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In Support of the Lumbee Fairness Act (S.107)
Before the United States Senate Committee on Indian Affairs
November 5, 2025 (corrected)

Chairwoman Murkowski, Vice-Chairman Schatz, and members of the Committee, thank you for the opportunity to appear in support of S.107, the Lumbee Fairness Act. My name is Arlinda Locklear. I have been involved as an attorney for the Tribe in its effort to obtain federal recognition since March 1988. I am also an enrolled member of the Lumbee Tribe.¹

Let me start with explaining how I came to be the Tribe's attorney in this effort. This story illustrates the strength of the Lumbee community and the Lumbee people's insistence upon their independence as a self-governing tribe. Robeson County is the heart of the Lumbee community. Even though our community constitutes nearly 40% of the population of the county, including a number of practicing attorneys, our community had never had a Lumbee Superior Court Judge before 1988. So when the State created a new superior court judge position for the county, the Lumbee people were determined that one of our own should be elected to that position. At that time, a prominent member of the Tribe (and a good friend) named Julian Pierce

¹ In addition to work on behalf of my own Tribe, it has been my honor to represent other non-federally recognized tribes for decades in the worthy work for federal recognition (before the Congress as well as the Department of the Interior), including the Miami Nation of Indiana, the Brothertown Nation of Wisconsin, the Gay Head Tribe of Massachusetts, and the Tunica-Biloxi Tribe and United Houma Indian Nation of Louisiana. The recognition work has been a major part of my work throughout my career.

was Director of the Indian legal services office in the community. In that capacity, Mr. Pierce had overseen the research relating to and submission of a Lumbee petition for federal recognition under the administrative acknowledgment process in 1987. Mr. Pierce then resigned and ran for the newly created Superior Court judge position. To our great sadness, Mr. Pierce was murdered after the nomination process had closed but before the election. When the State of North Carolina refused to reopen the nomination process for that judgeship, the Lumbee people mobilized, resulting in Mr. Pierce's election to the judgeship even though he could not serve. The Lumbee people kept the pressure on an embarrassed State and, soon after the election, another new judgeship was created and a Lumbee Indian was appointed to the position. We have routinely elected Lumbees as judges in the county ever since.

With the loss of Mr. Pierce, I was honored to step into Mr. Pierce's shoes to continue the work on federal recognition. I speak to you today based on forty years of experience with the issue since. Lumbee history is a long and remarkable one, but I will focus on a few features of our history and experience that demonstrate the Tribe's unique claim to federal recognition and other circumstances that reflect the simple justice of the Tribe's pursuit of equal treatment as a self-governing native community.

Early Lumbee Efforts to Achieve Federal Recognition

The Lumbee Tribe began its effort to obtain federal recognition soon after formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state legislation

recognized the Tribe under the name Croatan Indians of Robeson County,² authorized the Tribe to establish separate schools for its children, provided a pro rata share of county school funds for the Tribe's schools, and authorized the Tribe to control hiring for the schools and eligibility of students to attend the schools.³ North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained State legislation authorizing the creation of an Indian "normal school", *i.e.*, a school dedicated to training Indian teachers for the Lumbee schools. North Carolina General Assembly 1887, chap, 254. But because the Indian normal school was badly underfunded, the Lumbee Tribe petitioned Congress in 1888 for Federal Indian education assistance. For the Committee members' information, the Tribe has on display a picture showing the Indian Normal School students around 1920.

The 1888 Lumbee petition to Congress was signed by fifty-four (54) tribal leaders, including one of Chairman Lowery's ancestors. The petition sought Federal assistance for the then-named Croatan Indians in general and funding for the Tribe's schools in particular. A copy of this petition is on display for the Committee members' information. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the State. Citing the federal policy of encouraging states to assume responsibility for educating Indian children and the shortage of funding, the Commissioner of Indian Affairs

² The Croatan name was offered up by Mr. McMillan, a member of the State legislature who considered himself an amateur historian. It was not a name sought by the Tribe.

³ The Tribe jealously defended its authority to control enrollment into its schools. In 1913, the State Attorney General opined that the Robeson County Board of Education could overrule enrollment decisions made by the Tribe. The Tribe refused to accept this limitation; it sought and obtained a special act from the North Carolina Legislature overturning the Attorney General's opinion and restoring tribal authority. North Carolina General Assembly 1919, chap. 211.

denied the request for funding in 1890. Shortly thereafter, the Tribe began its quest to receive federal recognition more directly through federal legislation.

