the North Carolina Legislature, at the Lumbee group’s request, passed legislation recognizing them as the “Lumbee” Indians instead of as the “Cherokee” Indians. Although the Lumbee group now claims the Cherokee identity was pushed upon them, there is significant evidence throughout history of the Lumbee group and its “members” affirmatively asserting Cherokee identity.

As the Lumbee group’s expert Dr. Campisi stated, after World War I, this Lumbee group sought legislation in Congress for recognition as “the Cherokee Indians of Robeson and adjoining counties.” Specifically, in 1924, Dr. Campisi noted that the now-called Lumbee group had legislation introduced in the U.S. Senate that would have recognized them as “Cherokee” Indians. However, Commissioner of Indian Affairs Charles H. Burke opposed the legislation and it failed to pass. Dr. Campisi went on to state that the Lumbee group renewed their efforts in 1932 and had a bill introduced in the Senate that would have recognized them as “the Cherokee Indians,” but this effort failed as well.⁹ The Eastern Band has, since the early 1900s when the Lumbee group sought formal recognition as Cherokee, consistently and strongly opposed these efforts of the Lumbees to be recognized as a tribe.

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

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

⁹ *Id.* Ms. Arlinda Locklear, in her testimony before the Senate Indian Affairs Committee in 2003, noted that the Lumbee group claimed that they were Cherokee and sought federal legislation to be recognized as Cherokees. “Testimony of Arlinda Locklear, Patton Boggs LLP, Of Counsel for the Lumbee Tribe of North Carolina in Support of S. 420 United States Senate Committee on Indian Affairs” (Sept. 17, 2003) p. 4.

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

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

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

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

Lumbee's Self-Identification as "Siouan" Indians

According to the Lumbees, the Lumbee group sought federal recognition as "Siouan" Indians in 1924. Further, in the 1930s, for purposes of the Indian Reorganization Act, the Lumbees self-designated themselves as the "Siouan Indian Community of Lumber River."¹³ As stated above, the term "Siouan" is a reference to a generic linguistic classification that is spoken by many tribes in North America and is not a term that describes a distinct historical tribe.

It was not until 1952 that the Lumbees decided to refer to themselves as "Lumbee" based upon their geographic location next to the Lumber River. In 1956, Congress, at the request of the Lumbees, passed legislation commemorating their name change.¹⁴ Absent from this 1956 Act was any affirmation by Congress that recognized the Lumbees as descendants of specific historic tribes, entitled to a government-to-government relationship; rather, the Act refers to the Lumbees as a group that relies "on tribal legend" to trace their origin.¹⁵

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

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

Experts at the Bureau of Indian Affairs ("BIA") have testified that the Lumbee ties to the Cheraw Tribe are tenuous. On August 1, 1991, Director of the Office of Tribal Services Ronal Eden testified on behalf of the Administration regarding federal legislation that would Congressionally recognize the Lumbee group. Regarding the Lumbee group's petition for federal recognition, the Director testified to a "major deficiency" that "the Lumbee have not documented their descent from a historic tribe."¹⁸

The Director also testified that the 18th century documents used by the Lumbee group to support its claim that it primarily descends from a community of Cheraws living on Drowning

¹³ *Id.* at 9.

¹⁴ *Id.* at 9-10.

¹⁵ 70 Stat. 254.

¹⁶ 25 C.F.R. § 83.11(e).

¹⁷ *Id.* at 83.1.

¹⁸ Statement of Ronal Eden, Director, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, Before the Joint Hearing of the Select Committee on Indian Affairs, United States Senate, and the Interior and Insular Affairs Committee, United States House of Representatives, On S. 1036 and H.R. 1426 (Aug. 1, 1991) p. 3-5.

Creek in North Carolina in the 1730s needed extensive analysis corroborated by other documentation.¹⁹

In his September 17, 2003 testimony before this Committee, Lumbee expert Dr. Jack Campisi relied on a report by Dr. John R. Swanton of the Bureau of Ethnology to conclude “in the early 1930s that the Lumbees are descended [from] predominantly Cheraw Indians.” The House Report specifically refutes this claim, stating that Swanton chose “Cheraw” rather than another tribal name he identified—“Keyauwee”—because the Keyauwee name was not well known. “In other words, the choice of the Cheraw was apparently made for reasons of academic ease rather than historical reality.”²⁰

Furthermore, an Acting Deputy Assistant Secretary, Indian Affairs, has questioned the adequacy of the underlying proof of Cheraw descent. He testified in 1989 that:

The Lumbee petition . . . claims to link the group to the Cheraw Indians. The documents presented in the petition do not support [this] theory These documents have been misinterpreted in the Lumbee petition. Their real meanings have more to do with the colonial history of North and South Carolina than with the existence of any specific tribal group in the area in which the modern Lumbee live.²¹

In her 2003 testimony before this Committee, legal counsel to the Lumbee, Arlinda Locklear, admitted that these concerns continue today. “Department staff that administers the administrative acknowledgment process have expressed some concern about the absence of a genealogical connection between the modern-day Lumbee Tribe and the historic Cheraw Tribe.”²²

Claimed Lumbee Membership Not Tied to Cheraw Individuals

The various documents on which the Lumbee membership list is based similarly cast doubt as to the ability of the Lumbee group to meet the recognition criteria. The Lumbee group claims more than 60,000 enrolled members who are descended from anyone identifying as “Indian” in five North Carolina counties and two South Carolina counties in either the 1900 or 1910 federal census. The Lumbee Constitution refers to these census lists as the “Source Documents.” Yet, the individuals on these lists cannot be specifically identified and verified as Cheraw Indians. In fact, these individuals cannot be identified as belonging to any tribe whatsoever. These are lists of people who self-identified or were identified by census workers as “Indian.”

