

Calendar No. 491

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 112-201

EXTENDING FEDERAL RECOGNITION TO THE CHICKAHOMINY INDIAN TRIBE, THE CHICKAHOMINY INDIAN TRIBE-EASTERN DIVISION, THE UPPER MATTAPONI TRIBE, THE RAPPAHANNOCK TRIBE, INC., THE MONACAN INDIAN NATION, AND THE NANSEMOND INDIAN TRIBE

AUGUST 2, 2012.—Ordered to be printed

Mr. AKAKA, from the Committee on Indian Affairs,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 379]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 379) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The purpose of S. 379 is to provide Federal recognition to six tribes in the State of Virginia—the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, and make applicable to the tribal groups and their members all laws that are generally applicable to American Indians and Federally-recognized Indian tribes.

Need for legislation

Although there is a Federal regulatory process by which an Indian group may obtain Federal recognition (described below), the ability of a tribal group to meet the regulatory requirements is

highly dependent upon the availability of documentary evidence and records. The six Virginia tribal groups proposed for recognition in S. 379 have suggested that the unique history of the State of Virginia and its relations with these groups prevents them from being able to meet the level of documentary evidence required by the Department of the Interior.

Many of the courthouses that housed records and documents related to these tribal groups burned during the Civil War.¹ Thus, records up to the late 1800's are difficult to find for these groups. Additionally, in 1924, the State of Virginia passed the Racial Integrity Law, thereby requiring all segments of the population to be registered at birth in one of two categories: "white" or "colored." The "colored" category was mandated for all non-white persons regardless of race or ethnicity. Officials from the State's Bureau of Vital Statistics interpreted the law as allowing them to go back and change a person's birth certificate if they believed that there was evidence that the person was not fully white.

The primary target of the Racial Integrity Law was the African American community.² However, proponents of the agenda heralded by the Eugenics Movement saw the Virginia Indian community as a threat. This was because the Racial Integrity Law allowed persons of white and Virginia Indian ancestry, as long as it was not more than 1/16 of Indian blood quantum, to be classified as "white."³ Supporters of the law (including Dr. Walter Plecker, the Registrar for Virginia's Bureau of Vital Statistics), saw the exception in the law for Indians as an opportunity for persons of mixed heritage of African American and Native American ancestry to eventually move out of the category of "colored" and into the category of "white." Thus, officials from the State's Bureau of Vital Statistics actively sought to denigrate and deny persons of Virginia Indian descent the right to identify themselves as "Indians" or "white" and forced them to be declared "colored."⁴

The Racial Integrity Law remained in effect until it was declared unconstitutional by the United States Supreme Court in 1967 in the *Loving v. Virginia* case (388 U.S. 1). In 1997, Virginia Governor George Allen signed into law a bill allowing Virginia Indians to correct their birth records. However, the six tribes contend that the existence of the law for several decades makes it unlikely that adequate documentation exists to meet the Department's current interpretation of the Federal regulations governing acknowledgment of Indian groups.

Granting Federal recognition to the six Virginia groups has had strong support from the State of Virginia. During the last Congress, the Committee received a letter in support of S. 1178, an identical bill to S. 379, signed by then Virginia Governor, Timothy M. Kaine, and six of the previous State Governors.⁵ In 1999, both chambers of Virginia's General Assembly agreed to HJ 754 urging

¹ Rountree, Helen C., Ph.D., A Brief History of the Six Indian Tribes Requesting Federal Acknowledgment.

² Testimony of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, Coordinator, before the United States Committee on Indian Affairs, October 9, 2002.

³ Section 5 of 1924 Racial Integrity Act.

⁴ Testimony of Danielle Moretti-Langholtz, Ph.D., American Indian Resource Center, Coordinator, before the United States Committee on Indian Affairs, October 9, 2002.

⁵ Governor Timothy M. Kaine also sent the Committee a letter on August 4, 2009 indicating that the State tax policy experts concluded that passage of S. 1178 would have a negligible, if any, impact on the Commonwealth.

Congress to grant Federal recognition to the Virginia tribes. In February 2007, both chambers of Virginia's General Assembly agreed to S.J. 332, a resolution acknowledging the involuntary servitude of Africans and the exploitation of Native Americans and calling for reconciliation among all Virginians. During the 109th Congress, former Governor George Allen, who was a Senator, introduced S. 480, which would have granted Federal recognition to the six groups in S. 379.

BACKGROUND AND HISTORY

History of recognizing Indian tribes

The recognition of an Indian group as a Federally-recognized Indian tribe is an important action. It is an affirmation by the United States of a tribe's right to self-government and the existence of a formal government-to-government relationship between the United States and the tribe. Once a tribe is Federally recognized, the tribe and its members have access to Federal benefits and programs, and the tribal government incurs a formal responsibility to its members as the primary governing body of the community.

Before Congress ended the practice of treaty-making with Indian tribes in 1871, treaties were the usual manner of recognizing a government-to-government relationship between the United States and an Indian tribe. Since the abolishment of treaty-making, the United States has recognized Indian tribes by executive order, legislation, and administrative decisions by the Executive Branch. Additionally, Federal courts may clarify the status of an Indian group, though in many cases, the courts defer to the Bureau of Indian Affairs at the Department of the Interior.

In order to provide a uniform and consistent process for recognizing an Indian group, the Department of the Interior developed an administrative process in 1978 through which Indian groups could petition for acknowledgment of a government-to-government relationship with the United States. The standards for this process are set forth in Title 25 of the Code of Federal Regulations, Part 83: "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe."

