

Statement by Rep. James P. Moran
on the
Thomasina E. Jordan Indian Tribes of Virginia
Federal Recognition Act (H.R. 1294)
before the
Senate Committee on Indian Affairs

September 25, 2008

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

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

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

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

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

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

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

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

With great hypocrisy, Virginia’s ruling elite pushed policies that culminated with the enactment of the Racial Integrity Act of 1924. This act directed state officials, and zealots like Walter Plecker, to destroy state and local courthouse records and reclassify in Orwellian fashion all non-whites as “colored.” It targeted Native Americans with a vengeance, denying Native Americans in Virginia their identity.

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

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

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

era.”

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

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

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

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

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

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

Thank you.