

Tribes Seek Uncle Sam's Seal of Approval

BY CHARLES GERENA

Native Americans were part of the fabric of Virginia well before English settlers landed in Jamestown in 1607. Yet none of the 11 tribes that are formally recognized by the state has succeeded in convincing the federal government of their legitimacy, something they have tried to do since at least the 1920s.

The U.S. Senate is considering a bill to recognize six Virginia tribes — the Chickahominy, Eastern Chickahominy, Upper Mattaponi, Rappahannock, Monacan Indian Nation, and Nansemond. A similar bill is pending in the House of Representatives. Meanwhile, the Lumbee Tribe of North Carolina, which is taking a similar legislative route to gaining federal recognition, has fought to solidify its sovereignty since the 1880s.

Why are these tribes so persistent? One reason is that federal recognition clearly delineates a government-to-government relationship with Uncle Sam, giving tribes legal standing to lay claim to the territory they once occupied. It also enables tribes to protect their land from encroachment by placing it in a trust. (On the downside, putting land in a trust complicates economic development efforts, since projects often need federal approval.) Finally, federally recognized tribes qualify for grants to fund housing and water and sewer improvements in their communities.

For a tribe's enrolled members, federal recognition affords access to a variety of programs administered by the U.S. Bureau of Indian Affairs (BIA), the Indian Health Service, and other agencies. These include health clinics for individuals and a revolving loan fund for business owners. In addition, tribe members who live on lands held in trust don't pay state property taxes.

Lastly, recognition is meaningful on an emotional level. "We've always been acknowledged by the state, but federal recognition will put us on par with other tribes across the country," notes Wayne Adkins, first assistant chief of the Chickahominy Indian Tribe. "The Chickahominy have a history that is just as rich as those tribes. We helped the settlers survive at Jamestown."

In the absence of a federal seal of approval, state recognition confers a degree of legal "Indianness" on tribes that qualify for assistance from agencies like the Department of Housing and Urban Development and the Economic Development Administration. But it does not confer most of the benefits afforded to federally recognized tribes, chief among them the ability to govern themselves.

In the Fifth District, the Eastern Band of Cherokee Indians achieved federal recognition in 1868 — three decades after thousands of Cherokee were forcibly relocated to Oklahoma, leaving only a few behind in western North Carolina. Today, the Eastern Band's 14,000 enrolled

members control an area larger than the District of Columbia. The Catawba Indian Nation in South Carolina first gained federal recognition in 1943. But their status was terminated in 1959 and it took 34 years to regain it.

The recognition of Native American tribes has changed a great deal over the years. A formal administrative process was established by the BIA in 1978 and revised in 1994. Previously, Congress decided the issue through legislation. The idea was to create a path to recognition that was more consistent and less politicized.

Many tribes, however, have a hard time meeting the strict criteria. For example, Virginia's tribes don't have the genealogical records to prove their continued, uninterrupted existence, even though their presence in Virginia predates the days of Pocahontas and Capt. John Smith. After the General Assembly passed the Racial Integrity Act in 1924, Native Americans had the race on their birth records changed to "colored" because it was one of only two racial designations permitted in Virginia — "white" being the other. This eliminated all documentary evidence of tribes within the state.

Why has it become so hard for an Indian to officially be considered an Indian? "At first, land and fishing rights claims caused the ratcheting up of required documentation," says Mark Miller, a history professor at Southern Utah University who has written about the recognition process. "But the introduction of Indian gaming in the late 1980s is the number-one reason that the BIA federal acknowledgment process has become so controversial."

Federally recognized tribes have the sovereign right to operate gaming facilities like bingo parlors and casinos without being subject to state regulation. They do have to negotiate a compact with the state before offering games other than bingo or cards and the facilities have to be otherwise permissible under state law.

Still, "fear of new casinos has caused local towns, conservative religious groups, and neighborhood organizations to come out against many groups seeking federal recognition," notes Miller. (None of Virginia's tribes has expressed interest in operating gaming facilities and the legislation pending in Congress to recognize the tribes prohibits them from doing so.) Local governments lose something else if a Native American tribe gains federal recognition — they cannot impose taxes or land-use regulations on tribal lands.

Despite this opposition, Virginia's tribal leaders are pressing forward with their efforts. "There are some economic opportunities that the federal government offers tribes," notes Adkins. "But a lot of this has to do with pride. Our ancestors were discriminated against and recognition is a way of restoring some of that pride." **RF**