The regulations establish seven mandatory criteria, each of which must be met before a group can achieve status as a Federally recognized Indian tribe. The criteria are as follows:

- (1) The petitioning group has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) A predominant portion of the group comprises a distinct community and has existed as a community from historical times until the present;
- (3) The group has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (4) The group must provide a copy of its present governing documents (constitution and bylaws) and membership criteria;
- (5) The group's membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity;

(6) The membership of the group is composed principally of persons who are not members of any other acknowledged North American Indian tribe; and

(7) Neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The regulations have remained essentially unchanged since 1978, with the exception of revisions clarifying the evidence needed to support a recognition petition (1994), updated guidelines on the process (1997), a notice regarding BIA's internal processing of federal acknowledgment petitions (2000), and a notice to provide guidance and direction to make the process more streamlined and efficient (2008).⁶

There have been numerous complaints about the process since 1978, but the primary complaints have been about the high cost of gathering documentary evidence to meet the seven criteria and the length of time it takes the Department to review a petition. Since the Federal Acknowledgment Process regulations were established in 1978, the Department has issued 49 decisions under the process. Of that number, 17 petitioners were acknowledged as Indian tribes, and 32 petitioners were denied acknowledgment.

Due to the problems associated with the Federal Acknowledgment Process, an increasing number of tribal groups have asked Congress to recognize or restore their status as Federally-recognized Indian tribes. Congress retains the authority to recognize tribal groups, as Congress did with the Loyal Shawnee Tribe of Oklahoma and the Graton Rancheria of California in 2000 in the Omnibus Indian Advancement Act.⁷ Since 1982, Congress has restored or recognized 9 Indian tribes.⁸

History of Virginia Indian groups

When English settlers established the Jamestown Colony in 1607, there were approximately 40 Indian tribes existing in what is now the Commonwealth of Virginia. The last treaty that governed the relations between the tribes in Virginia and the State (then the Colony of Virginia) was the 1677 Middle Plantation Treaty. S. 379 will recognize six tribal groups. A brief history of each tribal group is described below.

The Monacan Indian Nation

The Monacan Indians are a part of forty Siouan groups in the Virginia piedmont region extending into the Carolinas.⁹ Recent ethnohistorical work has shown that the Monacan Indians reached from the James and Rappahannock River fall lines in the east to the Shenandoah Valley in the west, and as far south as the Roanoke River.¹⁰ The Monacans moved westward from 1607 to 1720 in

⁶ 73 Fed. Reg. 30146–48 (May 23, 2008).

⁷ See Pub. L. 106–568 (2000).

⁸ <http://www.bia.gov/idc/groups/xofa/documents/text/idc013624.pdf>.

⁹ L. Daniel Mouer, "Powhatan and Monacan Regional Settlement Hierarchies: A Model of Relationship between Social and Environmental Structures," *Quarterly Bulletin of the Archeological Society of Virginia* 36, no. 1 (1981): 1–21.

¹⁰ Jeffrey Hantman, "Between Powhatan and Quirank"; Jeffrey Hantman, "'Ancestral Monacan Society': Cultural and Temporal Boundaries in Indian History in Virginia," paper presented at the Society for American Archeology, 63rd annual meeting, March 1998; L. Daniel Mouer, "A Review of the Archaeology and Ethnohistory of the Monacans," in *Piedmont Archeology*, Pub-

two groups, with one staying in Ft. Christanna before moving on to Pennsylvania and later Canada, while the other group stayed in Amherst County, Virginia.¹¹

Up until the mid-1700s the Monacans had fairly sparse contact with English settlers. That changed as traders traveled further along the James River in the 1750s. The Monacan Indians had purposely lived in the Tobacco Row Mountains in order to avoid contact with Europeans.¹² However, encroaching agriculture made this nearly impossible. By the end of the Civil War, local farmers had begun to plant orchards in the Tobacco Row Mountains, taking away the Monacans' home area. Without land and without jobs, many Monacans worked the orchards and tobacco fields as tenant farmers in a "rigid, semi-feudal system [that] exploited Indian labor disproportionately" due to their lack of status.¹³

Some Monacans escaped this fate by "passing" as white in order to obtain land deeds, such as the case of the Johns Settlement at Bear Mountain. Under the Virginia Race Law of 1823, any child of an Indian, and any descendants of a Negro, up to the great-grandchild would be counted as mulatto. This is apparent in the 1790 national census in which Benjamin Evans and Robert Johns (both Monacans) were recorded as "white" with mulatto children instead of "Indian." The families had been previously recorded through tax records beginning in 1782. Since free people of color (which is how Virginia labeled its Natives until the Racial Integrity Act of 1924) could not own land or vote, they had to legally renounce their ethnicity and register as "white" in order to participate in Virginian society.

In 1831, William Johns purchased 52 acres on Bear Mountain, and another 400 acres in 1833. By 1850, 29 families related to this Monacan community, according to census records. When the land was divided in 1856, the Amherst County clerk's office recorded Monacan surnames of Beverly, Branham, Johns, Pinn and Terry as receiving parcels of the Johns Settlement.

In 1868, one of the Johns Settlement parcels was donated to the community to be used for a meeting place. Two years later in 1870, a wooden structure was built which the community used for its church services with itinerant ministers, serving about 350 Indians. In 1896 a local newspaper article featured the Monacan community, describing "the older [members of the tribe] as typical Indians, of a rich copper color, high cheek-bones, long, straight black hair, tall and erect in form." Locals commented that it had been called "the Indian community" as long as anyone could remember.

