

PREPARED TESTIMONY OF
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SCHAGHTICOKE TRIBAL NATION
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON THE FEDERAL RECOGNITION PROCESS
MAY 11, 2005

Chairman McCain, Vice Chairman Dorgan and Members of the Senate Committee on Indian Affairs, I am pleased to appear before you today on behalf of the Schaghticoke Tribal Nation. With me today in the hearing room are several members of the Schaghticoke Tribal Nation. I would like to introduce them at this time and ask them to stand to be recognized by the Committee.

The Schaghticoke Tribal Nation is the most recent Tribe to be recognized through the Federal acknowledgement process at the Bureau of Indian Affairs, having received our recognition on January 29, 2004. This was a glorious day for the Schaghticoke people because it was 23 years after we first filed our letter of intent in 1981 and continued the long, arduous and expensive process of documenting our Tribe's history. This documentation was necessary in order to satisfy the seven criteria that the BIA uses to determine whether an Indian group should be recognized by the United States.

The Tribe was successful in its effort in part because the Schaghticoke Tribal Nation has been recognized by the State of Connecticut since the State was formed. It is uncontested that we were there long before the State joined the Union. Our Reservation – a rocky hillside of 400 acres – was set aside for us by the Colony of Connecticut in 1736 and was the last of our traditional lands that had not been made available to white settlers. We have lived ever since on or near that Reservation and have used the site for our ceremonies and other tribal activities.

Tribal History: The Schaghticoke Tribal Nation was documented as a distinct Indian entity in Connecticut's Housatonic Watershed beginning in the early 17th Century. Our first recorded leader, or Sachem, Gideon Mauwee, was born about 1687 and died in 1760. Well into the 19th Century the Tribe followed the tradition of seasonal rounds of group movement with a winter-spring village, a summer village, and small camps for hunting, fishing, gathering, tin crafting, and collection of basket materials.

Tribal members sustained themselves by hunting, farming, fishing and barter of baskets, brooms, tin and other cottage industry products. In the 1740s, the Moravian Brethren began

visiting the Schaghticoke with the objective of converting the Indians to Christianity. There was a mission church and a school built on the Tribe's Reservation. In the 1770s, the Moravians were forced from the area by the English. Records kept by the Moravians supplied the initial basis of the Tribe's genealogy. The State of Connecticut separately maintained genealogy information on the Tribe's members throughout the first half of the 20th Century and used this information to determine members' rights to residency on the Reservation.

Prior to and during the mission period, the Tribe felt increasing pressure from non-Indian settlers, and members were forced to live on a much smaller land base. A long line of Colony and State overseers for the Tribe were appointed by the courts and that process continued unbroken from 1771 to 1921. After 1921, the State began appointing officials from the Parks and Forests Commission, the Welfare Department and, beginning in 1973, the Department of Environmental Protection, as the Tribe's overseers. The overseers were supposed to help the Tribe with management of its lands and resources but they often used their positions to help themselves to land and other resources. Under these overseers, the Tribe lost almost all usable acres of its original 1736 Reservation. Tribal lands were sold and those funds were applied to tribal health and welfare needs and to overseer salaries. The Ancestors of today's tribal members are those who appear on the overseers' account books and ledgers.

Today, the Schaghticoke have just over 300 members. The Reservation of 400 acres in Kent, Connecticut, is the historical and spiritual center for the Tribe. The Reservation is mountainous and rocky with only a small strip of flat land located on a flood plain. Today most tribal members live within 60 miles of the Reservation, primarily in Fairfield, New Haven and Litchfield counties in Connecticut and in nearby towns in New York State.

It became clear to the Tribe in the 1970s that in order to protect our land from further encroachment and to insure that our culture and tribal identity are preserved for our children, our grandchildren and indeed, for all future generations of Schaghticoke Indian people, we needed to have a government-to-government relationship with the Federal government. Tribal members began a serious volunteer effort in the 1970s that continues today to collect and organize material related to the Tribe's history. We thought that if we were recognized we would be safe against the threat of termination that took over Federal Indian policy in the 1950s. That policy was first rejected by President Nixon in 1970 and soundly repudiated by the Congress throughout the 1970s beginning with the restoration of the Menominee Tribe, the first of the terminated Tribes to be restored. Congress has now restored all of the Tribes that were terminated in the 1950s.

