Statement of
Honorable Sean D. Reyes, Utah Attorney General
Before the U.S. House Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
December 8th, 2015
Concerning H. R. 3764
To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes.

Chairman Young, Ranking Member Ruiz and Members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Office of the Utah Attorney General's views regarding H. R. 3764, To provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes.

On behalf of the State of Utah, and at the request of Chairman Young, I, Utah Attorney General Sean D. Reyes, hereby testify regarding H.R. 3764 as follows:

First and foremost, I am proud to be American. But I am also proud of my Native Hawaiian heritage, its rich cultural traditions and its contributions to this country. I have a great desire to protect its people and unique characteristics so it may continue to bless this nation. Similarly, I am sensitive to the importance of tribal recognition as part of historic agreements between our government and Native American people and as an ongoing commitment by our nation to allow Native American people to protect their rich cultural, religious and indigenous beliefs and traditions. The question at issue is not "should potential tribes be recognized" but "who should make the final determination of recognition" when so many critical interests are at stake.

Some of those interests belong to the several and sovereign states of our nation. In addition to my role as our state's top legal and law enforcement official, I also speak on behalf of a number of my state attorney general colleagues. For certain states, H. R. 3764 would directly affect current potential recognition of Native American groups. These states have concerns regarding the increase in number of very small groups of Native Americans, sometimes as small as two or three families, seeking federal recognition through the current Department of Interior ("DOI") procedures as administered by its Bureau of Indian Affairs ("BIA"). The DOI, over a period of years, has become more liberal in granting tribal recognition, as evidenced by the July 1, 2015 BIA rule relaxing standards by revising the "Part 83" recognition regulations. Once these small groups are federally recognized they receive federal benefits and, of more concern, are not subject to local taxation, criminal laws, local zoning laws, etc. As such, tribal acknowledgement impacts fields and areas as diverse as U.S. government contracting (e.g., "Super 8(a) status" for Alaska Native Corporations), tribal contracting (e.g., Utah's Ute Tribal Employment Rights Ordinance or "UTERO") to issues related to roads, law enforcement, gaming, hunting, land and water rights.

In Utah, there are seven Native American Tribes[1], which are currently recognized federally. While none of these tribes would be directly affected by H.R. 3764 and, even if no further groups in Utah ever seek or are granted recognition, there are a number of collateral issues related to H. R. 3764 that are significant to my state and our country.

[1] Confederated Tribes of the Goshute, Navajo, Ute, Northwestern Band of Shoshone, Pauite Indian Tribe, Skull Valley Bank of Goshute, Ute Mountain Ute.

For example, within recent years we in Utah have had federal cases regarding zoning which are the types of issues this legislation could potentially impact. To cite just one matter from Utah, *Shivwitz Band of Paiute Indians* et al. *v. State of Utah* et al., 428 F.3d 966 (10th Cir. 2005) involved the named tribe's authority to buy and use property abutting St. George, Utah, incorporating it as part of its Indian Lands, and then leasing it to a billboard company. The billboard company then put up billboards that would have been non-conforming under St. George zoning laws had the land at issue remained under city jurisdiction, and unincorporated into the tribe's lands. While both the federal district court and the Tenth Circuit correctly concluded that lands held by tribes are properly exempt from state and local regulatory authority when tribes properly exercise their sovereign discretion, the case provides one example of why initial tribal designation authority must be deeply considered to properly balance political and policy interests of state, as well as local, and tribal sovereign entities.

While current law allows state and local participation in DOI and BIA decision-making processes (though curtailed after the recent BIA Rule), the power of tribal designation carries with it collateral consequences for state and local regulatory authority that can only be appropriately considered by this body. Congress, where the several states have direct representation to debate and decide such matters, rather than an Executive agency, where the several states do not, is the proper body to decide where the sovereignty of each state may be altered by the actions of the federal government. H.R. 3764 would provide a more thorough and comprehensive procedure for Native American groups and communities to obtain federal recognition, allowing critical DOI and BIA input, but also allowing this body, where the several states have ample and immediate representation, to properly consider and if necessary reasonably debate and discuss possible collateral consequences on state sovereignty due to federal recognition of new tribal entities.

Further, Congress is constitutionally the proper entity to maintain the appropriate balance of powers regarding these "political" questions. Article I, Section 8, Clause 3 of the Constitution vests Congress with exclusive authority to "regulate commerce…with the Indian Tribes." Combined with Congress's treaty making powers under the Constitution, the United States Supreme Court has acknowledged "plenary power" for Congress related to all Indian affairs through the "Indian Commerce Clause." Inherent in this delegation is the authority to recognize a tribe or to deny acknowledgement of the same.

In summary, many state and federal interests are impacted by "Acknowledgement" or recognition of tribal status. The DOI, through the BIA, should continue its important work of examining evidence and working with petitioners in the recognition process. But Congress is a more accountable body to the people of the several states than any executive agency and is thus more appropriately situated to make the final tribal recognition decisions. The clear language of the Constitution, buttressed by clear pronouncements of the Supreme Court, makes Congress the proper and exclusive body that should make final decisions on issues of tribal recognition.

This concludes my testimony. I am happy to answer questions concerning this bill.