The Episcopal Church established St. Paul's Mission at the base of Bear Mountain in 1908. The mission became a unifying factor of the Monacan community, providing a place of worship, social gathering place and the only source of education for many Monacan Indians from 1908 until its close in 1963 due to integration.

lication no. 10, ed. J. Mark Witkofski and Lyle E. Browning (Richmond: Archaeological Society of Virginia, 1983), 21-39.

¹¹"Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. (Nov. 11, 2009), <http://www.monacannation.com/aboutus.shtml>.

¹²Samuel R. Cook, *Monacans and Miners: Native American and Coal Mining Communities in Appalachia* (Lincoln: University of Nebraska Press, 2000), 49-56.

¹³Samuel R. Cook, "The Monacan Indian Nation: Asserting Tribal Sovereignty in the Absence of Federal Recognition." *Wicazo SA Review*. Fall, 2002. P 91-116.

In 1920, the United States Census listed 304 Indians in Amherst County.

Throughout the 20th century, the Monacans became more active as a tribe politically and culturally. Some of these actions are exemplified by the Monacans' application for and receipt of job training assistance in the 1970s under the Comprehensive Employment and Training Act (CETA),¹⁴ giving their tribal members a better chance at obtaining jobs. In 1979, the Monacan Co-operative Pottery was established at the Amherst Mission, eventually producing pieces sold to the Smithsonian Institution. The tribe helped found the Mattaponi-Pamunkey-Monacan Consortium in 1981 in order to obtain funds from Department of Labor programs for Native Americans.

The Monacan Indian Nation obtained State recognition in 1989. They established a non-profit corporation in 1993 to formalize their community and create rules for its governance in lieu of Federal recognition as a sovereign nation.¹⁵

The Nansemond Indian Tribe

When the English first arrived in Virginia in 1607, the Nansemond people numbered around 1,200¹⁶ and made up part of the Powhatan Confederacy. Their original land was located 30 miles from Jamestown, making a large amount of interaction with English settlers inevitable. In 1608, a group of Englishmen lead by John Smith raided a Nansemond town, and threatened more destruction unless the Nansemond paid 400 bushels of corn to his men.¹⁷

The tribe split into two groups by 1646, with one group remaining on their homeland and adopting the English farming lifestyle. These became the Christianized Nansemonds. In 1669, the Virginia census records show two distinct Nansemond groups of Indians.¹⁸

The non-Christianized, "traditionalist" group attacked the English in 1644 and then fled westward to the Nottaway River where Virginia had assigned the Nottaway Indians a reservation. By 1664, the Nansemond Indians were given a poor tract of land as their reservation, which they later sold off.¹⁹ The reservation was sold in 1792 since this group of Nansemond had abandoned it in 1744 to live with the Nottaway tribe on their reservation. Unfortunately this group eventually dispersed or died out, with the last Nansemond living on the Nottaway reservation dying in 1806.²⁰

Meanwhile, the Christianized Nansemonds had moved near Dismal Swamp to avoid contact with the English and to find more productive lands. During the 1830s when Virginia passed more rigid racial laws, the Nansemond lobbied their delegate to pass a law ex-

¹⁴ Cook, Monacans and Miners, 116–118.

¹⁵ "Monacan Indian Nation." 2006. Monacan Indian Nation, Inc. (Nov. 11, 2009), <http://www.monacannation.com/aboutus.shtml>.

¹⁶ "The Official Nansemond Tribal Association Website." *Nansemond and Powhatan History*. 2009. Nansemond Tribal Association (Nov 13, 2009), http://www.nansemond.org/joomla/index.php?option=com_content&task=category§ionid=5&id=14&Itemid=30.

¹⁷ Waugaman, Sandra F. and Danielle-Moretti-Langholtz, Ph.D. *We're Still Here: Contemporary Virginia Indians Tell Their Stories*, Richmond, VA: Palari Publishing, 2006 (revised edition).

¹⁸ S. 379, 112th Cong. § 601(2) (2011).

¹⁹ S. Report No. 108–259 (2004).

²⁰ "The Official Nansemond Tribal Association Website."

empting them, which they achieved in 1833. They were able to register as “of mixed blood, not being negro or mulatto.”²¹

The Methodist Church established a mission for the Nansemond in 1850, eventually adding a schoolhouse in the 1890s to better educate their children.²² The Nansemond had historically promoted education within their ranks, even sending one of their boys to Bafferton Indian School at the College of William and Mary in 1711. In 1922 the Nansemond received funding for an Indian school from the County, which served their community for a few years. Although short-lived, the school was a great victory in a time when only two races were recognized in the State of Virginia and few supported funding a third segregated school system.²³

According to James Mooney’s 1901 census, the Nansemond tribe had 180 members. The Nansemond first attempted to obtain recognition in the 1920s with the encouragement of anthropologist Frank Speck. The tribe obtained State recognition in 1985.

The Chickahominy Indian Tribe

When Jamestown was established, the Chickahominy lived nearby in present-day New Kent County. This proximity allowed for much interaction between the two groups. The Chickahominy were an Algonquian speaking people numbering between 600 and 900 people.²⁴ Although the Chickahominy were allies with the Powhatan Confederacy, they were fairly independent and had their own form of government.

