

THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA  
FEDERAL RECOGNITION ACT OF 2009

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MAY 12, 2009.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1385]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1385) 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHICKAHOMINY INDIAN TRIBE

- Sec. 101. Findings.
- Sec. 102. Definitions.
- Sec. 103. Federal recognition.
- Sec. 104. Membership; governing documents.
- Sec. 105. Governing body.
- Sec. 106. Reservation of the Tribe.
- Sec. 107. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 108. Jurisdiction of Commonwealth of Virginia.

## TITLE II—CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION

- Sec. 201. Findings.
- Sec. 202. Definitions.
- Sec. 203. Federal recognition.
- Sec. 204. Membership; governing documents.
- Sec. 205. Governing body.
- Sec. 206. Reservation of the Tribe.
- Sec. 207. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 208. Jurisdiction of Commonwealth of Virginia.

## TITLE III—UPPER MATTAPONI TRIBE

- Sec. 301. Findings.
- Sec. 302. Definitions.
- Sec. 303. Federal recognition.
- Sec. 304. Membership; governing documents.
- Sec. 305. Governing body.
- Sec. 306. Reservation of the Tribe.
- Sec. 307. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 308. Jurisdiction of Commonwealth of Virginia.

## TITLE IV—RAPPAHANNOCK TRIBE, INC.

- Sec. 401. Findings.
- Sec. 402. Definitions.
- Sec. 403. Federal recognition.
- Sec. 404. Membership; governing documents.
- Sec. 405. Governing body.
- Sec. 406. Reservation of the Tribe.
- Sec. 407. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 408. Jurisdiction of Commonwealth of Virginia.

## TITLE V—MONACAN INDIAN NATION

- Sec. 501. Findings.
- Sec. 502. Definitions.
- Sec. 503. Federal recognition.
- Sec. 504. Membership; governing documents.
- Sec. 505. Governing body.
- Sec. 506. Reservation of the Tribe.
- Sec. 507. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 508. Jurisdiction of Commonwealth of Virginia.

## TITLE VI—NANSEMOND INDIAN TRIBE

- Sec. 601. Findings.
- Sec. 602. Definitions.
- Sec. 603. Federal recognition.
- Sec. 604. Membership; governing documents.
- Sec. 605. Governing body.
- Sec. 606. Reservation of the Tribe.
- Sec. 607. Hunting, fishing, trapping, gathering, and water rights.
- Sec. 608. Jurisdiction of Commonwealth of Virginia.

## TITLE I—CHICKAHOMINY INDIAN TRIBE

### SEC. 101. FINDINGS.

Congress finds that—

- (1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was 1 of about 30 tribes that received them;
- (2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—
  - (A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and
  - (B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;
- (3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York Mattaponi River in present-day King William County, leading to the formation of a reservation;
- (4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;
- (5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;
- (6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;
- (7) a Chickahominy child was 1 of the first Indians to attend Brafferton College;
- (8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;
- (9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(12) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(13) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(14) in 1919, C. Lee Moore, Auditor of Public Accounts for Virginia, told Chickahominy Chief O.W. Adkins that he had instructed the Commissioner of Revenue for Charles City County to record Chickahominy tribal members on the county tax rolls as Indian, and not as white or colored;

(15) during the period of 1920 through 1930, various Governors of the Commonwealth of Virginia wrote letters of introduction for Chickahominy Chiefs who had official business with Federal agencies in Washington, DC;

(16) in 1934, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, requesting money to acquire land for the Chickahominy Indian Tribe's use, to build school, medical, and library facilities and to buy tractors, implements, and seed;

(17) in 1934, John Collier, Commissioner of Indian Affairs, wrote to Chickahominy Chief O.O. Adkins, informing him that Congress had passed the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 461 et seq.), but had not made the appropriation to fund the Act;

(18) in 1942, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, asking for help in getting the proper racial designation on Selective Service records for Chickahominy soldiers;

(19) in 1943, John Collier, Commissioner of Indian Affairs, asked Douglas S. Freeman, editor of the Richmond News-Leader newspaper of Richmond, Virginia, to help Virginia Indians obtain proper racial designation on birth records;

(20) Collier stated that his office could not officially intervene because it had no responsibility for the Virginia Indians, "as a matter largely of historical accident", but was "interested in them as descendants of the original inhabitants of the region";

(21) in 1948, the Veterans' Education Committee of the Virginia State Board of Education approved Samaria Indian School to provide training to veterans;

(22) that school was established and run by the Chickahominy Indian Tribe;

(23) in 1950, the Chickahominy Indian Tribe purchased and donated to the Charles City County School Board land to be used to build a modern school for students of the Chickahominy and other Virginia Indian tribes;

(24) the Samaria Indian School included students in grades 1 through 8;

(25) In 1961, Senator Sam Ervin, Chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the Senate, requested Chickahominy Chief O.O. Adkins to provide assistance in analyzing the status of the constitutional rights of Indians "in your area";

(26) in 1967, the Charles City County school board closed Samaria Indian School and converted the school to a countywide primary school as a step toward full school integration of Indian and non-Indian students;

(27) in 1972, the Charles City County school board began receiving funds under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa et seq.) on behalf of Chickahominy students, which funding is provided as of the date of enactment of this Act under title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa et seq.);

(28) in 1974, the Chickahominy Indian Tribe bought land and built a tribal center using monthly pledges from tribal members to finance the transactions;

(29) in 1983, the Chickahominy Indian Tribe was granted recognition as an Indian tribe by the Commonwealth of Virginia, along with 5 other Indian tribes; and

(30) in 1985, Governor Gerald Baliles was the special guest at an intertribal Thanksgiving Day dinner hosted by the Chickahominy Indian Tribe.

#### SEC. 102. DEFINITIONS.

In this title:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term "tribal member" means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term "Tribe" means the Chickahominy Indian Tribe.

**SEC. 103. FEDERAL RECOGNITION.****(a) FEDERAL RECOGNITION.—**

(1) **IN GENERAL.**—Federal recognition is extended to the Tribe.

(2) **APPLICABILITY OF LAWS.**—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

**(b) FEDERAL SERVICES AND BENEFITS.—**

(1) **IN GENERAL.**—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) **SERVICE AREA.**—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

**SEC. 104. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 105. GOVERNING BODY.**

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 106. RESERVATION OF THE TRIBE.**

(a) **IN GENERAL.**—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) **DEADLINE FOR DETERMINATION.**—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) **RESERVATION STATUS.**—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) **GAMING.**—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 107. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 108. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) **IN GENERAL.**—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) **ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.**—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

## **TITLE II—CHICKAHOMINY INDIAN TRIBE— EASTERN DIVISION**

### **SEC. 201. FINDINGS.**

Congress finds that—

(1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was 1 of about 30 tribes that received them;

(2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—

(A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and

(B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;

(3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York River in present-day King William County, leading to the formation of a reservation;

(4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;

(5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;

(6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;

(7) a Chickahominy child was 1 of the first Indians to attend Brafferton College;

(8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;

(9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1870, a census revealed an enclave of Indians in New Kent County that is believed to be the beginning of the Chickahominy Indian Tribe—Eastern Division;

(12) other records were destroyed when the New Kent County courthouse was burned, leaving a State census as the only record covering that period;

(13) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(14) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(15) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(16) in 1910, a 1-room school covering grades 1 through 8 was established in New Kent County for the Chickahominy Indian Tribe—Eastern Division;

(17) during the period of 1920 through 1921, the Chickahominy Indian Tribe—Eastern Division began forming a tribal government;

(18) E.P. Bradby, the founder of the Tribe, was elected to be Chief;

(19) in 1922, Tsena Commocko Baptist Church was organized;

(20) in 1925, a certificate of incorporation was issued to the Chickahominy Indian Tribe—Eastern Division;

(21) in 1950, the 1-room Indian school in New Kent County was closed and students were bused to Samaria Indian School in Charles City County;

(22) in 1967, the Chickahominy Indian Tribe and the Chickahominy Indian Tribe—Eastern Division lost their schools as a result of the required integration of students;

(23) during the period of 1982 through 1984, Tsena Commocko Baptist Church built a new sanctuary to accommodate church growth;

(24) in 1983 the Chickahominy Indian Tribe—Eastern Division was granted State recognition along with 5 other Virginia Indian tribes;

(25) in 1985—

(A) the Virginia Council on Indians was organized as a State agency; and

(B) the Chickahominy Indian Tribe—Eastern Division was granted a seat on the Council;

(26) in 1988, a nonprofit organization known as the "United Indians of Virginia" was formed; and

(27) Chief Marvin "Strongoak" Bradby of the Eastern Band of the Chickahominy presently chairs the organization.

