

**TESTIMONY OF
PRINCIPAL CHIEF RICHARD SNEED
EASTERN BAND OF CHEROKEE INDIANS**

**A HEARING ON H.R. 1964, THE “LUMBEE RECOGNITION ACT”
BEFORE THE HOUSE SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE
UNITED STATES**

December 4, 2019

Chairman Gallego, Leader Cook, members of the Indigenous Peoples of the United States Subcommittee, thank you for the opportunity to testify today to provide the views of the Eastern Band of Cherokee Indians on H.R. 1964, the “Lumbee Recognition Act.”

For over a century, the Lumbees in North Carolina have sought federal recognition as an Indian tribe, which, under federal law, should be an Indigenous people with a governing body that preexisted the founding of the United States.¹ The Lumbees have falsely claimed to be a Cherokee tribe, and groups and individuals within the Lumbee continue to appropriate our Cherokee identity. But the Cherokees are not the only tribal identity that the Lumbees have sought to falsely appropriate. They have cloaked themselves in the identities of many other tribes in trying to achieve acknowledgment as a tribe from the federal government. Even since the last Congress, the Lumbees have changed from identifying themselves as the “Lumbee Tribe of Cheraw Indians” to the more general “Lumbee Tribe of North Carolina,” described as an amalgamation of tribes based on general dialects—not specific historic tribes with identifiable governing bodies. As you may know, Lumbee is not an historical tribe but a derivation of the word “Lumber” from the Lumbee location near the Lumber River. Finally, based on the research of third-party experts, we do not believe that most Lumbees today can demonstrate any Native ancestry at all, and this bill seeks to prevent a substantive review of this fact.

The Eastern Band opposes this bill for several specific reasons:

First, the integrity of the Eastern Band and other tribes with living tribal languages and long-standing government-to-government relations with the United States is undermined when politics and emotion, rather than facts about tribal identity, dictate outcomes regarding federal recognition. As Eastern Band Cherokee leaders have said since at least 1910 when the Lumbees first claimed to be Cherokee, the historical record raises very serious questions about the tribal and individual Native identity of the Lumbees.

Second, the Department of the Interior’s Office of Federal Acknowledgement (OFA) is the only federal entity equipped to make an informed, merits-based determination of Lumbee tribal identity and recognition. Congress is not equipped to make these decisions. The Lumbees filed a petition to begin this administrative process, and the process is open to them. After years of claiming the process is unfair and biased, the Obama administration issued new federal acknowledgment regulations that substantially lower the standards and information necessary to achieve federal acknowledgement. Solicitor Hilary Tompkins issued an opinion that says the

¹ See generally, 25 C.F.R. § 83.1.

Lumbees can access the administrative process, thereby undermining the Lumbee's previous attempts at congressional recognition, where was based in part on their argument that they could not participate in the OFA process.² Congress should defer to federal acknowledgment process at the Department of the Interior.

Third, Congress should be absolutely certain that the Lumbee group meets the objective criteria at Interior before it enacts a bill that could cost up to \$1 billion of taxpayer funds and significantly decreases the funds existing tribes and Indians receive. Based on the facts, Congress cannot be confident in the merits of this bill.

This Legislation Impacts the Integrity of Eastern Band and other Established Tribes

Since before the coming of Europeans to this continent, the Cherokee have lived in the southeastern part of what is now the United States, in the states of North Carolina, South Carolina, Alabama, Georgia, Kentucky, Tennessee, and Virginia. Through these years, the Cherokee have faced unending threats to our very existence – including the tragic Trail of Tears where more than 15,000 Cherokee Indians were forcibly removed by the U.S. Army from their ancestral homelands to the Indian Territory as part of the federal government's American Indian Removal Policy. Thousands died. Our Eastern Band people call this event Gay go whoa oh duh nuh ee, or the Removal. The Eastern Band of Cherokee Indians are the descendants of those Cherokees that resisted removal in the Great Smoky Mountains and escaped the Trail of Tears or who were able to return to their homeland in the Smoky Mountains after the Trail of Tears.

Yet through all of this, the Cherokee people have fiercely protected our separate identity as Cherokees. Many of our tribal members are fluent in the Cherokee language. We have a separate culture that makes us different from any group of people in the world. The leadership of the Cherokee and the Cherokee people themselves 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.

Like other tribes across the country, we hold in high regard the long-standing government-to-government relationship the Eastern Band of Cherokee Indians has with the United States. We are proud that the United States has entered into treaties with the Cherokee that helped shape the government-to-government relations with all tribes—relations based on longstanding governments, not claims to ambiguous racial affiliations.

But today, like other tribes, we face a new threat to our separate identity: groups of people who claim, or who have claimed Cherokee, or other tribal affiliations whose legitimacy is doubtful at best. Unfortunately, we believe this to be the case with this bill.