Surviving members of the Paspahog tribe found refuge with the Chickahominy during August 1610 after the family of Chief Wowinchopunk was murdered by settlers.²⁵ In the Treaty of 1614 with Jamestown’s governor Sir Thomas Dale, the tribe promised 300 warriors to fight against the Spanish.²⁶ The Chickahominy received the right to self-governance in return. In 1623, and again in 1627, the Chickahominy were victims of raids.²⁷ In 1646 the Chickahominy signed a treaty granting them a reservation in Pamunkey Neck near the present-day Mattaponi Reservation and in present-day King William County. In 1677, representatives of the Tribe signed the Treaty of Middle Plantation between several tribes and the King of England.²⁸ In 1702, the tribe was forced from its reservation and lost the lands in 1718.²⁹

Around 1750 the Chickahominy began moving back to their land in New Kent and Charles City Counties.³⁰ Charles City County

²¹Rountree, Helen C. *Pocahontas’s People*. OK: Oklahoma University Press, 1990.

²²S. 379, 112th Cong. § 601(17).

²³Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

²⁴Virginia Department of Education. “Virginia’s First People: Past and Present.” *History*. 2005. Prince William County Network, Virginia Department of Education (Nov. 13, 2009), <http://virginiaindians.pwnet.org/history/index.php>.

²⁵*The Thomasina Jordan Indian Tribes of Virginia Federal Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act*, 109 Cong. 576 (2006).

²⁶S. 379, 112th Cong. § 101(2) (2011).

²⁷Virginia Department of Education. “Virginia’s First People: Past and Present.” *History*. 2005. Prince William County Network, Virginia Department of Education (Nov. 13, 2009), <http://virginiaindians.pwnet.org/history/index.php>.

²⁸Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

²⁹Virginia Department of Education. “Virginia’s First People: Past and Present.” *History*. 2005. Prince William County Network, Virginia Department of Education (Nov. 13, 2009), <http://virginiaindians.pwnet.org/history/index.php>.

³⁰S. 379, 112th Cong. § 101(8) (2011).

census records show modern-day Chickahominy surnames in the area beginning in 1831.³¹ New Kent County records began documenting Chickahominy people in an 1840 Census.

In 1901, the tribe established the Samaria Baptist Church and bought nearby land for tribal use.³² In the early 1900s they also established the Samaria School for their childrens' education up until 8th grade, paying teacher salaries out of donated funds.³³ The tribe also created a tax on Chickahominy men from 1901 until 1935 to fund the building of the school, buy supplies and pay the teacher's salary. The tribe's school was integrated in 1968 as a primary school for the county.³⁴

In order to be married as Chickahominy Indians instead of as "colored" under Virginia's Racial Integrity Act of 1924, some tribal members were able to travel out of State. The parents of tribal member Stephen Adkins, for example, were fortunate in being able to do this, and were married on February 20, 1935 in Washington, D.C., thereby avoiding the loss of their Native identity.³⁵

In the 1920s, the governors of Virginia wrote letters of introduction for the Chickahominy chiefs, who had official business in Washington, D.C. In 1934, Chickahominy Chief O.O. Adkins wrote to Commissioner of Indian Affairs John Collier, requesting funding for construction of a school, medical facilities, a library and agricultural tools. Collier responded that Congress had passed the Indian Reorganization Act on June 18th of that year, but hadn't appropriated the funding. Chief O.O. Adkins again sought Collier's help in 1942 when Chickahominy men demanded proper racial designations before entering the Selective Service. Although Collier's office could not officially intervene "as a matter largely of historical accident," Collier did ask Richmond News-Leader editor Douglas S. Freeman to help the Virginia Indians obtain proper racial designations on their birth records.³⁶

The interactions between the Chickahominy Indians and the Federal government continued through later years. In 1961, Senator Sam Ervin, Chairman of the Subcommittee on Constitutional Rights of the Judiciary Committee in the Senate, requested information from Chickahominy Chief O.O. Adkins about Indians' constitutional rights "in [his] area" in Virginia.³⁷

The Chickahominy Indians built a tribal center in 1974 funded by tribal members through monthly pledges.³⁸ Their assertion of tribal government came to a head in 1983 when they received State recognition by the Commonwealth of Virginia. Currently there are about 750 Chickahominy living within 5 miles of the tribal center and hundreds more in other parts of the country.³⁹

³¹ S. 379, 112th Cong. § 101(10) (2011).

³² S. 379, 111th Cong. § 101(11) (2011).

³³ "William & Mary Arts and Sciences." *Virginia Indians: Chickahominy Tribe*. 2009. College of William & Mary (Nov. 12, 2009), <http://www.wm.edu/as/anthropology/research/airc/vaindians/tribes/chickahominy/index.php>.

³⁴ S. 379, 112th Cong. § 101(12) (2011).

³⁵ *The Thomasina Jordan Indian Tribes of Virginia Federal Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act*, 109 Cong. 576 (2006).

³⁶ S. 379, 112th Cong. §§ 101(15)–(20) (2011) and Rountree, Helen C., Testimony before the United States Senate Committee on Indian Affairs, September 25, 2008.

³⁷ S. 379, 112th Cong. § 101(25) (2011).

³⁸ S. 379, 112th Cong. § 101(28) (2011).

³⁹ "William & Mary Arts and Sciences." *Virginia Indians: Chickahominy Tribe*. 2009. College of William & Mary (Nov. 12, 2009), <http://www.wm.edu/as/anthropology/research/airc/vaindians/tribes/chickahominy/index.php>.

The Chickahominy Indian Tribe-Eastern Division

The early history of the Chickahominy Indian Tribe-Eastern Division is the same as that of the Chickahominy Indian Tribe, as the two tribes acted as one until the early 1900s.