In 1899, the first bill was introduced in Congress to appropriate funds to educate the Croatian Indian children. H.R.4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (H.R.4.19036, 61st Cong., 2d Sess.) and 1911 (S.3258, 62nd Cong., 1st Sess.) In 1913, the House of Representatives Committee on Indian Affairs held a hearing on S.3258, where the Senate sponsor of the bill reviewed the history of the Tribe and concluded that the Lumbees, still called Croatans, had “maintained their race integrity and their tribal characteristics.” Hearing before the Committee on Indian Affairs, House of Representatives, on S.3258, Feb. 14, 1913. In response to the same bill, the Department of the Interior dispatched C.F. Pierce, Supervisor of Indian Schools, to conduct an investigation of the Tribe. Pierce reviewed the Tribe’s history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance:

It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it would establish a precedent for the Catawbas of S.C., the Alabamas of Texas, the Tuscaroras of N.Y., as well as for other scattering tribes that are now cared for by the various states.

All the other tribes mentioned by Pierce have since been recognized by the United States.

In 1914, the Senate directed the Secretary of the Interior to investigate the condition and tribal rights of the Lumbee Indians and report thereon to Congress. S.Res.410, 63d Cong., 2d Sess. The Secretary assigned Special Indian Agent O.M. McPherson to conduct the

investigation. According to the Secretary's letter transmitting the McPherson Report to the President of the Senate, McPherson conducted "a careful investigation on the ground as well as extensive historical research." The report covered all aspects of the Tribe's history and condition, running 252 pages in length. Indians of North Carolina, 63rd Cong., 3d Sess., Doc.No. 677. McPherson's report again confirmed the tribal characteristics of the Lumbee Indians but Congress took no action on the McPherson report.

In 1924, yet another bill was introduced in Congress to recognize the Lumbee Indians now under the name of Cherokee Indians of Robeson County, mimicking a name that had recently been applied to the Tribe through State legislation. H.R.8083, 68th Cong., 1st Sess. This bill failed and in 1932 a very nearly identical bill was introduced in the Senate. S.4595, 72d Cong., 1st Sess. This bill failed as well.

In 1933, a federal bill was introduced that was nearly identical to the prior two bills, except that it directed that the previously designated Croatan Indians "shall hereafter be designated Cheraw Indians and shall be recognized and enrolled as such..." H.R.5365, 73d Cong., 1st Sess. In his statement at the hearing on the bill, the Secretary of the Interior attached an opinion of the eminent Dr. John Swanton, a specialist on southeastern Indians with the Smithsonian Institution Bureau of Ethnology, which concluded that the previously named Croatan Indians actually descended from Cheraw and other related Siouan speaking tribes. The Secretary recommended that the broader linguistic name of Siouan be used as the tribal designation for the Tribe, but also recommended that Congress include termination language because of the expense of providing Federal Indian services to the Tribe. Rep.No.1752, House of Representatives, 73d Cong., 2d Sess. The committee adopted the change proposed by the

Secretary and reported the bill out favorably, but the bill was not enacted. The following year, the Senate Committee on Indian Affairs took the same action on an identical bill in the Senate, S.1632, but there was no further action on the bill. S.Rep.204, 73d Cong., 2d Sess.

These numerous federal bills between 1899 and 1934 to recognize the Tribe under various name have a common and clear legislative purpose, *i.e.*, to recognize the Tribe on the same terms as the most recent State legislation recognizing the Tribe. The 1899 federal bill would have recognized the Tribe as Croatan, just as the State had done in 1885. The 1911 federal bill would have recognized the Tribe as the Indians of Robeson County, just as the State had done in a 1911 amendment to its law. North Carolina General Assembly 1911, chap. 215. The 1913 federal bill would have recognized the Tribe as Cherokee, just as the State had done in a 1913 amendment to its law. North Carolina General Assembly 1913, chap. 123. Indeed, a committee report on the 1913 federal bill explicitly acknowledged that the federal bill was intended to extend federal recognition on the same terms as the amended state law. Rep.No. 826, House of Representatives, 68th Cong., 1st Sess. Thus, the North Carolina Congressional delegation consistently followed the lead of North Carolina in its deliberations on the Tribe's status and clearly intended to recognize the Tribe in the various bills.