**SEC. 202. DEFINITIONS.**

In this title:

- (1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (2) TRIBAL MEMBER.—The term “tribal member” means—
  - (A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and
  - (B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.
- (3) TRIBE.—The term “Tribe” means the Chickahominy Indian Tribe—Eastern Division.

**SEC. 203. FEDERAL RECOGNITION.**

(a) FEDERAL RECOGNITION.—

- (1) IN GENERAL.—Federal recognition is extended to the Tribe.
- (2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

- (1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all future services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.
- (2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

**SEC. 204. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 205. GOVERNING BODY.**

The governing body of the Tribe shall be—

- (1) the governing body of the Tribe in place as of the date of enactment of this Act; or
- (2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 206. RESERVATION OF THE TRIBE.**

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

- (1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and
- (2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 207. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 208. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

- (1) all criminal offenses that are committed on; and
- (2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

### TITLE III—UPPER MATTAPONI TRIBE

#### SEC. 301. FINDINGS.

Congress finds that—

(1) during the period of 1607 through 1646, the Chickahominy Indian Tribes—

(A) lived approximately 20 miles from Jamestown; and

(B) were significantly involved in English-Indian affairs;

(2) Mattaponi Indians, who later joined the Chickahominy Indians, lived a greater distance from Jamestown;

(3) in 1646, the Chickahominy Indians moved to Mattaponi River basin, away from the English;

(4) in 1661, the Chickahominy Indians sold land at a place known as “the cliffs” on the Mattaponi River;

(5) in 1669, the Chickahominy Indians—

(A) appeared in the Virginia Colony’s census of Indian bowmen; and

(B) lived in “New Kent” County, which included the Mattaponi River basin at that time;

(6) in 1677, the Chickahominy and Mattaponi Indians were subjects of the Queen of Pamunkey, who was a signatory to the Treaty of 1677 with the King of England;

(7) in 1683, after a Mattaponi town was attacked by Seneca Indians, the Mattaponi Indians took refuge with the Chickahominy Indians, and the history of the 2 groups was intertwined for many years thereafter;

(8) in 1695, the Chickahominy and Mattaponi Indians—

(A) were assigned a reservation by the Virginia Colony; and

(B) traded land of the reservation for land at the place known as “the cliffs” (which, as of the date of enactment of this Act, is the Mattaponi Indian Reservation), which had been owned by the Mattaponi Indians before 1661;

(9) in 1711, a Chickahominy boy attended the Indian School at the College of William and Mary;

(10) in 1726, the Virginia Colony discontinued funding of interpreters for the Chickahominy and Mattaponi Indian Tribes;

(11) James Adams, who served as an interpreter to the Indian tribes known as of the date of enactment of this Act as the “Upper Mattaponi Indian Tribe” and “Chickahominy Indian Tribe”, elected to stay with the Upper Mattaponi Indians;

(12) today, a majority of the Upper Mattaponi Indians have “Adams” as their surname;

(13) in 1787, Thomas Jefferson, in Notes on the Commonwealth of Virginia, mentioned the Mattaponi Indians on a reservation in King William County and said that Chickahominy Indians were “blended” with the Mattaponi Indians and nearby Pamunkey Indians;

(14) in 1850, the census of the United States revealed a nucleus of approximately 10 families, all ancestral to modern Upper Mattaponi Indians, living in central King William County, Virginia, approximately 10 miles from the reservation;

(15) during the period of 1853 through 1884, King William County marriage records listed Upper Mattaponis as “Indians” in marrying people residing on the reservation;

(16) during the period of 1884 through the present, county marriage records usually refer to Upper Mattaponis as “Indians”;

(17) in 1901, Smithsonian anthropologist James Mooney heard about the Upper Mattaponi Indians but did not visit them;

(18) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis;

(19) from 1929 until 1930, the leadership of the Upper Mattaponi Indians opposed the use of a “colored” designation in the 1930 United States census and won a compromise in which the Indian ancestry of the Upper Mattaponis was recorded but questioned;

(20) during the period of 1942 through 1945—

(A) the leadership of the Upper Mattaponi Indians, with the help of Frank Speck and others, fought against the induction of young men of the Tribe into “colored” units in the Armed Forces of the United States; and

(B) a tribal roll for the Upper Mattaponi Indians was compiled;

(21) from 1945 to 1946, negotiations took place to admit some of the young people of the Upper Mattaponi to high schools for Federal Indians (especially at Cherokee) because no high school coursework was available for Indians in Virginia schools; and

(22) in 1983, the Upper Mattaponi Indians applied for and won State recognition as an Indian tribe.

**SEC. 302. DEFINITIONS.**

In this title:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term “tribal member” means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term “Tribe” means the Upper Mattaponi Tribe.

**SEC. 303. FEDERAL RECOGNITION.**

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area within 25 miles of the Sharon Indian School at 13383 King William Road, King William County, Virginia.

**SEC. 304. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 305. GOVERNING BODY.**

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 306. RESERVATION OF THE TRIBE.**

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.



(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 307. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 308. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

## **TITLE IV—RAPPAHANNOCK TRIBE, INC.**

**SEC. 401. FINDINGS.**

Congress finds that—

(1) during the initial months after Virginia was settled, the Rappahannock Indians had 3 encounters with Captain John Smith;

(2) the first encounter occurred when the Rappahannock weroance (headman)—

(A) traveled to Quiyocohannock (a principal town across the James River from Jamestown), where he met with Smith to determine whether Smith had been the “great man” who had previously sailed into the Rappahannock River, killed a Rappahannock weroance, and kidnapped Rappahannock people; and

(B) determined that Smith was too short to be that “great man”;

(3) on a second meeting, during John Smith’s captivity (December 16, 1607 to January 8, 1608), Smith was taken to the Rappahannock principal village to show the people that Smith was not the “great man”;

(4) a third meeting took place during Smith’s exploration of the Chesapeake Bay (July to September 1608), when, after the Moraughtacund Indians had stolen 3 women from the Rappahannock King, Smith was prevailed upon to facilitate a peaceful truce between the Rappahannock and the Moraughtacund Indians;

(5) in the settlement, Smith had the 2 Indian tribes meet on the spot of their first fight;

(6) when it was established that both groups wanted peace, Smith told the Rappahannock King to select which of the 3 stolen women he wanted;

(7) the Moraughtacund King was given second choice among the 2 remaining women, and Mosco, a Wighcocomoco (on the Potomac River) guide, was given the third woman;

(8) in 1645, Captain William Claiborne tried unsuccessfully to establish treaty relations with the Rappahannocks, as the Rappahannocks had not participated in the Pamunkey-led uprising in 1644, and the English wanted to “treat with the Rappahannocks or any other Indians not in amity with Opechancanough, concerning serving the county against the Pamunkeys”;

(9) in April 1651, the Rappahannocks conveyed a tract of land to an English settler, Colonel Morre Fauntleroy;

(10) the deed for the conveyance was signed by Accopatough, weroance of the Rappahannock Indians;

(11) in September 1653, Lancaster County signed a treaty with Rappahannock Indians, the terms of which treaty—