Two fires consumed all New Kent County records prior to 1870, but an enclave of Indians in New Kent County are shown in the Virginia Census of 1870. These are the ancestors of the Chickahominy Indian Tribe-Eastern Division.⁴⁰

In 1901, the Chickahominy Indian Tribe established the Samaria Indian Baptist Church. However, two factions formed within the tribe soon, splitting over whether to press the state for a reservation and whether to establish a new church. The Tsena Comocko Indian Baptist Church was built in 1922 in spite of the dissenting members.⁴¹ Unable to resolve their differences, the group forming the new church organized themselves as the Chickahominy Eastern Division Indians. The Eastern Division began forming its government in 1920, eventually incorporating under State law in 1925.

Once the tribe was split, the Chickahominy Indian Tribe-Eastern Division started a one-room schoolhouse in New Kent County called the Boulevard Indian School. In 1950, the tribal school was closed and the children started attending the Samaria Indian School again, but that school was closed in 1967 when Virginia integrated its public school system.

Although they had split from the Chickahominy tribe, the Chickahominy Eastern Division stayed linked to the Chickahominy. Both groups used the same school facilities, with Eastern Division children attending Samaria Indian School after the 1-room Indian school in New Kent County closed in 1950. They also had to find new schools when the Samaria Indian School was desegregated in 1967.

In the late 1970's, the tribe was awarded a grant from the U.S. Department of Housing and Urban Development to buy 2 mobile homes to be used as office and classroom space. Another grant from the Administration of Native Americans was used for the purchase and improvement of office equipment and supplies. The tribe received State recognition in 1983. Today the tribe numbers 130 people in New Kent County.

The Upper Mattaponi Tribe

Captain John Smith first visited the Passaunkack village in 1608, which is in the location of the modern-day Upper Mattaponi. On one of John Smith's maps from 1612, he locates the village in the tribe's present-day location.⁴² August Hermann mapped the area in 1676, labeling several "Indian houses" in the same location.

The Upper Mattaponi Tribe shares its earlier history with the Chickahominy Indian Tribe as they were forced together through treaties with the English. The Upper Mattaponi sought refuge with the Chickahominy after being attacked by Seneca Indians in 1683, beginning many years of shared history. The Virginia Colony assigned both tribes to a reservation in 1695, which they later traded

⁴⁰ S. 379, 112th Cong. § 201(11) (2011).

⁴¹ Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990. P. 218.

⁴² Virginia Department of Education. "Virginia's First People: Past and Present." *History*. 2005. Prince William County Network, Virginia Department of Education (Nov. 13, 2009), <http://virginiaindians.pwnet.org/history/index.php>.

for “the cliffs” (an area currently encompassed by the Mattaponi Indian Reservation).⁴³

In 1726 the Virginia Colony stopped funding interpreters in their dealings with the Upper Mattaponi. However, not all the interpreters left. James Adams stayed with the Upper Mattaponi, giving his surname to many of today’s tribal members.⁴⁴

Thomas Jefferson mentioned the Upper Mattaponi on their King William County reservation in 1787, and referred to the Chickahominy as “blended” with the Upper Mattaponi and Pamunkey Indians.⁴⁵

A Federal census in 1850 showed 10 Upper Mattaponi families living in King William County, Virginia. King William County records also indicate Upper Mattaponis residing in the county. An 1863 Civil War map designated the area “Indian land.” King William County court records list “Indians” marrying and residing on the King William County reservation, undoubtedly referring to the Upper Mattaponi.⁴⁶

Refusing to enlist in the Confederate Army during the Civil War, the Upper Mattaponis stayed neutral. Although not directly involved in the war, gunboats typically sailed past the reservation, and a slave ship was sunk nearby as well according to Mattaponi oral tradition.⁴⁷

Anthropologist James Mooney mentions the Upper Mattaponi in 1901 after hearing about them during a visit to the Pamunkey Tribe, but didn’t visit them himself. In 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis.⁴⁸

The Upper Mattaponi fought alongside other Virginia tribes for an Indian designation instead of a “colored” designation in the 1930 United States Census. The Upper Mattaponis achieved a compromise in which their ancestry was recorded. However, the census also contained an asterisk indicating that Indians did not exist in Virginia. These arguments over race continued into the 1940s, when the Armed Forces attempted to induct Upper Mattaponis into the services as “colored.” In 1945, the tribe also fought for its youth to be allowed to study at Federally-funded Indian schools since the tribe could not provide for their high school education.⁴⁹

The Upper Mattaponi won state recognition in 1983, confirming their Indian ancestry and identity in the eyes of Virginian government.

The Rappahannock Tribe

The Rappahannock people were probably the unfortunate tribe that met the Englishman Captain Samuel Mace as he sailed up what is now the Rappahannock River in 1603. The captain killed a Rappahannock chief and brought a group of men back to England. These men gave demonstrations of dugout canoes on the Thames River back in England in December of 1603.⁵⁰

⁴³ H.R. Rep. No. 110–124, at 6 (2007).

⁴⁴ S. 379, 112th Cong. §§ 301 (10)–(12) (2011).

⁴⁵ S. 379, 112th Cong. § 301(13) (2011).

⁴⁶ S. 379, 112th Cong. §§ 301(14)–(16) (2011).

⁴⁷ Rountree, Helen C. *Pocahontas’s People*. OK: Oklahoma University Press, 1990. p 198.

⁴⁸ S. 379, 112th Cong. §§ 301(17)–(18) (2011).