In 1934, Congress inaugurated a new policy for Indian Country with the enactment of the Indian Reorganization Act (IRA). Among other things, the IRA authorized half-blood Indians not then recognized to organize and adopt a tribal constitution, thereby becoming federally recognized. The Lumbee leadership wrote to the Commissioner of Indian Affairs, inquiring whether the IRA applied to the Lumbees. The inquiry was referred to the then Associate Solicitor Felix Cohen, who advised that the Lumbees could organize under the IRA if some

members of the Tribe were certified as one-half or more Indian blood. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, to Robeson County for that purpose. 209 Lumbees agreed to submit to Seltzer's examination. Out of those examined, Dr. Seltzer certified 22 members as one-half or more Indian blood and eligible to organize under the IRA. The science behind physical anthropology has since been thoroughly discredited and the Lumbee experience bears out the wholly unreliable nature of the alleged science. In several instances, for example, full siblings were examined by Dr. Seltzer but with differing outcomes - one sibling was designated as one half or more while the other sibling was not. This effort by the Lumbee Tribe also failed ultimately.⁴

While these legislative and administrative efforts failed to achieve the Tribe's goal of federal recognition, they nonetheless produced a remarkable and unique federal record documenting the Tribe and its community. As of a consequence of the half dozen bills introduced between 1899 and 1934 to recognize the Lumbee Tribe, four substantial reports were conducted by federal Indian agents into the Lumbee Tribe, its history, and community. All confirmed the tribal ancestry and distinct community with strong leadership of the Lumbee Tribe. But they also opposed the extension of federal Indian statutes and services to the Tribe because of federal policy to insist that states assume the responsibility for educating Indian children or

⁴ In the early 1970's, the survivors of the 22 certified half-bloods asked for the services to which they were entitled under the IRA. The Bureau of Indian Affairs (BIA) declined, interpreting the 1956 Lumbee Act as cutting off any rights that might arise under the IRA. Ultimately, the D.C. Court of Appeals rejected this interpretation of the 1956 Lumbee Act. *Maynor v. Morton*, 510 F.2d 1254 (D.C. Cir. 1975). The surviving half-bloods then received BIA housing assistance but the BIA declined to take land into trust for them, a necessary precondition to organizing under the IRA.

limited federal appropriations.

The 1956 Lumbee Act

Because of the mounting historical evidence compiled in Congress' deliberations on its recognition bills, including the McPherson report and the Swanton opinion, the Indians of Robeson County grew disgruntled with their designation under State law as Cherokees of Robeson County. Under pressure from the Tribe, the State of North Carolina conducted a referendum among the tribal members in 1952 on the tribal name. The choice was between adopting the name Lumbee⁵ or maintaining the State designation as Cherokees of Robeson County. The results were clear: 2,109 members chose to be known by their own name Lumbee and only 35 members chose maintain the State designation as Cherokee. To its credit, the State of North Carolina once again amended its law in 1953 to recognize the Tribe as Lumbee Indians of Robeson and adjoining counties. North Carolina General Assembly 1953, chap. 874.

As it had always done, once again the Tribe prevailed upon its congressional delegation to introduce the identical bill into Congress to recognize the Tribe on the same terms as the State. The Federal bill passed without amendment in the House of Representatives and was sent to the Senate. There, the Department of the Interior objected again based on its effort to avoid federal financial obligations:

We are therefore unable to recommend that the Congress take any action which *might ultimate result in the imposition of additional obligations on the Federal Government* or in placing additional persons of Indian blood under the jurisdiction

⁵ The name Lumbee had been informally used by the Tribe for decades by this time. The earliest recorded use of the name is in a 1926 article referring to the Tribe as such in the Raleigh News and Observer, a newspaper founded in 1865 with the widest distribution in the State.

of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition...if your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

(Emphasis added.) The Senate committee adopted the Secretary's recommendation so that when the bill was enacted into law, it contained classic termination language: "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 Indian shall be applicable to the Lumbee Indians." Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

The Impact of the 1956 Act - Confusion and Limbo

Since 1956, federal agencies and courts have construed the Lumbee Act in different ways. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the act, although not granted federal services. *American Indians: Facts and Future, Toward Economic Development for Native American Communities*, p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. Memorandum, April 10, 1970, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 Act left the Lumbees' status unchanged, *i.e.*, it neither recognized the Tribe nor terminated the Tribe's eligibility for services it might otherwise receive. The only court to construe the Act concluded that it designated the group as Lumbee Indians but did not take away individual rights that had

been bestowed by previous legislation such as the IRA. *Maynor v. Morton*, above.