(A) gave Rappahannocks the rights of Englishmen in the county court; and

- (B) attempted to make the Rappahannocks more accountable under English law;
- (12) in September 1653, Lancaster County defined and marked the bounds of its Indian settlements;
- (13) according to the Lancaster clerk of court, “the tribe called the great Rappahannocks lived on the Rappahannock Creek just across the river above Tappahannock”;
- (14) in September 1656, (Old) Rappahannock County (which, as of the date of enactment of this Act, is comprised of Richmond and Essex Counties, Virginia) signed a treaty with Rappahannock Indians that—
- (A) mirrored the Lancaster County treaty from 1653; and
- (B) stated that—
- (i) Rappahannocks were to be rewarded, in Roanoke, for returning English fugitives; and
- (ii) the English encouraged the Rappahannocks to send their children to live among the English as servants, who the English promised would be well-treated;
- (15) in 1658, the Virginia Assembly revised a 1652 Act stating that “there be no grants of land to any Englishman whatsoever de futuro until the Indians be first served with the proportion of 50 acres of land for each bowman”;
- (16) in 1669, the colony conducted a census of Virginia Indians;
- (17) as of the date of that census—
- (A) the majority of the Rappahannocks were residing at their hunting village on the north side of the Mattaponi River; and
- (B) at the time of the visit, census-takers were counting only the Indian tribes along the rivers, which explains why only 30 Rappahannock bowmen were counted on that river;
- (18) the Rappahannocks used the hunting village on the north side of the Mattaponi River as their primary residence until the Rappahannocks were removed in 1684;
- (19) in May 1677, the Treaty of Middle Plantation was signed with England;
- (20) the Pamunkey Queen Cockacoeske signed on behalf of the Rappahannocks, “who were supposed to be her tributaries”, but before the treaty could be ratified, the Queen of Pamunkey complained to the Virginia Colonial Council “that she was having trouble with Rappahannocks and Chickahominies, supposedly tributaries of hers”;
- (21) in November 1682, the Virginia Colonial Council established a reservation for the Rappahannock Indians of 3,474 acres “about the town where they dwelt”;
- (22) the Rappahannock “town” was the hunting village on the north side of the Mattaponi River, where the Rappahannocks had lived throughout the 1670s;
- (23) the acreage allotment of the reservation was based on the 1658 Indian land act, which translates into a bowman population of 70, or an approximate total Rappahannock population of 350;
- (24) in 1683, following raids by Iroquoian warriors on both Indian and English settlements, the Virginia Colonial Council ordered the Rappahannocks to leave their reservation and unite with the Nanzatico Indians at Nanzatico Indian Town, which was located across and up the Rappahannock River some 30 miles;
- (25) between 1687 and 1699, the Rappahannocks migrated out of Nanzatico, returning to the south side of the Rappahannock River at Portobacco Indian Town;
- (26) in 1706, by order of Essex County, Lieutenant Richard Covington “escorted” the Portobaccos and Rappahannocks out of Portobacco Indian Town, out of Essex County, and into King and Queen County where they settled along the ridgeline between the Rappahannock and Mattaponi Rivers, the site of their ancient hunting village and 1682 reservation;
- (27) during the 1760s, 3 Rappahannock girls were raised on Thomas Nelson’s Bleak Hill Plantation in King William County;
- (28) of those girls—
- (A) 1 married a Saunders man;
- (B) 1 married a Johnson man; and
- (C) 1 had 2 children, Edmund and Carter Nelson, fathered by Thomas Cary Nelson;
- (29) in the 19th century, those Saunders, Johnson, and Nelson families are among the core Rappahannock families from which the modern Tribe traces its descent;

(30) in 1819 and 1820, Edward Bird, John Bird (and his wife), Carter Nelson, Edmund Nelson, and Carter Spurlock (all Rappahannock ancestors) were listed on the tax roles of King and Queen County and taxed at the county poor rate;

(31) Edmund Bird was added to the tax roles in 1821;

(32) those tax records are significant documentation because the great majority of pre-1864 records for King and Queen County were destroyed by fire;

(33) beginning in 1819, and continuing through the 1880s, there was a solid Rappahannock presence in the membership at Upper Essex Baptist Church;

(34) that was the first instance of conversion to Christianity by at least some Rappahannock Indians;

(35) while 26 identifiable and traceable Rappahannock surnames appear on the pre-1863 membership list, and 28 were listed on the 1863 membership roster, the number of surnames listed had declined to 12 in 1878 and had risen only slightly to 14 by 1888;

(36) a reason for the decline is that in 1870, a Methodist circuit rider, Joseph Mastin, secured funds to purchase land and construct St. Stephens Baptist Church for the Rappahannocks living nearby in Caroline County;

(37) Mastin referred to the Rappahannocks during the period of 1850 to 1870 as "Indians, having a great need for moral and Christian guidance";

(38) St. Stephens was the dominant tribal church until the Rappahannock Indian Baptist Church was established in 1964;

(39) at both churches, the core Rappahannock family names of Bird, Clarke, Fortune, Johnson, Nelson, Parker, and Richardson predominate;

(40) during the early 1900s, James Mooney, noted anthropologist, maintained correspondence with the Rappahannocks, surveying them and instructing them on how to formalize their tribal government;

(41) in November 1920, Speck visited the Rappahannocks and assisted them in organizing the fight for their sovereign rights;

(42) in 1921, the Rappahannocks were granted a charter from the Commonwealth of Virginia formalizing their tribal government;

(43) Speck began a professional relationship with the Tribe that would last more than 30 years and document Rappahannock history and traditions as never before;

(44) in April 1921, Rappahannock Chief George Nelson asked the Governor of Virginia, Westmoreland Davis, to forward a proclamation to the President of the United States, along with an appended list of tribal members and a hand-written copy of the proclamation itself;

(45) the letter concerned Indian freedom of speech and assembly nationwide;

(46) in 1922, the Rappahannocks established a formal school at Lloyds, Essex County, Virginia;

(47) prior to establishment of the school, Rappahannock children were taught by a tribal member in Central Point, Caroline County, Virginia;

(48) in December 1923, Rappahannock Chief George Nelson testified before Congress appealing for a \$50,000 appropriation to establish an Indian school in Virginia;

(49) in 1930, the Rappahannocks were engaged in an ongoing dispute with the Commonwealth of Virginia and the United States Census Bureau about their classification in the 1930 Federal census;

(50) in January 1930, Rappahannock Chief Otho S. Nelson wrote to Leon Truesdell, Chief Statistician of the United States Census Bureau, asking that the 218 enrolled Rappahannocks be listed as Indians;

(51) in February 1930, Truesdell replied to Nelson saying that "special instructions" were being given about classifying Indians;

(52) in April 1930, Nelson wrote to William M. Steuart at the Census Bureau asking about the enumerators' failure to classify his people as Indians, saying that enumerators had not asked the question about race when they interviewed his people;

(53) in a followup letter to Truesdell, Nelson reported that the enumerators were "flatly denying" his people's request to be listed as Indians and that the race question was completely avoided during interviews;

(54) the Rappahannocks had spoken with Caroline and Essex County enumerators, and with John M.W. Green at that point, without success;

(55) Nelson asked Truesdell to list people as Indians if he sent a list of members;

(56) the matter was settled by William Steuart, who concluded that the Bureau's rule was that people of Indian descent could be classified as "Indian" only if Indian "blood" predominated and "Indian" identity was accepted in the local community;

(57) the Virginia Vital Statistics Bureau classed all nonreservation Indians as “Negro”, and it failed to see why “an exception should be made” for the Rappahannocks;

(58) therefore, in 1925, the Indian Rights Association took on the Rappahannock case to assist the Rappahannocks in fighting for their recognition and rights as an Indian tribe;

(59) during the Second World War, the Pamunkeys, Mattaponis, Chickahominies, and Rappahannocks had to fight the draft boards with respect to their racial identities;

(60) the Virginia Vital Statistics Bureau insisted that certain Indian draftees be inducted into Negro units;

(61) finally, 3 Rappahannocks were convicted of violating the Federal draft laws and, after spending time in a Federal prison, were granted conscientious objector status and served out the remainder of the war working in military hospitals;

(62) in 1943, Frank Speck noted that there were approximately 25 communities of Indians left in the Eastern United States that were entitled to Indian classification, including the Rappahannocks;

(63) in the 1940s, Leon Truesdell, Chief Statistician, of the United States Census Bureau, listed 118 members in the Rappahannock Tribe in the Indian population of Virginia;

(64) on April 25, 1940, the Office of Indian Affairs of the Department of the Interior included the Rappahannocks on a list of Indian tribes classified by State and by agency;

(65) in 1948, the Smithsonian Institution Annual Report included an article by William Harlen Gilbert entitled, “Surviving Indian Groups of the Eastern United States”, which included and described the Rappahannock Tribe;

(66) in the late 1940s and early 1950s, the Rappahannocks operated a school at Indian Neck;

(67) the State agreed to pay a tribal teacher to teach 10 students bused by King and Queen County to Sharon Indian School in King William County, Virginia;

(68) in 1965, Rappahannock students entered Marriott High School (a white public school) by executive order of the Governor of Virginia;

(69) in 1972, the Rappahannocks worked with the Coalition of Eastern Native Americans to fight for Federal recognition;

(70) in 1979, the Coalition established a pottery and artisans company, operating with other Virginia tribes;

(71) in 1980, the Rappahannocks received funding through the Administration for Native Americans of the Department of Health and Human Services to develop an economic program for the Tribe; and

(72) in 1983, the Rappahannocks received State recognition as an Indian tribe.