¹⁹ *Id.*

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

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

²² “Testimony of Arlinda Locklear, Patton Boggs LLP, Of Counsel for the Lumbee Tribe of North Carolina in Support of S. 420 United States Senate Committee on Indian Affairs” (Sept. 17, 2003) p. 4 n.1.

House Resources Committee members have recognized the weaknesses and complexities in the Lumbee group's claim to tribal recognition in the past:

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

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

Dr. Campisi: No.

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

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

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

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

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

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

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

The government-to-government relationship between a Tribal Nation and the United States begins at the point where each recognizes the sovereignty of the other. For this reason, it is crucial that the federal government have in place a credible, non-politicized process for determining which Tribal Nations it recognizes. The National Congress of American Indians (NCAI) expressed its support for such a process by resolution in 1977. Exhibit 3. In Spring of

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

1978, NCAI issued a Declaration of Principles on Tribal Recognition by the U.S. Government. Exhibit 4. NCAI declared: “There must be a valid and consistent set of criteria applied to every group which petitions for recognition. The criteria must be based on ethnological, historical, legal and political evidence.” *Id.* NCAI further declared that only those tribes or groups who satisfy such criteria may be recognized. *Id.* In large part due to pressure from NCAI, the Department of the Interior established the OFA and the federal recognition process (known as the “Part 83 process”) in Fall of 1978 to ensure that federal recognition determinations are made with rigorous scrutiny and based on factual and historical evidence, “free from the eddies and currents of partisan politics and influence.”²⁴

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

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

Properly done, the process of recognition requires an evaluation of complex and often ambiguous data and issues of ethnohistory, cultural anthropology, and genealogy. Not only do we lack that expertise, but there are precious few members of this Committee with any more than the most superficial knowledge on the subject at all. Such a decision is replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand fully. Needless to say, if those of us charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or even knowledge—in this area, how will the balance of our Members appropriately exercise those judgments as they will be called upon to do when this legislation reaches the floor?²⁵

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

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

²⁵ *Id.* at 16-17.

²⁶ *Id.* at 17

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

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

As historian and genealogist Jean Kelly explains:

Allowing Federal recognition for a group without clear antecedents of previous historical tribe(s) would dramatically redefine the standards for receiving Federal recognition, almost to the point of being meaningless. Such low standards would pave the way for groups with little to no evidence of Native ancestry to claim the cultures and identifies of legitimate tribes and assume legal rights over their sacred places and ancestral remains under the Native American Graves Protection and Repatriation Act (NAGPRA). Imbuing such groups with the legal authorities to act as sovereigns would have significant consequences for communities across America.”²⁷

Passage of the bill would set a dangerous precedent, encouraging countless groups with entirely baseless claims to seek federal recognition from Congress. As former Congressman Walter B. Jones stated in a hearing on the 2004 iteration of the Lumbee recognition bill, “if we start passing private bills to recognize [the Lumbee group], then I think we are creating a problem that is going to be uncontrollable, because how can you say yes to one and no to 237 [other groups seeking recognition]?”²⁸

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

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

²⁸ H.R. Hrg. 108-90 (2004), p. 5-6.

from a gaming perspective, and gaming revenues are irrelevant to the Eastern Band’s opposition to this bill.

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

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

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

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

³⁰ IHS Fact Sheet, available at

https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/factsheets/IHSProfile.pdf.

2758 CBO cost estimate. Estimated costs for other agencies that would provide services or benefits to the Lumbees as Indians, if recognized, must be included for the CBO cost estimate to be accurate and comprehensive. Exhibit 8.

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

Conclusion

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

With federal recognition comes the ability of a group to engage in serious activities associated with sovereign status, such as the ability to tax and enjoy certain tax advantages, the ability to exercise civil jurisdiction over non-Indians as well as Indians, and the right to engage in gaming. Enacting legislation like this only arms those who seek to erode sovereign rights with evidence that some groups possessing such rights were haphazardly afforded them. That is, the sovereign status of federally recognized tribes is currently under attack, with opponents arguing that tribes should be treated as little more than racial groups, devoid of treaty rights and a government-to-government relationship with the United States. Accordingly, federal recognition of tribes should be able to withstand the scrutiny of the federal courts that are responsible for interpreting the laws that uphold the United States’ trust obligations.