The Congressional Research Service (CRS) thoroughly reviewed the history and various interpretations of the 1956 Lumbee Act in 1988. It did so in response to a request from the Senate Select Committee on Indian Affairs, which had H.R.1426 under consideration at the time, a bill to provide federal recognition to the Tribe. The CRS concluded as follows:

The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

Memorandum dated September 28, 1988, reprinted in S.Rep.No.100-579, 100th Cong., 2d Sess. Finally, the Solicitor's Office at the Department of the Interior has also taken varying views on the Act, concluding in 1989 that the Act precluded the Tribe from participating in the administrative acknowledgment process, but finding otherwise in 2016. M-37040, Reconsideration of the Lumbee Act of 1956, Dec. 22, 2016. Whatever its ambiguity and however it might be construed, the 1956 Lumbee Act is clearly "a step toward recognition," one that Congress took following repeated consideration of the Tribe, its history, and its community. Yet, Congress has not completed the process of recognition.

Congress imposed legislation like the 1956 Lumbee Act on only one other occasion. In 1968, Congress enacted legislation for the state recognized Tiwas of Texas, legislation that designated the Tiwas as Indian, transferred any federal responsibility for the tribe to the state, and included termination language. 82 Stat. 93. The Senate Committee specifically noted in its

report on the 1968 Tiwa Act that the bill was “modeled after the act of June 7, 1956 (70 Stat. 254), which relates to the Lumbee Indians of North Carolina.” S.Rep.No.1070, 99th Cong., 2d Sess. Because of this unique circumstance, Congress enacted legislation in 1987 extending full federal recognition to the Tiwas of Texas, recognized by Congress as the Ysleta del Sur Pueblo of Texas. Pub.L. 100-89, 101 Stat. 667. Like Congress corrected the historical injustice for the Tiwas in 1987, Congress should now correct the same injustice for the Lumbee Tribe.

Modern Lumbee Efforts to Obtain Federal Recognition Legislation

It became clear to the Lumbee over time that the 1956 Lumbee Act did not accomplish the Tribe’s long-standing goal of federal recognition.⁶ As a result, the Tribe resumed its efforts to achieve federal recognition. As noted above, the Tribe prepared and submitted a documented petition for federal acknowledgment under the administrative process in 1987. When the Solicitor’s Office opined in 1989 that the 1956 Lumbee Act precluded administrative action to clarify the Tribe’s status, the Tribe turned once again to federal legislation.⁷

Since 1988, the Lumbee Tribe’s Congressional delegation has introduced more than a

⁶ The final evidence of this failure came in the 1970's when the State of North Carolina was ordered by a federal court to dismantle its racially segregated schools. Lumbee parents thought their children were exempt from that federal court order but they were told otherwise by the federal judge. According to the judge, the Tribe was not federally recognized and its separate schools violated the Fourteenth Amendment to the US Constitution. As a result, the Tribe lost control over schools it had operated under state law since 1885.

⁷ The Tribe requested that the Department return the petition to the Tribe, in light of its ineligibility for the process. The Department declined to do so. Nonetheless, the Department has not proceeded to process the Lumbee petition.

dozen bills to recognize the Tribe.⁸ During this period, the bill passed the House of Representative *seven times* but failed in the Senate. Also during this period, multiple hearings were held on the issue in both the House and the Senate, resulting in more than a half dozen committee reports. Thus, Congress' modern day deliberations on the issue have expanded the already voluminous congressional record on the Lumbee Tribe's history and community. We know of no comparable Congressional record on any other tribe-specific federal legislation.

The Congressional Record on the Lumbee Tribe Shows High Evidence of Tribal Existence

The Supreme Court has defined an Indian tribe as follows: "By a 'tribe', we understand a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory..." *Montoya v. United States*, 180 U.S. 261, 266 (1901). The Court has also repeatedly acknowledged that Congress has authority to decide whether a group of Indians constitutes an Indian tribe, so long as the group is a "distinctly Indian community." *See United States v. Sandoval*, 231 U.S. 28, 46 (1913). Thus, there are three necessary components of tribal existence: first, people of Indian ancestry, second, who reside in sufficient proximity to constitute a community, and third, who

