



TESTIMONY

of

JAMES T. MARTIN

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

Concerning

S. 420 "Lumbee Acknowledgement Act of 2003"

SEPTEMBER 17, 2003

Chairman Campbell and distinguished members of the Senate Committee, on behalf of the United South and Eastern Tribes, Inc. (USET) I thank you for allowing me to provide testimony regarding S. 420 "Lumbee Acknowledgement Act of 2003".

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama and Executive Director of USET, an inter-tribal organization consisting of twenty-four federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States.

The primary function of USET is to provide a forum for the exchange of information and ideas among its member Tribes, the Federal Government, and other entities. USET appreciates the opportunity to provide testimony expounding on concerns regarding the attempts of the Lumbees of North Carolina to obtain federal recognition through legislation and not through the formal acknowledgment process administered by the U.S. Department of the Interior.

USET acknowledges that the federal recognition of Indian Tribes is a formal act, creating a perpetual government-to-government relationship between Tribes and the United States, that acknowledges the sovereign status of Tribes. Federal recognition ensures Tribes the dignity they deserve and equal opportunities that fellow Tribes enjoy. Federal recognition is a complex process, important to the sovereign and cultural sustainability of Tribes, in that federal recognition also creates an official trustee relationship and fiduciary responsibilities on the part of the United States. USET affirms that federal recognition mandates an obligation by the federal government to protect and preserve the inherent sovereign rights of Tribes.

Federal recognition enables Tribes to gain access to vital resources needed to break the yoke of unemployment, low education levels, substandard housing, and poverty, which have historically plagued our people.

Federal recognition also shields Tribes from undue federal and state encroachments. Without federal recognition, Tribes have experienced great difficulty sustaining themselves as independent sovereign and cultural entities.

Federal recognition creates the trust relationship that identifies the federal government's fiduciary responsibility to manage and protect Indian lands, natural resources, and trust assets. The member Tribes of USET realize the affirmative advantages of proper federal recognition.

Furthermore, Federally recognized tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction over their tribal members and civil jurisdiction over all persons, Indian and non-Indian, within their territory. Federally recognized tribes have the authority to engage in economic development activity with certain jurisdictional and tax advantages.

We recognize that Congress has the power to extend recognition to certain groups, but in its infinite wisdom Congress has considered the federal recognition process a complex and tedious one, not to be entered into lightly. Congress therefore has deferred most federal acknowledgement determinations to the U.S. Department of the Interior, which has established a set of regulations standardizing the federal recognition process and creating an administrative procedure to determine whether particular Indian groups qualify as federally recognized Indian Tribes. The BAR procedures were the result of a two-year study of the Congressionally established American Indian Policy Review Commission and the requests of Tribes across the country calling for standardized criteria in determining the future relationships of tribes with the

United States. The BAR, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it is an Indian tribe that has existed since historical times as a distinct political entity. This procedure was established in 1978 and the process was streamlined 1994. The Bureau of Indian Affairs (BIA) maintains authority to oversee the recognition procedure and has set up a Federal Acknowledgment Process (FAP). The Lumbees are seeking immediate recognition without going through the BIA FAP process and meeting BIA/Branch of Acknowledgment Research (BAR) guidelines, thus circumventing an established system.

Seven criteria outlined in the Mandatory Criteria for Federal Acknowledgment, 25 C.F.R. sections 83.7 (a)-(g) were established through a formal notice and comment process with input from the tribes and other interested persons. The criteria are: (a) continuous identification since 1900 as American Indian; (b) existence as a distinct community since historical times; (c) maintenance of autonomous Tribal political influence/authority over members; (d) furnishing of a copy of the Tribe's governing document; (e) furnishing a list of all known members and show they descend from a single Tribe; (f) proof that members don't belong to any other American Indian Tribes; and (g) proof that the Tribe was not the subject of congressional termination legislation. These are complicated tasks to accomplish and require years of work by expert historians, genealogists, attorneys, professors, tribal members, and a host of others, but the

thorough process of gathering information and scrutiny of that information provides greater credibility to those Tribes that gain recognition.

USET member Tribes believe that the formal act of recognition, even though complex, is an essential act for Tribes to establish a productive, meaningful, and above all, creditable trust relationship with the United States government and other tribal governments. USET believes it is essential that the United States affirm the existence of Tribes as distinct sovereigns within the established system.

USET has a long-standing public tradition of supporting any Indian group seeking to go through the federal acknowledgement process. This position is reiterated in USET Resolution No. 93-15LA, *Restating Position on Lumbee Recognition*, duly passed at the Annual Board meeting on December 8, 1993 (attached). This resolution expressly rejected the concept of legislative recognition of Indian groups and favored the participation in the FAP by the Lumbees of North Carolina on an equal basis with other petitioning groups. It is not the intent of USET to encourage the denial of recognition of any Tribe, but it is our intent to demand that the FAP process and BAR guidelines for federal recognition be administered equally for all groups seeking federal recognition and that groups not be allowed to bypass the process. While we recognize that an interior Solicitor's opinion states that the Lumbees cannot access the BAR because of federal legislation, USET believes the appropriate remedy is for Congress to clear this barrier through legislation that would allow the Lumbees to access the

administrative process. A bi-partisan bill that would accomplish this has been introduced on the House side.

Additionally, federal legislative acknowledgement of a group gives unfair preferential treatment to that group over all other groups who are in the BAR process and patiently waiting for determination. Moreover, providing federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of according a group federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgment without serious technical review. Thus, Congress should take the politics out of federal acknowledgement and allow the expert agency to do its job.

As I conclude my testimony, I thank the Committee for the opportunity to provide comments and restate the USET position on the request for federal recognition by the Lumbees of North Carolina.

Again, I thank you for the honor of appearing before you to discuss this significant issue. I will be happy to answer questions at this time.