#### SEC. 402. DEFINITIONS.

In this title:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term “tribal member” means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—

(A) IN GENERAL.—The term “Tribe” means the organization possessing the legal name Rappahannock Tribe, Inc.

(B) EXCLUSIONS.—The term “Tribe” does not include any other Indian tribe, subtribe, band, or splinter group the members of which represent themselves as Rappahannock Indians.

#### SEC. 403. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by

the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) **SERVICE AREA.**—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of King and Queen County, Caroline County, Essex County, Spotsylvania County, Stafford County, and Richmond County, Virginia.

**SEC. 404. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 405. GOVERNING BODY.**

The governing body of the Tribe shall be—

- (1) the governing body of the Tribe in place as of the date of enactment of this Act; or
- (2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 406. RESERVATION OF THE TRIBE.**

(a) **IN GENERAL.**—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County, and Caroline County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County, and Caroline County, Virginia.

(b) **DEADLINE FOR DETERMINATION.**—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) **RESERVATION STATUS.**—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) **GAMING.**—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 407. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 408. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) **IN GENERAL.**—The Commonwealth of Virginia shall exercise jurisdiction over—

- (1) all criminal offenses that are committed on; and
- (2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) **ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.**—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

## **TITLE V—MONACAN INDIAN NATION**

**SEC. 501. FINDINGS.**

Congress finds that—

(1) In 1677, the Monacan Tribe signed the Treaty of Middle Plantation between Charles II of England and 12 Indian “Kings and Chief Men”;

(2) in 1722, in the Treaty of Albany, Governor Spotswood negotiated to save the Virginia Indians from extinction at the hands of the Iroquois;

(3) specifically mentioned in the negotiations were the Monacan tribes of the Totero (Tutelo), Saponi, Ochoneeches (Occaneechi), Stengenocks, and Meipontskys;

(4) in 1790, the first national census recorded Benjamin Evans and Robert Johns, both ancestors of the present Monacan community, listed as “white” with mulatto children;

(5) in 1782, tax records also began for those families;

(6) in 1850, the United States census recorded 29 families, mostly large, with Monacan surnames, the members of which are genealogically related to the present community;

(7) in 1870, a log structure was built at the Bear Mountain Indian Mission;

(8) in 1908, the structure became an Episcopal Mission and, as of the date of enactment of this Act, the structure is listed as a landmark on the National Register of Historic Places;

(9) in 1920, 304 Amherst Indians were identified in the United States census;

(10) from 1930 through 1931, numerous letters from Monacans to the Bureau of the Census resulted from the decision of Dr. Walter Plecker, former head of the Bureau of Vital Statistics of the Commonwealth of Virginia, not to allow Indians to register as Indians for the 1930 census;

(11) the Monacans eventually succeeded in being allowed to claim their race, albeit with an asterisk attached to a note from Dr. Plecker stating that there were no Indians in Virginia;

(12) in 1947, D’Arcy McNickle, a Salish Indian, saw some of the children at the Amherst Mission and requested that the Cherokee Agency visit them because they appeared to be Indian;

(13) that letter was forwarded to the Department of the Interior, Office of Indian Affairs, Chicago, Illinois;

(14) Chief Jarrett Blythe of the Eastern Band of Cherokee did visit the Mission and wrote that he “would be willing to accept these children in the Cherokee school”;

(15) in 1979, a Federal Coalition of Eastern Native Americans established the entity known as “Monacan Co-operative Pottery” at the Amherst Mission;

(16) some important pieces were produced at Monacan Co-operative Pottery, including a piece that was sold to the Smithsonian Institution;

(17) the Mattaponi-Pamunkey-Monacan Consortium, established in 1981, has since been organized as a nonprofit corporation that serves as a vehicle to obtain funds for those Indian tribes from the Department of Labor under Native American programs;

(18) in 1989, the Monacan Tribe was recognized by the Commonwealth of Virginia, which enabled the Tribe to apply for grants and participate in other programs; and

(19) in 1993, the Monacan Tribe received tax-exempt status as a nonprofit corporation from the Internal Revenue Service.

#### SEC. 502. DEFINITIONS.

In this title:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term “tribal member” means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term “Tribe” means the Monacan Indian Nation.

#### SEC. 503. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of all land within 25 miles from the center of Amherst, Virginia.

**SEC. 504. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 505. GOVERNING BODY.**

The governing body of the Tribe shall be—

- (1) the governing body of the Tribe in place as of the date of enactment of this Act; or
- (2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 506. RESERVATION OF THE TRIBE.**

(a) **IN GENERAL.**—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of Albemarle County, Alleghany County, Amherst County, Augusta County, Campbell County, Nelson County, and Rockbridge County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of Albemarle County, Alleghany County, Amherst County, Augusta County, Campbell County, Nelson County, and Rockbridge County, Virginia.

(b) **DEADLINE FOR DETERMINATION.**—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) **RESERVATION STATUS.**—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) **GAMING.**—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 507. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 508. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) **IN GENERAL.**—The Commonwealth of Virginia shall exercise jurisdiction over—

- (1) all criminal offenses that are committed on; and
- (2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) **ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.**—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

## **TITLE VI—NANSEMOND INDIAN TRIBE**

**SEC. 601. FINDINGS.**

Congress finds that—

(1) from 1607 until 1646, Nansemond Indians—

- (A) lived approximately 30 miles from Jamestown; and
- (B) were significantly involved in English-Indian affairs;

(2) after 1646, there were 2 sections of Nansemonds in communication with each other, the Christianized Nansemonds in Norfolk County, who lived as citizens, and the traditionalist Nansemonds, who lived further west;

(3) in 1638, according to an entry in a 17th century sermon book still owned by the Chief's family, a Norfolk County Englishman married a Nansemond woman;

(4) that man and woman are lineal ancestors of all of members of the Nansemond Indian tribe alive as of the date of enactment of this Act, as are some of the traditionalist Nansemonds;

- (5) in 1669, the 2 Nansemond sections appeared in Virginia Colony's census of Indian bowmen;
- (6) in 1677, Nansemond Indians were signatories to the Treaty of 1677 with the King of England;
- (7) in 1700 and 1704, the Nansemonds and other Virginia Indian tribes were prevented by Virginia Colony from making a separate peace with the Iroquois;
- (8) Virginia represented those Indian tribes in the final Treaty of Albany, 1722;
- (9) in 1711, a Nansemond boy attended the Indian School at the College of William and Mary;
- (10) in 1727, Norfolk County granted William Bass and his kinsmen the "Indian privileges" of clearing swamp land and bearing arms (which privileges were forbidden to other nonwhites) because of their Nansemond ancestry, which meant that Bass and his kinsmen were original inhabitants of that land;
- (11) in 1742, Norfolk County issued a certificate of Nansemond descent to William Bass;
- (12) from the 1740s to the 1790s, the traditionalist section of the Nansemond tribe, 40 miles west of the Christianized Nansemonds, was dealing with reservation land;
- (13) the last surviving members of that section sold out in 1792 with the permission of the Commonwealth of Virginia;
- (14) in 1797, Norfolk County issued a certificate stating that William Bass was of Indian and English descent, and that his Indian line of ancestry ran directly back to the early 18th century elder in a traditionalist section of Nansemonds on the reservation;
- (15) in 1833, Virginia enacted a law enabling people of European and Indian descent to obtain a special certificate of ancestry;
- (16) the law originated from the county in which Nansemonds lived, and mostly Nansemonds, with a few people from other counties, took advantage of the new law;
- (17) a Methodist mission established around 1850 for Nansemonds is currently a standard Methodist congregation with Nansemond members;
- (18) in 1901, Smithsonian anthropologist James Mooney—
  - (A) visited the Nansemonds; and
  - (B) completed a tribal census that counted 61 households and was later published;
- (19) in 1922, Nansemonds were given a special Indian school in the segregated school system of Norfolk County;
- (20) the school survived only a few years;
- (21) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians that included a section on the Nansemonds; and
- (22) the Nansemonds were organized formally, with elected officers, in 1984, and later applied for and received State recognition.