⁸ *See* H.R.5042, 100th Cong.; H.R.2335 101st Cong.; H.R.1426 (S.1036, Senate companion), 102^d Cong.; H.R.334, 103^d Cong.; H.R.898 (S.420, Senate companion), 108th Cong.; H.R.21 (S.660, Senate companion), 109th Cong.; H.R.65 (S.333, Senate companion), 110th Cong.; H.R.31 (S.1735, Senate companion), 111th Cong.; H.R.27 (S.1218, Senate companion), 112th Cong.; H.R.1803 (S.1132, Senate companion), 113th Cong.; H.R.184 (S.2285, Senate companion), 114th Cong.; H.R.2352 & 3650 (S.1047, Senate companion), 115th Cong.; H.R.1964 (S.1368, Senate companion), 116th Cong.; H.R.2758, 117th Cong.; H.R.1101 (S.521, Senate companion), 118th Cong.

are united under some form of leadership or government.⁹ The congressional record on the Lumbee Tribe shows that the Tribe exhibits all three components of an Indian tribe.

First, Congress has known since 1933 that the Lumbees descend from the Cheraw and related Siouan-speaking tribes. Dr. Swanton expressed this view in an opinion provided to Congress at a hearing on a Lumbee recognition bill at that time. Since then, other renowned anthropologists and historians with PhDs in the field have reached the same conclusion and so testified to Congress. These include: Dr. Jack Campisi (author of the Lumbee petition submitted in 1987), who testified in 1988 (as well as in multiple later hearings) in support of the Lumbee recognition bill; Dr. Ray Fogelson (deceased), editor of the Southeast Volume of the Smithsonian Handbook of North American Indians, who testified in 1988 in support of Lumbee recognition; Dr. William Sturtevant (deceased), general editor of the Smithsonian Handbook of North American Indians, who testified in 1988 in support of Lumbee recognition; and Dr. Fred Hoxie, Swanlund Professor of History at the University of Illinois emeritus and member of the founding Board of Directors, Smithsonian National Museum of the American Indian, who testified in 2019 and has submitted a statement again today in support of Lumbee recognition.¹⁰

In a committee report on a Lumbee recognition bill in 2007, the House Sub-Committee

⁹ These are also the essential components of a tribe in the administrative acknowledgment regulations. The three substantive mandatory criteria are descent from an historic tribe, the maintenance of a community, and the presence of political leadership of some type. 25 CFR Part 83, §§ 83.11(b), (c) & (e).

¹⁰ The Eastern Band of Cherokee commissioned a report on Lumbee ancestry by Ms. Jean Kelley, who has a masters degree from the University of Arizona. Ms. Kelley concluded that the Lumbee Tribe cannot prove a connection with a historic tribe. But she fails to address the contrary view of eminent professionals, doctorate-level professionals. She also ignores the historical record that corroborates these experts' views.

on Indian and Insular Affairs summarized the historical record on Lumbee ancestry, which corroborates these experts' views:

The evidence establishes that the [Lumbee] Tribe descends from the historic Cheraw and related Siouan-speaking tribes. Historically, the Cheraw were located on Drowning Creek in North Carolina. Drowning Creek was renamed the Lumber River by the State of North Carolina in 1809. The ancestors of the modern day Lumbee Tribe have been located around Drowning Creek/Lumber River ever since the first contract with Europeans in the early 1700's.

...

Congress' deliberations on the Tribe's history produced authoritative reports by the Department of the Interior. In 1914, Special Indian Agent O.M. McPherson, sent to investigate the history and condition of the tribe, concluded that the tribe was descended from the Cheraw Tribe. In 1934, the Department expressed to Congress, based upon a report by the eminent John R. Swanton of the Bureau of Ethnology, that the Lumbees descend from the Cheraw and related Siouan speaking tribes of coastal North Carolina.

H.R. 110-164, 110th Cong., 1st Sess., at 3-4.