² Memorandum from Hilary C. Tompkins, Solicitor, Indian Affairs, to the Secretary of the Interior (Dec. 22, 2016) ("M-37040" or "2016 Solic. Mem.").

Serious Problems with Claimed Lumbee Tribal Identity

If Congress recognizes groups whose tribal and individual identity as Indians is seriously in doubt, it will dilute the government-to-government relationships that existing federally recognized tribes have with the United States. We strongly believe that this bill would undermine the integrity of existing federally recognized Indian tribes due to the real problems that the Lumbee have in demonstrating that it is a tribe, including their inability to trace the genealogy of over 60,000 members to any historic tribe, much less a single historic tribe that has maintained a functioning government throughout history and entitled to federal recognition on such grounds.

The Lumbee Have Self-Identified As At Least Four Different Tribes

The Lumbee group seeking Congress's acknowledgment today has been before the Congress on numerous occasions in the past, including 1899, 1910, 1911, 1913, 1924, 1932, 1933, 1955, 1988, 1989, 1991, 1993, 2004, and every subsequent term since 2004. The tribal identity of the Lumbee, who have over the course of history self-identified themselves as four different tribes before Congress –Croatan, Cherokee, Siouan, and now Cheraw – is highly in question. These appellations do not correlate with each other. Linguistically, the Croatan were Algonquian, the Cherokee Iroquoian, and the Cheraw were Siouan. Thus, these disparate references themselves implausibly covered three distinct and separate linguistic groups. Moreover, referring to themselves as the “Siouan Tribe” did not make sense because the term “Siouan” is simply a reference to a broad generic linguistic classification that encompassed many distinct tribal languages in North America, including Osage, Assiniboine, Dakota, Lakota, Catawba, Hidatsa, Crow, Mandan, Ponca, Biloxi, and Quapaw, to name a few.

The origin of the Lumbee name comes not from a historic tribe but from a geographic location in the State of North Carolina, a place along the Lumber River. The term “Lumbee” is a modern creation that the group selected as its name in 1952. Over the years, the Congress has heard from this same group many times seeking federal acknowledgement. The Lumbee have self-identified themselves as any number of vastly different linguistic groups in these efforts.

Lumbee Self-Identification as “Croatan” Indians

For example, as the Lumbee's own hired expert Dr. Jack Campisi stated in his testimony before the Senate Indian Affairs Committee on September 17, 2003, the Lumbee sought federal services from the Congress as Croatan Indians in the 1880s and early 1900s.³

In 1993, the House Resources Committee's Report contained the following relating to the history of the Lumbee, including its “Croatan” origins:

The story of how the progenitors of the Lumbee came to live in this area of North Carolina is a multifarious one. In fact, there are almost as many theories as there are theorists. Up until the 1920's, the most persistent

³ “Testimony of Dr. Jack Campisi, in Support of S. 420, United States Senate Committee on Indian Affairs” (September 17, 2003) p. 6.

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.⁴

Lumbee’s Self-Identification as “Cherokee” Indians

In the state of North Carolina, the Lumbee group sought recognition from the North Carolina legislature in 1913 as the “Cherokee Indians of Robeson County.” This legislation was passed, despite their inability to demonstrate they were Cherokee and despite 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 “Cherokee” Indians.

As the Lumbee’s expert Dr. Campisi stated, after World War I, this Lumbee group sought legislation in Congress for recognition as “the Cherokee Indians of Robeson and adjoining counties.” Specifically, in 1924, Dr. Campisi noted that the now-called Lumbee group had legislation introduced in the U.S. Senate that would have recognized them as “Cherokee” Indians. However, the Commissioner of Indian Affairs Charles H. Burke opposed the legislation, and it failed to pass. Dr. Campisi went on to state that the Lumbee group renewed their efforts in 1932 and had a bill introduced in the Senate that would have recognized them as “the Cherokee Indians,” but this effort failed also.⁵ The Eastern Band has, since the early 1900’s when the

⁴ H.R. Rep. No. 103-290, 103rd Cong., 1st Sess. at 179 (1993).

⁵ *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 group sought formal recognition as Cherokee, consistently and strongly opposed these efforts of the Lumbees to be recognized as a tribe.

Lumbee's Self-Identification as "Siouan" Indians

According to the Lumbee, they sought federal recognition as "Siouan" Indians in 1924. Further, in the 1930's, for purposes of the Indian Reorganization Act, the Lumbees self-designated themselves as the "Siouan Indian Community of Lumber River."⁶ 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. Notably, despite their Siouan claims, the Lumbee have never represented that they have a distinct tribal language, much less a language traceable to a Siouan dialect.