**SEC. 602. DEFINITIONS.**

In this title:

- (1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.
- (2) TRIBAL MEMBER.—The term "tribal member" means—
  - (A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and
  - (B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.
- (3) TRIBE.—The term "Tribe" means the Nansemond Indian Tribe.

**SEC. 603. FEDERAL RECOGNITION.**

(a) FEDERAL RECOGNITION.—

- (1) IN GENERAL.—Federal recognition is extended to the Tribe.
- (2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

- (1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.
- (2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area



comprised of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia.

**SEC. 604. MEMBERSHIP; GOVERNING DOCUMENTS.**

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

**SEC. 605. GOVERNING BODY.**

The governing body of the Tribe shall be—

- (1) the governing body of the Tribe in place as of the date of enactment of this Act; or
- (2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

**SEC. 606. RESERVATION OF THE TRIBE.**

(a) **IN GENERAL.**—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia.

(b) **DEADLINE FOR DETERMINATION.**—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) **RESERVATION STATUS.**—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) **GAMING.**—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

**SEC. 607. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.**

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

**SEC. 608. JURISDICTION OF COMMONWEALTH OF VIRGINIA.**

(a) **IN GENERAL.**—The Commonwealth of Virginia shall exercise jurisdiction over—

- (1) all criminal offenses that are committed on; and
- (2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) **ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.**—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

**PURPOSE OF THE BILL**

The purpose of H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, is 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.

**BACKGROUND AND NEED FOR LEGISLATION**

The issue of the status of these six Virginia tribes comes to the Committee with a voluminous congressional record. Similar legislation was introduced either in the House of Representatives or the Senate in the 107th, 108th, 109th and 110th Congresses. Hearings have been held on the past legislation and reports have been filed.

These hearings and reports have consistently established that these tribes are descendants of the historic tribes that occupied the area when the first English settlers arrived in what is now Virginia. The Department of the Interior has generally not voiced opposition to Congressional recognition of these tribes other than to state that there is an administrative process available for them. The Department has not questioned the tribes' Indian ancestry or tribal governmental status.

*Document destruction and tampering*

Despite the wealth of documentation that exists for each of these tribes, it is not entirely clear that these tribes could meet the criteria used by the Bureau of Indian Affairs as part of the Federal Acknowledgment Process. Although references exist from the 1600s until the present indicating the existence of Indians in the Virginia area, much documentation that would be required by the Bureau of Indian Affairs has been tampered with or destroyed.

During the Civil War period from 1861–1865, most of the local records were destroyed in fires at government buildings. In addition, many Indians began adopting Anglo-American names, language, and customs in order to hide their Indian heritage to ensure survival. Another hindrance to appearing in local records was the socio-economic status of most Virginia Indians. Until the late 19th century, they tended to rent land, engage in common-law marriages, and die without a will—activities that do not require official documents thus rendering them 'invisible' in public records.

In the first half of the twentieth century, there was a deliberate and systematic attempt to erase Indians in the Commonwealth of Virginia. Dr. Walter Ashby Plecker served as the first Registrar of the Virginia Bureau of Vital Statistics from 1912–1947. A white supremacist, Dr. Plecker set out to rid the Commonwealth of Virginia of any records that recorded the existence of Indians or Indian tribes living therein. He was instrumental in ensuring passage of the 1924 Racial Integrity Act which required all persons living in Virginia to provide extensive proof of their race. The Act made it a felony to submit records which misidentified a person's race and prohibited documents and marriage licenses to anyone whose lineage was questioned.

Dr. Plecker specifically targeted Virginia Indians. At the time, individuals who had 1/16 or less Indian blood were permitted to register as White. He believed that there were no true Indians living in Virginia and those claiming to be Indian were only using the title to try and pass as White. He wrote that mixed-blood families or those suspected of having Negro ancestry must not be allowed to register as White or Indian. It was illegal for individuals to classify themselves or their newborn children as Indian. Dr. Plecker sent a list of Indian surnames to County registrars insisting they not allow anyone with these surnames to register as White or Indian. He spent decades changing the race designation on birth certificates and other legal documents from Indian to Colored, Negro, or Free Issue (a term used to describe former slaves after the Civil War). He threatened hospitals, midwives, and registrars who used the classification of Indian and was successful in getting many Virginia Indians jailed for refusing to acquiesce to his beliefs and change their racial classification. Consequently, for 46 years, there

was a systematic destruction of thousands of records that traced and recorded the ancestry of Virginia's Indians.

### *Schools*

The importance of tribal schools established by several of the tribes cannot be overlooked. During Reconstruction, the administration of public schools was left to each county and segregated schools were established in many areas of Virginia. "White" schools did not admit Indians but "Colored" schools did; any Indian children attending them, however, as well as their families, lost credibility to their claims as Indians. Counties were often reluctant to fund Indian schools if the Indian population was small, leaving it to the local Indian community to raise funds for their own schools, send their children to "Colored" schools, or not educate their children.

### *Ancestry*

The evidence contained in numerous Congressional hearings and reports establishes that these tribes are descended from the historic tribes that occupied the Virginia coastline in 1607.<sup>1</sup> When English settlers came ashore along the Virginia coastline, they were received by approximately thirty Indian tribes. Six of those tribes—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—are the subject of this bill. From 1607 to 1646, the Chickahominy Indian Tribe lived approximately 20 miles from Jamestown. The Mattaponi Indians, who later joined the Chickahominy Indians, lived farther away. In 1614, when the Chickahominy Indian Tribe entered into a treaty of mutual aid with the English they resided on the Chickahominy River. This was followed by another treaty entered into in 1646 that forced the Chickahominy from their homeland to the area around the York and Mattaponi Rivers in present-day King William County. The history of the Chickahominy and Mattaponi Indians was intertwined for many years thereafter. In 1677, the Chickahominy and Mattaponi Indians were subjects of the Queen of Pamunkey when the Chickahominy and Mattaponi Indians signed the Treaty of Middle Plantation with England, which guaranteed the Indians civil rights, rights to gather food, and property rights. The Colony of Virginia assigned a reservation to the Chickahominy and Mattaponi Indians in 1695. In 1787, Thomas Jefferson noted the Chickahominy Indians were mixed with the Mattaponi Indians and nearby Pamunkey Indians.

### *Chickahominy Indian Tribe*

Despite the treaties, in 1702 the Chickahominy were forced from their reservation, but in 1750 some members began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties where they

<sup>1</sup>See H.R. 2345, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001, Hearing held Sept. 25, 2002; S. 2694, the Thomasina E. Jordan Indian Tribes of Virginia Act of 2002, Hearing held Oct. 9, 2002, S. Rept. 107-921; S. 1423, the Thomasina E. Jordan Indian Tribes of Virginia Act of 2003, S. Rept. 108-259; S. 480, the Thomasina E. Jordan Indian Tribes of Virginia Act of 2005, S. Rept. 109-576.

still reside today. In 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records.

In 1901, the Chickahominy Indian Tribe formalized its governing structure and has held regularly scheduled meetings since. After the governing structure was formalized, the Tribe began operating the Samaria Indian School in 1901. A tribal tax assessment on Chickahominy men was used to build and maintain the Samaria Indian School, buy supplies, and pay a teacher's salary. In 1922, the State agreed to pay two-thirds of the teachers' salaries at Samaria Indian School. On various occasions in the 1930s and 1940s, the Chickahominy corresponded with John Collier, Commissioner of Indian Affairs, requesting assistance. Mr. Collier referred the matter to the Editor of the Richmond-News Leader newspaper of Richmond, Virginia, informing him that "as a matter largely of historical accident" he was unable to assist them. In the early 1980s, the Commonwealth of Virginia established an advisory committee to examine Native issues. In 1983 the Commonwealth extended recognition to the Tribe.