⁴⁹ S. 379, 111th Cong. §§ 301(19)–(21) (2011).

⁵⁰ “Virginia Indian Council: Virginia Indian Tribes.” *Rappahannock Tribe*. 12/10/2007. VCI (Nov 5, 2009), <http://indians.vipnet.org/tribes/rappahannock.cfm>.

The Rappahannocks were a late acquisition into Powhatan's Confederacy, differing culturally from the Mattaponi and Pamunkey mainstay of the confederacy. They were first recorded in Western society in 1605.⁵¹ Captain John Smith encountered several Rappahannock villages during his 1607 capture in Chickahominy territory.⁵² On Smith's map, he represents the Rappahannock people with 34 wigwams just north of the river as opposed to 1 wigwam (representing 5 villages and 2 chief towns) in their traditional homeland on the southern shore. However, this placement makes practical sense in terms of defense against the Powhatan.⁵³

Captain William Claiborne attempted to establish treaty relations with the Rappahannocks in 1645 because the tribe had not participated in the 1644 uprising led by the Pamunkey. In their peaceful manner, the tribe continued to encounter English settlers and even doing business with them. In 1651, the Rappahannocks sold land to English settler Colonel Morre Fauntleroy and signed a treaty with Lancaster County in September of 1653. The tribe signed another treaty in 1656 with the Rappahannock county (present-day Richmond and Essex Counties), setting out rewards for returning fugitives and encouraging the Rappahannocks to make their children servants in English houses.⁵⁴

A 1669 Virginia census records 30 Rappahannock and 50 Nantaughtacund (which both Speck and Mooney believe is reference to the Rappahannock).⁵⁵ The town referred to in this census was actually a hunting village used by the Rappahannock had lived in the 1670s. The Rappahannocks were removed from their homeland in 1684 to a reservation established for them in 1682 in modern day Caroline and King and Queen Counties. After Iroquois raids in 1683, the Virginia Colonial Council moved the Rappahannock to the Nanzatico Indian Town about 30 miles away from King George County. From 1687 to 1699 the Rappahannock migrated away from Nanzatico to Portobacco Indian Town on the southern side of the Rappahannock River. In 1705 the tribe was moved a few miles off their original reservation.⁵⁶ They were moved once again in 1706 along with the Portobaccos and Nanzaticos by Essex County back to King and Queen County where they resettled on one of their ancient hunting village sites (the 1682 reservation).

Upper Essex Baptist Church had a solid Rappahannock presence in their congregation from 1819 until the 1880s. This was a tribute to their presence in the region as well as their Christianization and the beginning of their assimilation into American culture. In 1870 Joseph Mastin established another church, St. Stephens Baptist, to serve the Rappahannock in Caroline County, taking members away from Upper Essex Baptist Church.⁵⁷ St. Stephens was the primary tribal church until Rappahannock Indian Baptist Church was established in 1964.⁵⁸

Although unable to attend white public schools, the Rappahannock created other educational opportunities for their members.

⁵¹ Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p25.

⁵² Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p28.

⁵³ Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925. p36.

⁵⁴ S. 379, 112th Cong. §§ 401(8)–(14) (2011).

⁵⁵ Speck, Frank G. *The Rappahannock Indians of Virginia*. 1925.

⁵⁶ S. Rep. No. 108–259 at 2 (2004).

⁵⁷ S. 379, 112th Cong. §§ 401(30)–(36) (2011).

⁵⁸ S. 379, 112th Cong. § 401(38) (2011).

Rappahannock children were taught by a tribal member in Caroline County until the tribe built their own formal school in 1922 at Lloyds in Essex County. In December 1923, Chief George Nelson testified before Congress asking for \$50,000 to establish an Indian school in Virginia.⁵⁹ During the late 1940s and early 1950s, the tribe set up a school at Indian Neck, with the State paying a tribal member to teach 10 students in King and Queen County to Sharon Indian School.⁶⁰ The Rappahannock created a private school in 1962 in a donated building in Essex County. Unfortunately it was closed in 1964, and the children were then bused to Sharon School until that school closed 3 years later.⁶¹ In 1965, the Rappahannock students were moved to Marriott High School, a white public school, by order of the Governor of Virginia.⁶²

LEGISLATIVE HISTORY

S. 379, the Indian Tribes of Virginia Federal Recognition Act of 2011, was introduced on February 17, 2011, by Senators Webb and Warner. A companion bill, H.R. 783, has also been introduced in the House of Representatives. Similar legislation was introduced in the 107th, 108th, 109th, 110th, and 111th Congresses. The Senate Committee on Indian Affairs held a hearing on such similar legislation during the 110th Congress. Additionally, during the 111th Congress, the Committee conducted a business meeting concerning the legislation and reported it favorably. Since the Committee had previously held a legislative hearing and mark-up on the similar bills in previous Congresses, the Committee proceeded directly to mark-up of S. 379.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the “Indian Tribes of Virginia Federal Recognition Act of 2011.”

TITLE I—CHICKAHOMINY INDIAN TRIBE

Section 101. Findings

This section provides Congressional Findings on the history of the Chickahominy Indian Tribe.

Section 102. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are “Secretary,” “tribal member” and “tribe.”

Section 103. Federal recognition

This section extends Federal acknowledgment to the Chickahominy Indian Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

⁵⁹ S. 379, 112th Cong. §§ 401(46)–(48) (2011).

⁶⁰ S. 379, 112th Cong. § 401(66) (2011).

⁶¹ Rountree, Helen C. *Pocahontas's People*. OK: Oklahoma University Press, 1990 at 241.