It is ironic to us that we are the first Tribe since the 1950s to have a bill introduced to terminate our recognition. Rep. Nancy Johnson, our Representative in the US Congress, recently introduced a bill to terminate the recognition that took nearly 25 years to finally achieve. This bill was introduced despite the fact that the State already brought suit against the United States to overturn our Tribe's recognition; that suit is currently pending in the Interior Board of Indian Appeals. The State of Connecticut should have supported the Schaghticoke Tribal Nation in the courts and in the Congress instead of attempting a reversal. The Schaghticoke Tribal Nation has successfully fulfilled the seven required criteria which allows us to have a government-to-government relationship with the United States, just as we have had one with the State for hundreds of years.

Recognition and Gaming: The Tribe is mystified by the animosity on the part of many in our State where we have been recognized since before its founding. Our guess, however, is that gaming is the culprit. As the Committee knows, two of the most successful Indian gaming casinos in the United States are located in eastern Connecticut, the Mohegan Sun and Foxwoods. Both casinos contribute significant revenues to Connecticut in return for their exclusive right to operate casino-style gaming in the State. We suspect that certain public officials simply do not want gaming in the western part of the State where the Schaghticoke live. But as we all know, gaming is not the same as recognition. Recognition will last far beyond the life of any gaming operation.

When we filed our letter of intent to petition for recognition in 1981, the idea of gaming was not even on our minds. Congress enacted the Indian Gaming Regulatory Act in 1988, seven years after our letter was filed with the BIA. Like the Eastern Pequot and the Mohegan Tribe before it, we were forced to consider seeking financial assistance when it became clear that the Tribe's limited financial and human resources were not sufficient to undertake the work necessary to prove that the Tribe meets the BIA's seven mandatory criteria. This was a very critical point in our journey to Federal recognition. It took years for our members to accept the Tribe's need to seek outside help. We sought out our backers; they did not come to us.

Our evidence is exhaustive. Our petition includes over 30,000 pages of historical documents (the Tribe had to prove its existence beginning with its first contact with Europeans in the late 1600s). There are genealogical documents, birth, marriage, death records, state overseer records, state welfare records, colonial and state legislature documents, Connecticut court records, newspaper clippings, books, articles, police records, church records, diaries, meeting notes, anthropological studies and school records. Our petition was exhaustively and soundly researched and it demonstrates beyond doubt our right to Federal recognition.

To those who contend that the Tribe's affiliation with a developer is "unsavory" or somehow negates the content and substance of our petition, I say "ridiculous." Unless and until the United States changes the recognition criteria to require a more reasonable survey of tribal history, or until it provides the funds needed for the exhaustive research and analysis that the BIA currently requires, our guess is that very few groups of Indians will be able to prove their tribal existence. The loss of their histories and cultures will be one more wound all of America will suffer at the expense of Indian people.

Unfortunately, we believe those who speak for the State of Connecticut are in full denial about our recognition. They initially claimed that because the Schaghticoke Tribal Nation received a negative Proposed Finding, then the Final Determination would also have to be negative. This two-step process was constructed to allow petitioners to provide information if needed after a Proposed Finding to remedy perceived gaps or shortcomings. We are not the first nor will we be the last Tribe to remedy an initial negative Proposed Finding.

The Tribe was disappointed to receive the negative Proposed Finding but we were not surprised nor were we daunted in our determination to move forward. We produced hundreds of additional documents and exhibits, and substantial analytical reports to fill the gaps noted by the

BIA in the negative Proposed Finding. When we received our positive Final Determination the Tribe's initial euphoria over the BIA decision was quickly flattened by the continuing barrage of negative comments and actions by Connecticut's elected officials at all levels of government – local, state and Federal.

State Actions: Immediately after the BIA granted our petition for recognition, the State began a round of accusations about “improper influence” – presumably by the Tribe and its backers – that has only been matched by the *actual* attempts of the accusers themselves to improperly influence the process. State officials advanced the argument that corruption and undue influence must have been present in order for the BIA to issue a positive Final Determination. **[Attachment A]** In response to the allegations, the Inspector General of the U.S. Department of the Interior launched an investigation. The results are contained in an IG Report that gave the process a clean bill of health. **[Attachment B]** State officials immediately labeled the Report a whitewash. **[Attachment C]** Neither the Governor, nor the Attorney General, nor any Member of Congress has provided one shred of evidence to corroborate their assertions of corruption.

Ninety days after our recognition, in early May 2004, Connecticut sued the United States to overturn the decision. The litigation is still pending before the Interior Board of Indian Appeals. We have been amazed at the efforts by these officials over the past year to attempt to directly influence the administrative law judge in the case, **[Attachment D]** as well as their direct appeals to President George W. Bush and Secretary of the Interior Gale A. Norton to intercede. **[Attachment E]**

It is interesting to note that Connecticut is the first and only State to ever challenge the recognition by the United States of any Indian Tribe. Schaghticoke is actually the second Tribe to achieve this dubious honor. The State earlier brought suit to overturn the decision to recognize the Eastern Pequot Tribe. That suit is also pending at the IBIA.