#### *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. In 1901, the Chickahominy Indian Tribe (before the tribes were split) established the Samaria Indian Baptist Church in 1901. When the Chickahominy Indian Tribe was split into the Chickahominy Indian Tribe and the Chickahominy Indian Tribe-Eastern Division in 1910, the Chickahominy Indian Tribe-Eastern Division started a one-room schoolhouse in New Kent County called the Boulevard Indian School. The Eastern Division tribal government was officially formed in 1920 and their church, the Tsena Commocko Baptist Church was organized in 1922. In 1925, the tribe was incorporated under a tax-exempt status. At this time, all tribal males sixteen years of age and older began contributing dues towards the financial operation of the tribe. In 1950, the tribal school was closed and the children started attending Samaria Indian School, but that school was closed in 1967 when Virginia integrated its public school system. In the late 1970s, the tribe was awarded a grant from the U.S. Department of Housing and Urban Development to buy two mobile homes to be used as office and classroom space. Another grant from the Administration of Native American Programs was used for the purchase and improvement of office equipment and supplies. The Tribe received state recognition in 1983.

#### *Upper Mattaponi Tribe*

The Upper Mattaponi Tribe shares its earlier history with the Chickahominy Indian Tribe, as they were forced together through treaties with the English. In 1695, the Chickahominy and Mattaponi Indians were assigned a reservation by the Virginia Colony but traded reservation land for land at a place known as "the

cliffs,” which today is still known as the Mattaponi Indian Reservation. The Virginia Colony discontinued funding of interpreters for the Chickahominy and Mattaponi Indian Tribes in 1726, but James Adams, who served as an interpreter to the Upper Mattaponi Indian Tribe, elected to stay with the Upper Mattaponi Indians. Today, a majority of the Upper Mattaponi Indians have “Adams” as their surname. A federal census in 1850 showed ten Upper Mattaponi families living in King William County, Virginia. King William County records also indicate Upper Mattaponis residing in the County. From 1884 to present, King William County marriage records usually refer to Upper Mattaponis as “Indians.”

Smithsonian anthropologist James Mooney indicated in 1901 that he had heard about the Upper Mattaponi Indians but did not visit them. In 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis. The leadership of the Upper Mattaponi Indians opposed the use of a “colored” designation in the 1930 United States census and won a compromise in which the Indian ancestry of the Upper Mattaponis was recorded. Due to the activities of Dr. Plecker, however, the census also contained an asterisk indicating that Indians did not exist in Virginia. During the period of 1942 through 1945, the Upper Mattaponi Indians fought against the induction of young men of the Tribe into “colored” units in the Armed Forces of the United States. Also during this time, a tribal roll for the Upper Mattaponi Indians was compiled. From 1945 to 1946, negotiations occurred to admit some of the young people of the Upper Mattaponi to high schools for Federal Indians because no high school coursework was available for Indians in Virginia schools. In 1983, the Commonwealth extended formal recognition to the Upper Mattaponi Indians.

*Rappahannock Tribe, Inc.*

Written documentation of the Rappahannock Tribe first occurred when Captain John Smith was brought as a captive of King Powhatan to the Rappahannock King Accapataugh at his capital town, Tappahannock, on the Rappahannock River. Consistent with a series of peace treaties, around 1651 the Rappahannocks moved from the Rappahannock River to inland sites. In 1682, as tributaries of Pamunkey, the Rappahannocks became signators to the 1677 Treaty of Middle Plantation. By order of the Colonial Council in 1682, they were moved to Portobago Bay Indian Town, where they lived with the Portobago Tribe and Nansittico Tribe. The Colonial Council ordered them to move again in 1706; this time they moved back to their traditional winter hunting grounds on the ridge between the Rappahannock and Mattaponi Rivers, where they still reside.

During the 1760s, three Rappahannock girls were raised on Thomas Nelson’s Bleak Hill Plantation in King William County. Of those girls, one married a Saunders man, one married a Johnson man, and one had two children, Edmund and Carter Nelson, fathered by Thomas Cary Nelson. It is these families to which the modern day Rappahannock trace their descent. A few tax records exist from 1819 and 1820 indicating that Edward Bird, John Bird (and his wife), Carter Nelson, Edmund Nelson, and Carter Spurlock (all Rappahannock ancestors) were listed on the tax rolls of King and Queen County and taxed at the county poor rate.

These tax records are significant documentation because the great majority of pre-1864 records for King and Queen County were destroyed by fire. In 1870, St. Stephens Baptist Church was constructed for the Rappahannocks and was the primary church for the Rappahannocks until the Rappahannock Indian Baptist Church was established in 1964.

During the early 1900s, noted anthropologist James Mooney maintained correspondence with the Rappahannocks, surveying them and instructing them on how to formalize their tribal government. In 1920, Dr. Speck visited the Rappahannocks and assisted them in organizing to fight for their sovereign rights. They were granted a charter from the Commonwealth of Virginia formalizing their tribal government in 1921. The Rappahannocks established a formal school at Lloyds, Essex County, Virginia in 1922. The Rappahannocks were engaged in an ongoing dispute with the Commonwealth of Virginia and the United States Census Bureau about their classification in the 1930 federal census. The Virginia Vital Statistics Bureau classed all nonreservation Indians as "Negro," and it failed to see why "an exception should be made" for the Rappahannocks. During the Second World War, the Pamunkeys, Mattaponis, Chickahominies, and Rappahannocks had to fight the draft boards with respect to their racial identities. In the 1940 Census, 118 members of the Rappahannock Tribe were identified as "Indian." An article in the Smithsonian Institution Annual Report in 1948 entitled, "Surviving Indian Groups of the Eastern United States" included and described the Rappahannock Tribe. In the late 1940s and early 1950s, the Rappahannocks operated a school at Indian Neck. The State agreed to pay a tribal teacher to teach ten students bused by King and Queen County to Sharon Indian School in King William County, Virginia. In 1972, the Rappahannocks worked with the Coalition of Eastern Native Americans to fight for federal recognition. The Commonwealth of Virginia extended recognition to the tribe in 1983.

#### *Monacan Indian Nation*

Documentation exists indicating the existence of the Monacans from 1608, when Europeans first made contact with them, and that the Monacan Indian Nation are descendants of the Tribe that existed in the 1600s and for time immemorial before that. One of the first written recordings of the Monacans was made by Captain John Smith when he noted the existence of Monacan towns on his map in 1608, describing the main town as Russawmeake. Captain Smith also described an expedition by a Mr. Newport to the Monacan area, which included two Monacan towns: Monhemencouch and Massinacack. Another map was published in 1651 still showing the existence of the Monacans but indicating that they had shifted territory somewhat. In 1677, the Monacans join other native groups in signing the Treaty of Middle Plantation. The Treaty of Albany was signed in 1722, which was intended to save the specified Virginia Indians, including the Monacan, from extinction by the Iroquois. In 1790, the First National Census recorded Benjamin Evans and Robert Johns, both ancestors of the present Monacan community as they had married Monacan women, as "white" with mulatto children. An 1850 Census recorded 29 families with Monacan surnames and an 1870 Census indicates Indians living in Amherst

County, Virginia with the surname “Beverly,” a Monacan surname. Likewise, an 1880 Census records six individuals named “Johns” (also a Monacan surname) as “Indian.” A 1920 Census indicates 304 Indians living in Amherst County.

In 1870, a log structure was built at the Bear Mountain Indian Mission. The structure became an Episcopal Mission and is listed as a landmark on the National Register of Historic Places. In 1920, 304 Amherst Indians were identified in the United States census. From 1930 through 1931, numerous letters from Monacans to the Bureau of the Census were sent in response to the decision of Dr. Walter Plecker, former head of the Bureau of Vital Statistics of the State of Virginia, not to allow Indians to register as such for the 1930 census. The Monacans eventually succeeded in being allowed to claim their race, albeit with an asterisk attached to a note from Dr. Plecker stating that there were no Indians in Virginia. In 1947, D’Arcy McNickle, a Salish Indian, saw some of the children at the Amherst Mission and requested that the Cherokee Agency visit them because they appeared to be Indian. Chief Jarrett Blythe of the Eastern Band of Cherokee did visit the Mission and wrote that he “would be willing to accept these children in the Cherokee school.” In 1979, a Federal Coalition of Eastern Native Americans established the entity known as “Monacan Co-operative Pottery” at the Amherst Mission. The Commonwealth of Virginia extended recognition to the Monacan Tribe in 1989.

