ADDITIONAL AND DISSENTING VIEWS

H.R. 31 extends recognition to the Lumbee Indians of North Carolina. If recognized, the Lumbees would be one of the largest tribes in the U.S. in terms of their membership. According to the Congressional Budget Office, this would cost $786 million over the FY 2010–14 period, assuming appropriation of the necessary funds. Perhaps the Democratic Leadership no longer suffers from sticker shock in light of the trillions of taxpayer dollars it has spent, borrowed, and taxed in just a few months, but three-quarters of the billion dollars is nevertheless a significant sum of money and recognizing an enormous new tribe may stretch budgets thin for services provided to tribes everywhere else. Legislative proposals to recognize the Lumbee have surfaced numerous times over the last century, yet none were enacted. No new information has come to light to justify passing it today; thus, further action on H.R. 31 seems premature. Simply put, more justification is needed to recognize the Lumbee Tribe.

First, the Obama Administration testified in support of H.R. 31, reversing the stance of the Bush Administration. In the Committee hearing on the bill held on March 18, 2009, the witness from the Department of the Interior was unable to explain why the Obama Administration supports legislative recognition of the Lumbees. The witness testified:

> There are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case. We support H.R. 31 with amendments as discussed below.

What are these "rare circumstances"? The witness did not describe them. What if any standard did the Obama Administration use to decide the Lumbees warrant federal recognition in light of the opposition of previous Administration's? None were provided. The witness could not even identify who in the Administration made the recommendation for the President to endorse Lumbee recognition, or whether there were any objective criteria and standards on which the endorsement was based. Perhaps the President used "empathy" rather than rule of law to make his decision. Perhaps the decision was a political one. Maybe it is purely arbitrary. In any case, it would help the Congress to be informed as to why the Executive Branch shifted its historic stance.

In spite of a number of hearings in the House and Senate over the years, there are nevertheless some unanswered questions. To date, the Committee does not seem to have reliable information as to how many members are in the tribe. In the Committee hearing on H.R. 31, the Interior witness estimated the Lumbee tribe includes "over 40,000" members. The Lumbee Chairman subsequently testified there are about 55,000 members. Why is there a

difference of 15,000 between what is recognized by Interior and the Tribe? This disparity alone is larger than the enrollment of many whole tribes.

According to a recent news article that was submitted for the hearing record, some Lumbees want to open the rolls and increase the membership of the tribe even more, but the tribe is holding off doing so until Congress passes H.R. 31.

The House should obtain a certain membership number on which to estimate the cost of the bill and its impact on resources available to all recognized tribes. The CBO bases its dramatic cost estimate of $786 million over five years on an assumed enrollment of 54,000 members. If the Lumbee does change its enrollment criteria to expand membership after recognition is extended, the costs could swell to more than a billion dollars over the same five-year period.

This leads to a related concern. As written, the bill does not require members of the Lumbee tribe to be individuals possessing Indian ancestry. There is no reason to question the intentions of the tribe, which wants to enroll only Indian people. But as the Constitution reserves only to Congress the power to recognize a tribe, then it is the duty of the Congress to ensure that a tribal recognition bill provides a means to verify that it is recognizing a tribe of Indian people. To do otherwise undermines the whole notion of tribal recognition and thereby dishonors all validly recognized tribes.

On this point, H.R. 31 limits the Secretary only to "confirming compliance with the membership criteria set out in the Tribe's constitution adopted on November 16, 2001, which verification shall be completed within 2 years after the date of the enactment of this section." This language actually prohibits the Secretary from confirming whether all Lumbee members descend from historic Indian tribes of North Carolina as described in the findings section of the bill. This is inappropriate and unreasonable.

The membership criteria of the tribe, according to the Lumbee chairman, consist of two things: proof of descent from an ancestor on the tribe's base roll, and maintaining contact with the tribe.

There is no mechanism in H.R. 31 providing that anyone—other than the Lumbee Tribe itself—to verify that individuals listed on the tribe's base roll are, in fact, Indian people. The tribe has testified that its members are descendants of coastal North Carolina tribes. At a minimum, the Secretary should verify that every member of the tribe descends from such historic tribes. Such verification has not been done and it is not required under H.R. 31.

Verification of Indian ancestry is justified for the simple reason that it is a tenet of Indian law. A number of laws enacted over many years provide clear requirements that Indian people must be members of Indian tribes. H.R. 31 should be no different.

A final and broader concern with H.R. 31 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 Lumbee Tribe was not under federal jurisdiction in 1934. Thus, anything done with H.R. 31, could set a precedent for resolving Carcieri. Under H.R. 31, lands placed in trust for the Lumbee Tribe 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. 31 is appropriate. If the solution is to provide the Secretary of Interior with appropriate authority to acquire lands in trust, then H.R. 31 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. 31 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.

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