

## TESTIMONY OF NEAL McCALEB

RE: S. 297

April 21,2004

Mr. Chairman, I want to thank you and the members of this committee for providing me with this opportunity to testify on the "Federal Acknowledgement Process" for the recognition of Indian Tribes.

During the time I served as the Assistant Secretary of Indian Affairs I had the occasion to render "Determinations" on the petitions of several tribal applicants for recognition as Tribal governments. During this process I was impressed by three circumstances. These were:

1. The length of time and level of research required to ascertain the compliance of the petitioner with the criteria established for "Recognition".
2. The almost exclusive reliance of the Assistant Secretary on the findings and conclusions reached by the professional staff of the BIA's "Board of Acknowledgement and Research".
3. The extent and frequency of requests to the BIA for copies of all research, information and documentation submitted or accumulated by the BIA pursuant to a petition for recognition under the "Freedom of Information Act".

I believe that the above factors operate to marginalize the credibility and timeliness of the Federal Recognition Process as it now exists.

The provisions of this Bill will operate to improve these circumstances. The required scheduling provisions of Section 5 should help create the time discipline and allocation of resources to reduce delay result in timely determinations.

One of the most intractable problems associated with the timely determination is the lack of adequate professional resources within the BIA to provide the extensive and scholarly research and documentation necessary for credible determination. The "Additional Resources" provided by the "Independent Review and Advisory Board" in Section 6 should aid not only in expediting the process but more importantly provide the Assistant Secretary with a peer review or "second opinion" on controversial matters of opinion and interpretation. While I believe the technical and professional staff of the BAR is highly qualified there is the perception that their opinions and perhaps predisposition resulting from other

research may influence their findings. The introduction of a peer review will enhance the credibility of the final determination.

The creation and funding of "Pilot Project" provided for in Section 6 can help with the timeliness issue and demonstrate the effectiveness of outsourcing research functions to respond to the backlog of petitions now pending before the BIA.

I observed during my tenure that there was a substantial diversion of BAR staff time in responding to the extensive and repetitious requests for all manner of research documentation and administrative materials. These requests for information were almost always mandatory under the "Freedom of information Act" and took precedence over the productive work of the staff on the petitions. The cumulative effect of these repetitious FOIA requests was to delay the final determination and diffuse the focus of the technical and professional staff.

The provisions of Section 7 will certainly operate to make more effective use of limited staff time and resources and operate to expedite the completion of the petition evaluation.

In addition to my comments on the contents of this Bill I would also offer my suggestion that this legislation contain a provision for an end to future petitions for recognition after some reasonable period of time to provide ample notice to any potential applicant considering a petition for recognition. The BIA has spent more than a quarter of a century receiving and researching petitions for recognition from groups alleging their tribal governmental status. There is little doubt in my mind that all indigenous peoples of this nation who can legitimately claim Tribal status under the criteria established for Federal recognition are now aware of the acknowledgement process and the consequences of recognition or lack of it. To continue indefinitely with receiving and researching new petitions will only further diminish the effectiveness of the limited congressional appropriations in the discharge of the Federal trust responsibility.

Thank you for the privilege of making this statement. I will be happy to try and answer any questions you may have of me.