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Written Statement for Committee on Government Reform

Thank you Mr. Chairman, members of the Committee, and especially our Congressman from Connecticut, Chris Shays, for inviting me to testify today on behalf of the Eastern Pequot Tribal Nation.

I'm here today to tell you about one tribe's experience with the recognition process. Our opponents try to keep the focus on casinos and their impact but my tribe is suffering a different impact: the impact of unwarranted delays in the process. I don't think anyone here will claim the recognition process is working perfectly. When the regulations were implemented in 1978, the process was designed to take 3 to 5 years. The Eastern Pequot Tribal Nation filed its original letter of intent to seek recognition in 1978, **26 years ago**. We've traveled the path to recognition through 5 presidential administrations, 7 secretaries of the interior, 9 assistant secretaries of the interior for Indian affairs, 4 state governors and 4 state attorneys general. We have followed every step prescribed by the regulations and **we are still not done yet**.

In your invitation to me to address this committee, you asked about transparency. This process could not have been more transparent. Just look at our procedural history: After 3 years of active review by BAR, in March of 2000, our petition received a positive preliminary finding. In a detailed 152 page decision with over 500 pages of exhibits, BAR provided its analysis of our petition's strengths and weaknesses. The regulations allow for a comment period for the Tribe and all interested parties to respond to the preliminary finding. In our case the usual six-month period was extended to 18 months because of a request filed by the Connecticut Attorney General and his demands through a Freedom of Information Act lawsuit. During the comment period, the state and towns had open access to the BAR staff and participated in a two day marathon technical assistance hearing. They grilled the staff about the process, our evidence, the BAR's view of the evidence, and the grounds for the preliminary decision. Without exception, they received every document they requested. Nothing has been hidden.

The Tribe ultimately submitted 566 pages of additional material and nine boxes of exhibits in response to BAR's comments. The Attorney General and the towns submitted a total of 879 pages of material.

After months of analyzing this information, BAR issued a positive final determination in 2002. We are the only tribe to achieve a positive preliminary and positive final decision. As allowed by the regulations, the Connecticut Attorney General appealed to the Interior Board of Indian Appeals. All briefs in the appeal were completed in March of 2003 and after 13 months we are still waiting for a judge to be assigned to the case.

You asked about integrity. Our opponents claim we have used inappropriate political influence in the recognition process. The Eastern Pequot Tribal Nation employs one lobbying firm in Washington, DC, whose principal role is to track legislation that might affect us. We pay our lobbyist \$120,000 per year. We began our relationship with this firm during the Clinton administration and it continues today under the Bush administration. At no time have we ever asked any lobbyist to try to influence the outcome of any decision regarding recognition and at no time has any lobbyist represented to us that they have any ability to do so.

We've met approximately once each year with the Connecticut delegation and other leaders in Washington, such as Senators Inouye and Campbell. These meetings have been arranged well in advance and appear in public records. The only meeting we have had with any Department of the Interior official in the past two years was with then Assistant Secretary McCaleb, at his invitation, not ours. At no time during any of these meetings have we asked any elected or appointed official to influence the outcome of any recognition decision.

Political influence is at work here, but it is not being exercised by our tribe, rather, incredible influence is being brought to bear by a small group of people whose real goal is to stop Indian gaming in Connecticut. Mr. Benedict for example is representing a group called Connecticut Alliance Against Casino Expansion. He has raised millions of dollars and stages frequent public rallies against casinos. In fact, Mr. Benedict himself is a registered lobbyist. Elected officials in our state, paid by taxpayer dollars, have appeared regularly at his rallies claiming they oppose recognition of our tribe but what they really oppose is gaming. Elected officials here in Washington have used their political influence and taxpayer dollars to introduce legislation that would halt recognition decisions and stop us even though we have faithfully followed the regulations for 26 years. A recent example is the Attorney General's unscheduled, *ex parte* meeting with the Secretary of the Interior on March 17 where he specifically asked her to stop recognizing tribes.

Our opponents have tried to delay us every step of the way. They attack our recognition decision most often using three arguments: the so-called merger of two tribes, the claim that the Assistant Secretary overruled his staff's recommendation and the supposed reliance on state recognition used by BAR in reaching our decision.

On the first issue, this is what the final determination actually said: "This determination does not merge two tribes, but determines that a single tribe exists which is represented by two petitioners." Regarding the second, the staff simply has no decision making authority in this process. The Assistant Secretary makes the decision to issue a positive preliminary decision; in our case Mr. Gover's decision in the Clinton administration was ultimately confirmed in the positive final determination in the Bush administration. I am sure each of you has on

occasion disagreed with your staff. Third, again quoting from the decision, “The continuous State recognition . . . is not a substitute for direct evidence....[i]nstead this longstanding State relationship and reservation are additional evidence which, when added to the existing evidence, demonstrates that the criteria are met at specific periods in time.”