#### *Nansemond Indian Tribe*

Evidence documents that from 1607 until 1646, Nansemond Indians lived approximately 30 miles from Jamestown, Virginia and had significant contact with English settlers. In 1638, a Norfolk County Englishman married a Nansemond woman. That man and woman are the lineal ancestors of all members of the Nansemond Indian tribe and even of some the Nansemonds who lived further west. After 1646, the Nansemond Indians were split into two divisions: the Christianized ones that remained in Norfolk County, and the traditionalists that lived further west. In 1669, the two Nansemond divisions appeared in Virginia Colony’s census of Indian bowmen. Joining several other Indian tribes, the Nansemond Indians signed the Treaty of 1677 with the King of England. The Colony of Virginia prevented the Nansemonds and other Virginia Indians from negotiating separate peace treaties with the Iroquois. Instead, Virginia represented the Nansemonds and other tribes in the final Treaty of Albany in 1722. Norfolk County granted William Bass and his family the “Indian privileges” in 1727 of clearing swamp land and bearing arms because of his Nansemond ancestry. These privileges were forbidden to non-Indians. William Bass was issued a certificate of Nansemond descent in 1742. Norfolk County issued William Bass another certificate of Indian and English descent in 1797.

In 1833, a state law was passed—at the behest of their local member of the Virginia House of Delegates—creating a special racial category in which they could be certified by the local county court. The category was officially called “Persons of Mixed Blood, Not Being Free Negroes or Mulattos” and the county clerk responsible for completing and filing the required certificates simply classified the Nansemonds as “Indians.” A Methodist mission was es-

established around the 1850s for the Nansemonds and is currently a standard Methodist congregation with Nansemond members. Smithsonian anthropologist James Mooney visited the Nansemonds in 1901 and completed a tribal census that counted 61 households. In 1922, the Nansemonds were given a special Indian school in the segregated school system of Norfolk County. In 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians that included a section on the Nansemonds. The Nansemonds were organized formally, with elected officers, in 1984, and received state recognition in 1985.

#### *Gaming*

The six Virginia tribes agreed to a prohibition on gaming and have repeatedly stated that they have no intention of pursuing gaming at this time. Accordingly, H.R. 1385 provides that the tribes are prohibited from conducting any gaming pursuant to any inherent authority they may possess pursuant to the Indian Gaming Regulatory Act, or any other federal law.

#### COMMITTEE ACTION

H.R. 1385 was introduced on March 9, 2009 by Representative James Moran (D-VA). The bill was referred to the Committee on Natural Resources. On March 18, 2009, the Committee on Natural Resources held a hearing on H.R. 1385. The Committee received testimony from the Hon. James Moran (D-VA); the Hon. Tim Kaine, Governor, Commonwealth of Virginia; Mr. George Skibine, Bureau of Indian Affairs; Chief Stephen Adkins, Chickahominy Indian Tribe; and Ms. Helen Rountree, anthropologist.

On April 22, 2009, the Committee met to mark up H.R. 1385. During the markup, Chairman Rahall (D-WV) offered an en bloc amendment which was agreed to by voice vote. The Committee favorably reported H.R. 1385, as amended, by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; Table of contents*

Section 1 establishes the short title as the “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009” and provides a table of contents.

#### TITLE I—CHICKAHOMINY INDIAN TRIBE

##### *Section 101. Findings*

Section 101 establishes a number of congressional findings documenting the history of the Chickahominy Indian Tribe.

##### *Section 102. Definitions*

Section 102 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” for purposes of Title I.

##### *Section 103. Federal recognition*

Section 103 extends federal recognition to the Chickahominy Indian Tribe and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Chickahominy Indian Tribe and its members. It also provides that the



Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the tribe for the purpose of delivering federal services to tribal members.

*Section 104. Membership; governing documents*

Section 104 establishes the membership roll and the governing documents of the Chickahominy Indian Tribe as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

*Section 105. Governing body*

Section 105 establishes the governing body of the Chickahominy Indian Tribe as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

*Section 106. Reservation of the Tribe*

Section 106 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 107 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

*Section 108. Jurisdiction of the Commonwealth of Virginia*

Section 108 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Further, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the Commonwealth of Virginia upon verification that the tribe possesses the capacity to reassume such jurisdiction.

TITLE II—CHICKAHOMINY INDIAN TRIBE—EASTERN  
DIVISION

*Section 201. Findings*

Section 201 establishes a number of congressional findings documenting the history of the Chickahominy Indian Tribe—Eastern Division.

*Section 202. Definitions*

Section 202 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” for purposes of Title II.

*Section 203. Federal recognition*

Section 203 extends federal recognition to the Chickahominy Indian Tribe-Eastern Division and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Chickahominy Indian Tribe-Eastern Division and its members. It also provides that the Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the tribe for the purpose of delivering federal services to tribal members.

*Section 204. Membership; governing documents*

Section 204 establishes the membership roll and the governing documents of the Chickahominy Indian Tribe-Eastern Division as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

*Section 205. Governing body*

Section 205 establishes the governing body of the Chickahominy Indian Tribe-Eastern Division as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

*Section 206. Reservation of the Tribe*

Section 206 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 207 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

*Section 208. Jurisdiction of the Commonwealth of Virginia*

Section 208 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Further, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the Commonwealth of Virginia upon verification that the tribe possesses the capacity to reassume such jurisdiction.

## TITLE III—UPPER MATTAPONI TRIBE

*Section 301. Findings*

Section 301 establishes a number of congressional findings documenting the history of the Upper Mattaponi Tribe.

*Section 302. Definitions*

Section 302 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” of Title III.

*Section 303. Federal recognition*

Section 303 extends federal recognition to the Upper Mattaponi Tribe and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Upper Mattaponi Tribe and its members. It also provides that the Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the tribe for the purpose of delivering federal services to tribal members.

*Section 304. Membership; governing documents*

Section 304 establishes the membership roll and the governing documents of the Upper Mattaponi Tribe as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

*Section 305. Governing body*

Section 305 establishes the governing body of the Upper Mattaponi Tribe as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

*Section 306. Reservation of the Tribe*

Section 306 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 307 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

*Section 308. Jurisdiction of Commonwealth of Virginia*

Section 308 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Further, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the Commonwealth of Virginia upon verification that the tribe possesses the capacity to reassume such jurisdiction.

## TITLE IV—RAPPAHANNOCK TRIBE, INC.

*Section 401. Findings*

Section 401 establishes a number of congressional findings documenting the history of the Rappahannock Tribe, Inc.

*Section 402. Definitions*

Section 402 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” purposes of Title IV.

*Section 403. Federal recognition*

Section 403 extends federal recognition to the Rappahannock Tribe, Inc. and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Rappahannock Tribe, Inc. and its members. It also provides that the Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the tribe for the purpose of delivering federal services to tribal members.

*Section 404. Membership; governing documents*

Section 404 establishes the membership roll and the governing documents of the Rappahannock Tribe, Inc. as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

*Section 405. Governing body*

Section 405 establishes the governing body of the Rappahannock Tribe, Inc. as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

*Section 406. Reservation of the Tribe*

Section 406 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 407 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

*Section 408. Jurisdiction of the Commonwealth of Virginia*

Section 408 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Further, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the

Commonwealth of Virginia upon verification that the Tribe possesses the capacity to reassume such jurisdiction.

#### TITLE V—MONACAN INDIAN NATION

##### *Section 501. Findings*

Section 501 establishes a number of congressional findings documenting the history of the Monacan Indian Nation.

##### *Section 502. Definitions*

Section 502 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” for purposes of Title V.

##### *Section 503. Federal recognition*

Section 503 extends federal recognition to the Monacan Indian Nation and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Monacan Indian Nation and its members. It also provides that the Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the Tribe for the purpose of delivering federal services to tribal members.

##### *Section 504. Membership; governing documents*

Section 504 establishes the membership roll and the governing documents of the Monacan Indian Nation as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

##### *Section 505. Governing body*

Section 505 establishes the governing body of the Monacan Indian Nation as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

##### *Section 506. Reservation of the Tribe*

Section 506 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 507 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

##### *Section 508. Jurisdiction of the Commonwealth of Virginia*

Section 508 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Fur-

ther, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the Commonwealth of Virginia upon verification that the Tribe possesses the capacity to reassume such jurisdiction.