Second, Dr. Campisi has testified to this Committee on the nature and strength of the Lumbee community. Dr. Campisi examined federal census records dating back to 1850 to establish that the Lumbee and their ancestors resided in close knit communities that were almost exclusively Lumbee. S.Hrg. 100-881 on S.2672, 100th Cong., 2d Sess., Aug. 12, 1988, at 63-64. Dr. Campisi updated his research for his testimony in 2019. After examining a statistical sample of enrolled members, Dr. Campisi concluded that as of that year approximately 60% of Lumbee members were married to other Lumbees. Hearing before the House Sub-Committee for Indigenous Peoples of the United States, on H.R.1964, Dec. 4, 2019. The Department of the Interior considers an in-marriage rate this high to be *conclusive proof* of community; in other words, no other proof is necessary according to the administrative process. 25 CFR §

83.11(b)(1)(I).¹¹

Third, the Lumbee Tribe has a long history of highly effective political leadership. As the discussion above regarding relations with the State of North Carolina demonstrates, the Tribe has always been able to mobilize in support of the community goals and independence and achieve those goals. Vine Deloria, Jr., testified before this Committee in 1988 and spoke directly about political authority in the Lumbee community:

If we wish to speak of the traditional Indian method of government, what distinguished Indians from others who constituted political entities, then we are basically speaking of loose alliances of extended family groups, capable of acting in concert with each other as the occasion demanded.

I stress this aspect of traditional life because, while I believe the Lumbees to have satisfactorily proven that they have maintain a continuous political existence, the committee should note, now and in the future, that formal tribal government is a creation of the Bureau of Indian Affairs and not an Indian characteristic. A traditional Indian community more closely resembles what we find in Robison (sic) County among the Lumbees, large extended families who exert social and political control over family members, and who see their family as part of an extended people.

S. Hrg. 100-881, on S.2672, to provide federal recognition of the Lumbee Tribe of North Carolina, at 93.¹²

¹¹ The Lumbees are also geographically concentrated in their traditional territory of Robeson and adjoining counties, North Carolina. Dr. Campisi testified at the same hearing that more than 50% of the enrolled tribal members live in exclusively or nearly exclusive Lumbee areas in their traditional territory. The Department considers this high level of geographic concentration to be conclusive proof of both community and political authority. 25 CFR § 83.11(b)(2)(I).

¹² As he noted in his testimony, Vine Deloria testified on the Lumbee bill “based on extensive and prolonged contact with numerous people of the [Lumbee] tribe during most of my adult life.” In addition, Deloria’s aunt Ella Deloria, a noted linguist, had worked in the Lumbee community in the 1940’s on a dictionary of Siouan languages spoken in that part of North Carolina. S.Hrg.Rep. at 89.

Make no mistake, the last 140 years of failed attempts by the Lumbee Tribe have been frustrating, and, frankly heart-breaking, for the Tribe. The only saving grace is that the protracted deliberations have resulted in an extraordinary record that speaks eloquently to Lumbee existence, identity, and persistence. This Committee can act favorably upon the Lumbee Fairness Act with full confidence that, in doing so, it recognizes a distinct and remarkable Indian community within the meaning of Supreme Court authority.

The Lumbee Enrollment Criteria

The Lumbee Tribe has long been known as the largest non-federally recognized tribe in the country. In 1977, the American Indian Policy Review Commission, Final Report, Chap. XI, Nonrecognized Tribes, put the enrollment then at 40,000. Because the Tribe was not historically recognized by the United States, there were no federal rolls of membership to which present members can be genealogically traced. But there are important records that identify historic members of the Tribe. These documents comprise what tribal law calls the source documents and from which applicants for enrollment must trace descent.

The most important of these is school records. Enrollment in Lumbee schools was historically the only service available exclusively to Lumbees and, as discussed above, the Tribe controlled enrollment in those schools. Initially, the state limited enrollment in the Indian schools to Indians, then called Croatan, “now living in Robeson County and their descendants.” North Carolina Assembly 1885, chap. 51. In 1889, the State amended its law to require proof of Indian ancestry to qualify for enrollment “to the fourth generation.” North Carolina General Assembly 1889, chap. 60. Each school had a committee to determine that an enrolling child met

this criteria. These so-called “blood committees” kept detailed records on their deliberations and those records are the most important of the Tribe’s source documents.