It was not until 1952 that the Lumbee 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 Lumbee, passed legislation commemorating their name change.⁷ 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, but rather as a group that relies "on tribal legend" to trace their origin.⁸ In fact, the 1956 Act explicitly disavowed any such notion, acknowledging Lumbees not as a sovereign entity with whom the federal government owes a trust obligation, but as a "racial" group.⁹

The Lumbees' Current Efforts to Link Themselves to the Cheraw or other Historical Tribes Are Tenuous

The federal acknowledgment criteria require that the membership of a petitioning group consist of "individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity."¹⁰ The regulations define "historical" in this context as "dating from first sustained contact with non-Indians."¹¹ The origin and ties of the Lumbee to an historical tribe has been the subject of uncertainty not only among experts in the area but also the Lumbee themselves.

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

Lumbee Tribe of North Carolina in Support of S. 420 United States Senate Committee on Indian Affairs" (September 17, 2003) p. 4.

⁶ *Id.* at 9.

⁷ *Id.* at 9-10.

⁸ 70 Stat. 254.

⁹ *Id.*

¹⁰ 25 C.F.R. § 83.7(e).

¹¹ *Id.* at 83.1.

agency, the Director testified to a “major deficiency” that “the Lumbee have not documented their descent from a historic tribe.”¹²

The testimony also stated that the 18th century documents used by Lumbee to support its claim that it is primarily descended from a community of Cheraws living on Drowning Creek in North Carolina in the 1730’s needed extensive analysis corroborated by other documentation.¹³

In his September 17, 2003 testimony before the Senate Indian Affairs Committee, Lumbee expert Jack Campisi relies on a report of Dr. John R. Swanton of the Bureau of Ethnology for concluding “in the 1930s that the Lumbees are descended from predominantly Cheraw Indians.”¹⁴ The House Report specifically refutes this claim, stating that Swanton chose “Cheraw” rather than another tribal name he identified—“Keyauwee”—because the Keyauwee name was not well known. “In other words, the choice of the Cheraw was apparently made for reasons of academic ease rather than historical reality.”

Furthermore, the head of the BIA’s acknowledgment process questioned the adequacy of the underlying proof of Cheraw descent. He testified in 1989 that:

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

Counsel to the Lumbee Arlinda Locklear in her 2003 testimony before the Senate Indian Affairs Committee admits that these concerns continue today. “Department staff that administers the administrative acknowledgment process have expressed some concern about the absence of a genealogical connection between the modern-day Lumbee Tribe and the historic Cheraw Tribe.”¹⁵

Claimed Lumbee Membership Not Tied to Cheraw Individuals

The various documents on which the Lumbee membership list is based similarly cast doubt as to the ability of the Lumbee to meet the acknowledgement criteria. The Lumbee claim 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

¹² Statement of Ronal Eden, Director, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, Before the Joint Hearing of the Select Committee on Indian Affairs, United States Senate, and the Interior and Insular Affairs Committee, United States House of Representatives, On S. 1036 and H.R. 1426 (August 1, 1991) p. 3-5.

¹³ *Id.*

¹⁴ Campisi Testimony at 21.

¹⁵ “Testimony of Arlinda Locklear, Patton Boggs LLP, Of Counsel for the Lumbee Tribe of North Carolina in Support of S. 420 United States Senate Committee on Indian Affairs” (September 17, 2003) p. 4 fn. 1.

census. The Lumbee Constitution refers to these census lists as the “Source Documents.” Yet the individuals on these lists cannot be specifically identified and verified as Cheraw Indians. In fact, these individuals cannot be identified as belonging to any tribe whatsoever. These are lists of people who self-identified or were identified by the census as “Indian.”

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?¹⁶

¹⁶ H.R. Rep. No. 103-290, 103rd Cong., 1st Sess. at 186-87 (1993).

Interior’s Office of Federal Acknowledgement Is the Proper Forum for Deciding Whether the Lumbee Should Be Federally Recognized

The Department of the Interior, through the Office of Federal Acknowledgement (OFA), has an established uniform administrative process with objective criteria that can make exactly the kind of substantive, merits-based determinations that the Congress is unequipped to make. The Obama administration undertook a multi-year effort to reform the OFA process, ultimately publishing a final rule that substantially lowered the standards for federal recognition. About the new final rule, Assistant Secretary for Indian Affairs Kevin Washburn stated:

This updated rule is the product of extraordinary input from tribal leaders, states, local governments and the public We have a responsibility to recognize those tribes that have maintained their identity and self-governance despite previous federal policies expressly aimed at destroying tribes. This new process remains rigorous, but it promotes timely decision-making through expedited processes and increases transparency by posting all publically available petition materials online so that stakeholders are well-informed at each stage of the process. Many of these improvements came from public comments by stakeholders and we are grateful for their guidance.¹⁷

To allow the Lumbees to circumvent that process would be to abandon the merits—merits with which the Lumbees themselves have shown significant problems in demonstrating—in favor of old-fashioned politics.