⁶² S. 379, 112th Cong. § 401(68) (2011).

Section 104. Membership; governing documents

This section states that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 105. Governing body

This section establishes the requirements for the tribe's governing body and any future governing bodies of the tribe.

Section 106. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of New Kent, Charles City, James City, or Henrico that the tribe seeks to transfer to the Secretary. This section also includes a prohibition on gaming.

Section 107. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 108. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

TITLE II—CHICKAHOMINY INDIAN TRIBE-EASTERN DIVISION

Section 201. Findings

This section provides Congressional Findings on the history of the Chickahominy Indian Tribe Eastern Division.

Section 202. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are "Secretary," "tribal member" and "tribe."

Section 203. Federal recognition

This section extends Federal acknowledgment to the Chickahominy Indian Tribe Eastern Division. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Section 204. Membership; governing documents

This section states that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 205. Governing body

This section establishes the requirements for the tribe's governing body and any future governing bodies of the tribe.

Section 206. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are within the counties of New Kent, Charles City, James City, or Henrico that the tribe seeks to transfer to the Secretary. This section also includes a prohibition on gaming.

Section 207. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 208. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

TITLE III—UPPER MATTAPONI TRIBE

Section 301. Findings

This section provides Congressional Findings on the history of the Upper Mattaponi Tribe.

Section 302. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are "Secretary," "tribal member" and "tribe."

Section 303. Federal recognition

This section extends Federal acknowledgment to the Upper Mattaponi Indian Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Section 304. Membership; governing documents

This section states that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 305. Governing body

This section establishes the requirements for the tribe's governing body and any future governing bodies of the tribe.

Section 306. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of King William, Caroline, Hanover, King and Queen, and New Kent. This section also includes a prohibition on gaming.

Section 307. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 308. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

TITLE IV—RAPPAHANNOCK TRIBE, INC.

Section 401. Findings

This section provides Congressional Findings on the history of the Rappahannock Tribe, Inc.

Section 402. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are “Secretary,” “tribal member” and “tribe.”

Section 403. Federal recognition

This section extends Federal acknowledgment to the Rappahannock Tribe, Inc. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Section 404. Membership; governing documents

This section provides that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 405. Governing body

This section establishes the requirements for the tribe’s governing body and any future governing bodies of the tribe.

Section 406. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of King and Queen, Richmond, Lancaster, King George, Essex, Caroline, New

Kent, King William, and James City. This section also includes a prohibition on gaming.

Section 407. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 408. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

TITLE V—MONACAN INDIAN NATION

Section 501. Findings

This section provides Congressional Findings on the history of the Monacan Indian Nation.

Section 502. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are “Secretary,” “tribal member” and “tribe.”

Section 503. Federal recognition

This section extends Federal acknowledgment to the Monacan Indian Nation. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Section 504. Membership; governing documents

This section states that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 505. Governing body

This section establishes requirements for the tribe’s governing body and any future governing bodies of the tribe.

Section 506. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the counties of Albemarle, Alleghany, Amherst, Augusta, Campbell, Nelson, and Rockbridge. This section also includes a prohibition on gaming.

Section 507. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 508. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

TITLE VI—NANSEMOND INDIAN TRIBE

Section 601. Findings

This section provides Congressional Findings on the history of the Nansemond Indian Tribe.

Section 602. Definitions

This section provides definitions for terms used throughout the remainder of the Title. The terms defined in this section are “Secretary,” “tribal member” and “tribe.”

Section 603. Federal recognition

This section extends Federal acknowledgment to the Nansemond Indian Tribe. This section also includes applicable laws, an explanation of services and benefits and the establishment of a service area.

Section 604. Membership; governing documents

This section states that the Tribe must provide the most recent membership roll and governing documents to the Secretary before the date of enactment of this legislation.

Section 605. Governing body

This section establishes the requirements for the tribe’s governing body and any future governing bodies of the tribe.

Section 606. Reservation of the tribe

This section directs the Secretary to take into trust any land held in fee by the Tribe that was acquired on or before January 1, 2007. It also authorizes the Secretary to take into trust lands owned by the Tribe in fee that are located within the boundaries of the city of Suffolk, the City of Chesapeake, or Isle of Wight County, Virginia. This section also includes a prohibition on gaming.

Section 607. Hunting, fishing, trapping, gathering, and water rights

This section states that enactment of S. 379 does not expand, reduce or affect hunting, fishing, trapping, gathering, and water rights of the tribe or its members.

Section 608. Jurisdiction of the Commonwealth of Virginia

This section states that the Commonwealth of Virginia shall have jurisdiction over all criminal and civil actions arising on lands owned by the tribe or held in trust by the Secretary. The Secretary is authorized to accept all or any portion of the jurisdiction of Virginia after consultation with the Attorney General and certification by the tribe. The section expressly states that this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Senate Committee on Indian Affairs addressed S. 379 in a business meeting on July 28, 2011. The bill was ordered reported favorably without amendment to the full Senate (en bloc with S. 546 and S. 1218) by voice vote.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated October 12, 2011, was prepared for S. 379:

S. 379—Indian Tribes of Virginia Federal Recognition Act of 2011

Summary: S. 379 would provide federal recognition to six Indian tribes in Virginia—the Chickahominy Indian Tribe, the Eastern Division of the Chickahominy Indian Tribe, the Upper Mattaponi Tribe, The Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. Federal recognition would make the tribes eligible to receive benefits from various federal programs. CBO estimates that implementing this legislation would cost \$68 million over the 2012–2016 period, assuming appropriation of the necessary funds. Enacting S. 379 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 379 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of S. 379 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 550 (health).