#### TITLE VI—NANSEMOND INDIAN TRIBE

##### *Section 601. Findings*

Section 601 establishes a number of congressional findings documenting the history of the Nansemond Indian Tribe.

##### *Section 602. Definitions*

Section 602 provides definitions for the terms “Secretary,” “Tribal Member,” and “Tribe” for purposes of Title VI.

##### *Section 603. Federal recognition*

Section 603 extends federal recognition to the Nansemond Indian Tribe and provides that all federal laws and regulations of general applicability to other Indian tribes apply to the Nansemond Indian Tribe and its members. It also provides that the Tribe and its members shall be eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Finally, it defines the Service Area of the tribe for the purpose of delivering federal services to tribal members.

##### *Section 604. Membership; governing documents*

Section 604 establishes the membership roll and the governing documents of the Nansemond Indian Tribe as the most recent roll and governing documents submitted to the Secretary of the Interior before the date of enactment of this Act.

##### *Section 605. Governing body*

Section 605 establishes the governing body of the Nansemond Indian Tribe as the governing body in place as of the date of enactment of this Act or any subsequent governing body elected in accordance with election procedures specified in the governing documents of the Tribe.

##### *Section 606. Reservation of the Tribe*

Section 606 as amended establishes the reservation of the Tribe as those lands that are held in fee by the Tribe that were acquired by the Tribe on or before January 1, 2007. Further, the Secretary may place in trust any lands within the boundaries of specified counties on behalf of the Tribe. In addition, the Tribe is prohibited from conducting gaming pursuant to any inherent authority, the Indian Gaming Regulatory Act, or any other federal law.

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

Section 607 provides that nothing expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe or its members.

##### *Section 608. Jurisdiction of the Commonwealth of Virginia*

Section 608 provides that the Commonwealth of Virginia will exercise jurisdiction over all criminal offenses and civil actions that

occur on lands within the Commonwealth of Virginia that are owned by or held in trust by the United States for the Tribe. Further, this section provides the Secretary of the Interior the authority to accept jurisdiction on behalf of the United States from the Commonwealth of Virginia upon verification that the tribe possesses the capacity to reassume such jurisdiction.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article 1, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1385—Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009*

Summary: H.R. 1385 would provide federal recognition to six Indian tribes in Virginia—the Chickahominy Indian Tribe, the Eastern Division of the Chickahominy Indian Tribe, 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 \$65 million over the 2010–2014 period, assuming appropriation of the

necessary funds. Enacting H.R. 1385 would not affect direct spending or revenues.

H.R. 1385 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 H.R. 1385 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—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Bureau of Indian Affairs:						
Estimated Authorization Level .....	3	3	3	3	3	15
Estimated Outlays .....	2	3	3	3	3	14
Indian Health Service:						
Estimated Authorization Level .....	10	10	10	11	11	52
Estimated Outlays .....	9	10	10	11	11	51
Total Changes:						
Estimated Authorization Level .....	13	13	13	14	14	67
Estimated Outlays .....	11	13	13	14	14	65

Basis of estimate: For this estimate, CBO assumes that H.R. 1385 will be enacted near the end of fiscal year 2009. H.R. 1385 would provide federal recognition to six Indian tribes in Virginia. Such recognition would allow the tribes, with membership totaling about 4,200 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 H.R. 1385 would cost \$65 million over the 2010–2014 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 \$14 million over the 2010–2014 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: H.R. 1385 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 56 percent of tribal members—or about 2,400 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 \$4,000 per individual in 2009. Assuming appropriation of the necessary funds and adjusting for anticipated inflation, CBO estimates that IHS benefits for the tribes would cost \$51 million over the 2010–2014 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 eligi-



ble to receive funding from those departments. Thus, CBO estimates that implementing H.R. 1385 would not add to the cost of those programs.

Intergovernmental and private-sector impact: H.R. 1385 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Leigh Angres—Bureau of Indian Affairs, Robert Stewart—Indian Health Service; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Randall.

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

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### EARMARK STATEMENT

H.R. 1385 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or (f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local, or tribal law.

#### CHANGES IN EXISTING LAW

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

## ADDITIONAL AND DISSENTING VIEWS

H.R. 1385 extends recognition to six tribes in the Commonwealth of Virginia that seek recognition as the descendants of historic tribes that had treaty relations with the colonists of Virginia and the King of England. Before the House proceeds further with this bill, several key issues should be thoroughly addressed.

First, more information is needed as to who the present-day tribes and their members petitioning for recognition are. Two hearings (one in the 111th Congress on H.R. 1385 and one in the 110th on similar legislation) have not cleared this up. This leads to a related question: is every member of these tribes an Indian descendant of one of the historic tribes of Virginia? The answer to this question is unclear because the Committee has neither analyzed nor received from the Department of the Interior a reasonable analysis of the records necessary for a fully informed decision to recommend that the full House pass H.R. 1385. Apart from this incomplete record, the appropriateness and justification for recognizing six Indian tribes in Virginia have not been fully considered. There also seems to be a lack of justification for considering the petitions of the Virginia groups prior to the petitions of other groups. About nine groups that submitted petitions seeking recognition under the Bureau of Indian Affairs' regulatory process have completed their petitions; in this respect, they are more prepared for a final determination than the Virginia tribes. There seem to be few, if any, objective criteria for considering recognition bills in the Committee.

More hearings are in order for H.R. 1385 before sending it to the House Floor. In the hearing held on March 18, 2009, the Committee received a lot of testimony from a witness for the six petitioners, from the Governor of Virginia, a historian, and the Department of the Interior. All provided interesting, often passionate, statements. It was especially troubling to learn of a dark era in the Commonwealth's history when racial integrity laws suppressed the identification of Indian Virginians. Although the Department provided no position on the bill in its brief statement on H.R. 1385, the Administration witness did remark that all six groups have petitioned for recognition with the BIA, but none have completed this process. This means the Department lacks completely documented petitions from the six tribes.

H.R. 1385 contains ample lists of congressional findings about the history of the six groups, but there is no requirement to verify that members of these tribes are Indian people who descend from historic Virginia tribes. The definition of "tribal member" in H.R. 1385 does not even require the individual to be of Indian ancestry. According to information provided to the Committee, the tribes' policies or laws generally require Indian ancestry to be members. The legislation, however, does not require that the Secretary of the

Interior verify that the groups' members actually descend from historic Virginia tribes. The House should consider amending the bill to require that any entity recognized as a tribe must be able to document that its members are Indian people who descend from the historic tribes residing in the area that is now present-day Virginia.

A final and broader concern with H.R. 1385 is that what Congress does with this bill could well affect the Committee's ongoing work to address the Supreme Court decision in *Carcieri v. Salazar*. Members of the Committee who were present for the April 1 hearing on this matter learned that the Supreme Court held that the Secretary of the Interior has no authority to acquire lands into trust for tribes not under federal jurisdiction in 1934, except when authorized by a specific Act of Congress. As a result, the Secretary can no longer acquire lands in trust without a specific Act of Congress for tribes recognized after 1934, and the trust status of the lands of such tribes might be open to challenge.

The six Virginia tribes were not under federal jurisdiction in 1934. Thus, anything done with H.R. 1385, could set a precedent for resolving *Carcieri*. Under H.R. 1385, lands placed in trust for the Virginia tribes will be secure; meanwhile, lands held in trust or proposed for trust by other tribes recognized many years ago, are not secure. This kind of inconsistency in federal Indian policy is the kind that led to the *Carcieri* controversies in the first place.

If the solution to *Carcieri* is to deal with each and every post-1934 tribe's trust land application separately in Congress, then H.R. 1385 is appropriate. If the solution is to provide the Secretary of Interior with appropriate authority to acquire lands in trust, then H.R. 1385 is not appropriate.

While the Committee has held a hearing on *Carcieri*, there seems to be no consensus on how to resolve it. We have received no testimony from the Department, and none of the tribes, states, counties, cities, private land owners and other concerned interests have had an opportunity to testify in the Committee as of the time the report for H.R. 1385 is filed.

It would be wise to postpone Floor action of any recognition bills until the Committee acquires a better understanding of the impacts of *Carcieri* and what to do about it.

DOC HASTINGS.