You asked about accountability. We have had to account for every day of our history since 1614, to the BIA and to the interested parties. We have provided tens of thousands of pages of information documenting our petition. Many of those documents came right out of state archives and files. The interested parties received each piece of our evidence and had the right to comment on it. All that material, including their comments, has been reviewed and analyzed by a team of highly qualified professionals to reach a final decision of almost 200 pages detailing the evidence that demonstrates our tribe meets the 7 criteria. We have been accountable for every professional we have hired and every source of information we have used. The very nature of the recognition process mandates accountability, especially for tribes whose first contact dates back into the 1600s

Unlike many of the Western tribes, the Eastern tribes never entered into treaties with the United States so they don't have automatic access to federal programs. Instead, they had relationships with the colonies before this country was even formed. The Colony of Connecticut established the Eastern Pequot reservation in 1683 and it remains one of the oldest continuously occupied reservations in the country. The State took over the relationship with our tribe in 1784 and that protected relationship continues today. The recognition process adopted in 1978 was designed to give tribes like ours the opportunity to gain access to federal social, health and educational programs that were established for our benefit.

When we started this process in 1978, there was no Indian Gaming. The Indian Gaming Regulatory Act was not passed until 1988, ten years after we first applied for recognition. In 1978, our tribe had no money, no expertise and no access to the professionals who could help us. We did the work ourselves, holding bake sales, car washes and selling our crafts to scrape together the money to file our first petition. We learned quickly that we needed substantial professional assistance to get through the process.

With the introduction of Indian gaming in Connecticut and the opening of the first casino in 1993, the landscape changed completely. IGRA allowed an investor to get a realistic return on the very high-risk funds tribes need to hire a team of professionals to help them with the recognition process. Whether we wanted a casino or not, we had no other way to find the funding to hire the best historians, genealogists, anthropologists, and lawyers.

You asked about cost. Beginning in 1993, our tribe entered into a series of arrangements with investors who agreed to finance our recognition effort in return for future casino management fees as provided by IGRA. Through 2000,

this financing totaled approximately \$ 5 million. In 2000, we entered into our current development agreement with Eastern Capital Development, of Southport, Connecticut, a group of private investors, none of whom have any ties to the gaming industry. .

To date, they have loaned our tribe about \$11 million. Approximately 70% went directly to our effort to meet the recognition criteria. The professional team includes a set of lawyers to coordinate the research on our petition and insure regulatory compliance, other lawyers to represent us in the court suits filed by the Attorney General, and a third group of lawyers to coordinate the Attorney General's IBIA appeal. The team that helped us compile our petition includes 6 senior researchers in anthropology, history and law (4 PhD's, 2 LLd's), 2 research assistants, 2 genealogists, and an archivist. This team has worked continuously since 1997 to meet the challenges, requirements and scope of the recognition process and accounts for most of the expense.

In all this time and with all their rhetoric, our opponents have not submitted one shred of evidence that disproves our right to recognition. Without such evidence to stop our recognition, those who want to stop us from building a casino have no tactics left other than delays, confusion and distortion. Years ago, our opponents received one piece of advice from their lawyers that they've taken to heart. The best way to stop a casino and land claims is to stop a tribe's recognition. And the best way to stop recognition is to derail the process. Recognition does not automatically create a casino. There are many steps along the way where the state's and towns' concerns about gaming will be properly addressed. We have to go through a rigorous approval process before we can even dream about a casino. We must take land into trust and negotiate a gaming compact which in our state requires the ratification of the full legislature. Both of these also mandate extensive public participation.

I don't think a wholesale restructuring of the process needs to take place. The process is thorough, transparent and has provisions for adequate accountability. What must happen is that the BIA must be given additional funding to increase its staff so they can deal with the tremendous backlog of recognition decisions. The IBIA needs similar resources to help them deal with the many complicated cases they review.

This committee should not confuse opposition to gaming with the need to improve the recognition process. Congress should not take away any tribe's right to federal programs to satisfy a small group of people fundamentally opposed to gaming. After all, the 2 casinos in Connecticut employ over 20,000 people and pay the state over \$400 million per year.

Many people have complained that this process is not fair. Please focus on these statistics: since September of 2002 when our appeal was filed, 154 decisions have been issued by the Interior Board of Indian Appeals. Of those 154 cases, 95 were filed after ours. Once again, 95 of the 154 decisions were for cases filed after ours. And we're still waiting.