Other source documents include federal census records for the tribal territory (Robeson and adjoining counties in North Carolina) that identify Indians, church records,¹³ and historic lists of tribal members such as the petitioners signed by tribal leaders and submitted to the State and Federal governments. It is every applicant’s responsibility to prove a genealogical connection to an individual on these source documents by birth or death certificates and similar vital records. The roll, including these supporting documents, are now digitized.¹⁴

Descent from a source document is only the first step to qualify for enrollment in the Lumbee Tribe. The applicant must also demonstrate that she or he has maintained tribal contact, either historic (such as attendance at an Indian school or membership in an Indian church) or present contact (such as visitation or knowledge of the community). For most new applicants, tribal contact is determined in an interview conducted by the Tribal Enrollment Office. In addition, enrolled members under the age of 55 must update their enrollment every seven years to maintain eligibility to vote in tribal elections and other tribal rights. Because of this requirement of tribal contact, the Tribe believes its enrollment process not only has integrity but also reflects

¹³ The importance of the all-Indian churches in the Lumbee community cannot be overstated. In 2019, Dr. Campisi estimated there were more than 150 Indian churches in Lumbee territory, with an all Indian congregation and in nearly every case an Indian minister. Dec. 4, 2019, Statement on H.R.1964. In fact, there are so many Lumbee churches that they have been organized in their own separate conferences for more than 100 years. Like the schools, these tribal institutions kept detailed records on their membership.

¹⁴ Because the roll and supporting documents have been digitized, the Tribe is confident that the Secretary can verify the accuracy of the roll within two years as required by section 5 of the Lumbee Fairness Act, S.107.

the historic reality of a strong community with close connections among its members. There are now 62,000 enrolled members in the Tribe.

Historically, the large number of enrolled Lumbee members has been used against the Tribe by the Department of the Interior. Since 1890, the Department has repeatedly complained about the size of the Tribe and the associated cost of providing services to tribal members. But this cannot be accepted as a principled basis for failure to recognize the Tribe. Indeed, it means that the injustice done to an Indian community is all the greater because of the large number of Indian people harmed by Federal neglect.

Neither is fear of impacting other tribes' service budgets a principled, or even factually accurate, basis for reluctance to recognize a clearly legitimate Lumbee Tribe. The budget impact is not as large as the usual per capita calculation of adding new members to the Federal Indian service population might suggest. Because the Lumbee Tribe is state recognized, it already receives Indian services from many federal agencies, such as Housing and Urban Development, Department of Education, and Department of Energy. These services should be excluded from any calculation of budget impact.¹⁵ The new fiscal impact would be limited to the BIA, Department of the Interior, and Indian Health Service (IHS), Department of Health and Human Services. The 2022 CBO estimate placed those costs, once fully implemented, at \$43 million per annum and \$80 million per annum, respectively. Those two agencies have a process that extends full services to members of newly recognized or restored tribes only when Congress appropriates

¹⁵ The most recent CBO cost estimate of Lumbee recognition was prepared in 2022. It acknowledged that the budget impact would be less than one might expect because the Tribe currently receives Federal Indian services from these agencies.

money for that purpose.¹⁶ In addition, out of the 574 federally recognized tribes, 567 of them receive their BIA and IHS funding through either a self-determination contract or a self-governance compact, and the Secretary is precluded from reducing the amount of funding in both cases.¹⁷ 25 CFR § 900.19 (self-determination contracts), and 25 CFR §§ 1000.501, 1000.671 (self-governing compacts), mandating that the Secretary provide the full funding contracted for with those tribes. As a result, federally recognized tribes are protected from any diminution of their services from bringing Lumbee tribal members on board for federal services.

Simply stated, the large number of Indians who are enrolled with the Lumbee Tribe and excluded from Federal Indian services makes it all more urgent that Congress get on with the business of correcting this long-standing injustice by extending full federal recognition to the Lumbee Tribe.

Conclusion

In 1935, BIA Commissioner Collier sent Superintendent Fred Baker of the Sisseton Agency to visit the Lumbee community as part of deliberations on application of the IRA to the Tribe. Superintendent Baker reported that he met with approximately 4,000 members of the

¹⁶ In the case of the BIA, it already has a line item in each year's budget for newly recognized tribes. Those tribes are allocated a pro rata share of the new tribes appropriation; if the need exceeds the appropriation, then the need goes unmet. Newly recognized tribes can receive new tribes fund for three fiscal years, during which time the tribe negotiates its own budget that is included in the Administration's next budget request. Once that budget is appropriated, that tribe's members receives the funded services. In the case of the IHS, that agency's manual explicitly provides that newly recognized or restored tribes receive services only when Congress appropriates funding for that budget.

¹⁷ Staff Report, 2024 Oversight Hearing, House Committee on Natural Resources. <http://www.HHRG-118-1124-20240306-SD002.pdf>.

community and that they strongly supported the plan to acquire land for and organize the Tribe.

Superintendent Baker observed, “*It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them.*” It did not happen sooner.

It is now much later and time for government action.