Mr. Chairman, members of the Resources Committee have noted the harm that would come to long-standing federally recognized tribes from legislation like this:

Bypassing the [administrative] process not only ignores the problem [with that process], but is unfair to all of the recognized tribes. There exists a formal government-to-government relationship between the recognized tribes and the United States. If Congress creates tribes at will, without meaningful uniform criteria or substantial corroborated evidence that the group is indeed a tribe, then we dilute and weaken that relationship.¹⁸

Moreover, on December 22, 2016, Solicitor of the Interior Hilary Tompkins issued M-Opinion 37040¹⁹, concluding that the Lumbees may access the OFA process.

¹⁷ Department of the Interior Announces Final Federal Recognition Process to Acknowledge Indian Tribes Initiative Reforms a Process Long Criticized as “Broken,” Increases Transparency in Important Review of Tribal Recognition Status, <https://www.doi.gov/pressreleases/department-interior-announces-final-federal-recognition-process-acknowledge-indian-tribes>.

¹⁸ *Id.* at 202.

¹⁹ Memorandum from Hilary C. Tompkins, Solicitor, Indian Affairs, to the Secretary of the Interior (Dec. 22, 2016) (“M-37040” or “2016 Solic. Mem.”). Ex. 2. On February 6, 2017, the Department suspended and temporarily withdrew four of the eight M-Opinions issued by the Solicitor from December 4, 2016, to January 18, 2017. The Lumbee opinion was not one of the four the Department suspended or withdrew. See <https://www.doi.gov/solicitor/opinions>.

Over the past four decades, the Department has vacillated in its interpretations of the Lumbee Act. Solicitor's Office memoranda in 1989 concluded that the Act barred the Department from acknowledging the Lumbee Indians as an Indian tribe through the Part 83 [OFA] process. Because I find that neither the text of the Lumbee Act nor its legislative history precludes the Lumbee Indians from petitioning for Federal acknowledgment under the Department's regulations, I conclude that they may avail themselves of the acknowledgment process in 25 C.F.R. Part 83. If their application is successful, they may then be eligible for the programs, services, and benefits available to Indians because of their status as Indians.²⁰

M-Opinion 37040 makes clear that the Solicitor takes no position on whether the Lumbees should be recognized on the merits.²¹

Harm to Existing Tribes and Waste of Taxpayer Money

The impact on appropriations to other Indian tribes would be unprecedented in the history of federal acknowledgment. The last time the CBO scored the cost of the Lumbee bill in 2011, the score was \$846 million over the 2012-2016 (five years) based on a Lumbee membership of "about 54,000 people." The Lumbee now claims a membership of more than 60,000. The 2019 HUD funding allocations say that the Lumbees have a membership of 62,610. Extrapolating from the 2011 number, based on the membership increase alone, the present cost would be about \$980 million over five years. The real cost to the BIA and IHS budgets would exceed \$1 billion.

Accordingly, this bill would have a huge, negative impact on the budgets of Bureau of Indian Affairs and the Indian Health Service and would decrease even further the 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 dive into support for this legislation for emotional or political reasons, particularly without being absolutely certain that this group constitutes an Indian tribe in accordance with the objective criteria at the Office of Federal Acknowledgement, which it cannot.

CONCLUSION

If this Committee and the Congress chose to pass this legislation, the consequences will be dramatic for existing federally recognized tribes.

First and foremost, politics will have won a decided victory over sound policy. The notion of "taking the politics out of federal recognition" will have suffered its most severe setback in history.

²⁰ 2016 Solic. Mem. at 19. The Eastern Band of Cherokee Indians takes no position on the correctness of the Solicitor's conclusion that the 1956 Lumbee Act does not preclude Lumbee individuals from eligibility for federal programs, services, and benefits available to Indians.

²¹ 2016 Solic. Mem. at 2.

Second, with federal acknowledgement comes the ability of a group to engage in serious activities associated with sovereign status, such as the ability to tax and enjoy certain tax advantages, the ability to exercise civil jurisdiction over non-Indians as well as Indians, and the right to engage in gaming. Enacting legislation like this only arms those who seek to erode sovereign rights with evidence that some of those with such rights were haphazardly afforded them. That is, the sovereign status of federally recognized tribes are currently under attack, with opponents arguing that tribes should be treated as little more than racial groups, devoid of treaty rights. 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.

Mr. Chairman, the Eastern Band of Cherokee Indians would welcome the Lumbees into the family of federally recognized tribes if they can successfully make it through the administrative process at the Department of the Interior. Absent their meeting the objective criteria at Interior, with complete vetting of their claimed tribal identity, membership lists, and other requirements, we believe that passing this legislation would be a serious mistake, with politics winning out over sound policy.