State and local officials have asked Members of the State's Congressional delegation to intercede to overturn our recognition. In response, three Members of the United States House of Representatives from Connecticut recently introduced a bill to terminate the recognition of our Tribe. To our knowledge, this is the first bill since the 1950s intended to terminate a Federally-recognized Indian Tribe.

The townspeople of Kent, where the Schaghticoke Tribal Nation is located, have formed a task force Town Action to Save Kent (TASK), which in turn has hired a well-known national DC lobby group, Barbour, Griffith and Rogers, for the sole purpose of influencing the Congress and the BIA to overturn our recognition status. There are several more such groups throughout Connecticut that are actively working against the United States' decision in our case.

The State's antipathy to the Schaghticoke Tribal Nation is bi-partisan and permeates all levels of government -- Federal, state and local. In fact, however, officials at all levels of government entered into an eight-month negotiation under the direction of a Federal court judge that caused them to enter into a stipulated agreement about how the Tribe's expedited

recognition process would be handled. A full summary of the legal history relating to the recognition of the Tribe is attached. **[Attachment F]**

Tribal Response to State Actions: This barrage of influence-mongering has all taken place during the pending litigation against the Department of the Interior by the State of Connecticut in challenging the BIA's decision to grant Federal recognition to the Schaghticoke Tribal Nation. The Tribe has remained, for the most part, silent in the face of the constant harangue that has been made known through numerous and continuous press releases by the Governor, the Attorney General and Members of Congress.

Recently, I participated in a forum hosted by the Connecticut State Historical Society to air the issues about the recognition process and the Schaghticoke Tribal Nation. I think the audience found it very enlightening. We are attaching a DVD of that meeting **[Attachment G]**. With me on the panel were Attorney General Richard Blumenthal, Nell Jessup Newton, Dean of the University of Connecticut Law School, and Dr. Nicholas Bellantoni, the State's Archeologist. As you know, a transcript would be very costly to produce. However, I have attached some newspaper articles that provided coverage of the event. **[Attachments H]**

Need for Legislative Reform of the Recognition Process: In closing, I would like to thank the Chairman and the entire Committee on Indian Affairs for holding this hearing to explore the BIA's process for recognition of American Indian Tribes. If this Nation is going to live up to its full commitment to Indian people and to help correct some of the historic wrongs done to the Nation's first citizens, this badly-broken process needs to be reformed. While it is possible for a group to "make it through" the process, it is very, very expensive and much, much too long.

From its inception, the BIA's acknowledgment process has been marked by delay. Since 1978, the BIA has resolved 37 petitions (*See: Summary of Acknowledgment Cases, February 4, 2005, published by the BIA*). Another 20 have been resolved "by other means" – Congressional legislation, withdrawal, merger, etc. This average of 37 resolutions is slightly less than 1.3 petitions per year. When the regulations were published in 1978 there were 40 petitioners. Since then, another 262 groups have either filed a letter of intent to petition or have actually submitted a documented petition. According to the BIA, 245 petitioners are still awaiting BIA action. Unless the process is improved, it is evident to all that it will take many many decades to process these remaining petitions.

The GAO investigated the process and stressed that more resources are critically needed. In response to the GAO finding, the BIA's Assistant Secretary Neil McCaleb made a commitment to allocate additional resources from the BIA to the process to make it viable. Until last year, the BIA was receiving about \$900,000 per year for this process. We understand that may have increased somewhat but not nearly enough to make a difference.

Congress needs to provide much more funding if this process is going to continue to be used for recognition purposes. Similarly, if Congress wants to avoid the need for petitioning groups to seek out gaming developers, it will need to fill the void with adequate resources to get the work done. I testified at length at a hearing before this Committee on May 24, 2000 and said

much the same thing. I am attaching that testimony to this statement and refer readers to pages 3-5. I stand by those comments today but you will note the situation is worse now than it was even 5 years ago. [**Attachment I**]

We would be happy to contribute our knowledge and experience about the process to the Committee to assist in drafting appropriate legislation.

Thank you again for the opportunity to present the views of the Schaghticoke Tribal Nation. . I ask that this statement and all of the attachments by included in the Committee hearing record.

I look forward to any questions you may have at this time.

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