| | By fiscal year, in millions of dollars— | | | | | 2012– 2016 |
|-------------------------------------|---|------|------|------|------|---------------|
| | 2012 | 2013 | 2014 | 2015 | 2016 | |
| Bureau of Indian Affairs: | | | | | | |
| Estimated Authorization Level | 3 | 3 | 3 | 3 | 3 | 16 |
| Estimated Outlays | 2 | 3 | 3 | 3 | 3 | 15 |
| Indian Health Services: | | | | | | |
| Estimated Authorization Level | 10 | 10 | 11 | 11 | 11 | 53 |
| Estimated Outlays | 9 | 10 | 11 | 11 | 11 | 52 |
| Total Changes: | | | | | | |
| Estimated Authorization Level | 13 | 14 | 14 | 14 | 15 | 70 |
| Estimated Outlays | 11 | 13 | 14 | 14 | 15 | 68 |

Note: Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that S. 379 will be enacted early in fiscal year 2012, that the necessary

amounts will be appropriated each year, and that outlays will follow historical patterns for assistance to other tribes.

S. 379 would provide federal recognition to six Indian tribes in Virginia. Such recognition would allow the tribes, with membership totaling about 4,100 people, to receive benefits from various programs administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Based on the average per capita expenditures by those agencies for other Indian tribes, CBO estimates that implementing S. 379 would cost \$68 million over the 2012–2016 period, assuming appropriation of the necessary funds.

Bureau of Indian Affairs: BIA provides funding to federally recognized tribes for various purposes, including child welfare services, adult care, community development, and general assistance. In total, CBO estimates that providing BIA services would cost \$15 million over the 2012–2016 period, assuming appropriation of the necessary funds. This estimate is based on per capita expenditures for other federally recognized tribes located in the eastern United States.

Indian Health Service: S. 379 also would make members of the tribes eligible to receive health benefits from the IHS. Based on information from the IHS, CBO estimates that about 55 percent of tribal members—or about 2,300 people—would receive benefits each year. CBO assumes that the cost to serve those individuals would be similar to funding for current IHS beneficiaries—about \$3,500 per individual in 2011. Assuming of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the tribes would cost \$52 million over the 2012–2016 period.

Other federal agencies: In addition to BIA and IHS funding, certain Indian tribes also receive support from other federal programs within the Departments of Education, Housing and Urban Development, Labor, and Agriculture. Based on their status as tribes recognized by Virginia, the tribes specified in the bill are already eligible to receive funding from those departments. Thus, CBO estimates that implementing S. 379 would not increased spending from those programs.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 379 contains no intergovernmental or private-sector mandates as defined in UMBRA and would impose no costs on state, local, and tribal governments.

Estimate prepared by: Federal Costs: Martin von Gnechten—Bureau of Indian Affairs; Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 379 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 379.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

ADDITIONAL VIEWS OF VICE CHAIRMAN BARRASSO

I understand how important Federal recognition is for tribal groups and how difficult and challenging the administrative recognition process is for them. Nevertheless, it is my view that legislative recognition—legislation that deems a group or tribe to be federally recognized—is not the right way to decide which groups should be recognized and which groups should not be recognized. That is a function that can be best performed by the Executive Branch of the Government following the regulations that have been adopted for that purpose. Federal recognition of a group as an Indian tribe may have profound consequences for the group, its members, other Indian tribes, the general public, and the Federal Government.

Just in terms of impact on the Federal Treasury alone, the Congressional Budget Office estimates that implementing S. 379 will cost \$68 million over a 5-year period, assuming appropriation of the necessary funds. Since most of that cost would be in the form of programs and services available through the BIA and IHS for which the Tribe and its members will become eligible, even if that additional money is never appropriated, recognition of the tribe will in and of itself place significant additional stress on the limited resources of both of these agencies, since they will not turn tribal members away from programs and services for which they are eligible. So tribal recognition is indeed a weighty decision, with real consequences.

Testifying about several recognition bills at a hearing before this Committee during the 110th Congress (including an earlier version of this bill introduced in the House, H.R. 1294), the Director of the Office of Federal Acknowledgement at the Department of the Interior stated—

Legislation such as S. 514, S. 724, S. 1058, and H.R. 1294 would allow these groups to bypass this [the Federal acknowledgement] process—allowing them to avoid the scrutiny to which other groups have been subjected. The Administration supports all groups going through the Federal acknowledgment process under 25 CFR Part 83.¹

The Department's witness went on to point out that, in light of the importance and implications of recognition decisions, the Department adopted its Federal acknowledgment regulations at 25 CFR Part 83 in 1978 in recognition of "the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgment."²

¹ Testimony of R. Lee Fleming, Director, Office of Federal Acknowledgment, U.S. Department of the Interior, before the Committee on Indian Affairs, September 25, 2008.

² Id.

This bill represents a step away from a process that applies uniform, established acknowledgment criteria to the history of the group and in the direction of "ad hoc" recognition decisions. I do not think that Congress is in a good position to undertake the detailed historical, cultural, political and ethnographic analysis that should go into a recognition decision.

If a particular group has some unique historical or other barriers so that it cannot fairly access the administrative process, then perhaps it would be appropriate for Congress to consider whether those barriers should be removed or modified so that the group can have fair access to that process. However, I do not feel it is appropriate for Congress to simply deem a group to be a recognized Indian tribe.

JOHN BARRASSO.

