



Virginia Indian Advisory Board

Board Meeting

Wednesday, February 8, 2023

4:00 pm – 6:00pm

Mechanicsville Branch Library
7461 Sherwood Crossing Pl,
Mechanicsville, VA 23111

The meeting of the Virginia Indian Advisory Board was held in-person with a quorum present.

Board members attending in-person:

Chair Brandon Custalow
Dr. Ashley Spivey
Ms. Cami Adkins
Dr. Gregg Kimball
Ms. Julie Langan

Work Group Members attending:

Ms. Jean Kelley (virtual)
Dr. Brad Hatch (virtual)
Dr. Buck Woodard (virtual)
Ms. Pamela Ross (in person)

Gloria Senecal, Secretary of the Commonwealth's office, and Ross Phillips, Office of the Attorney General, attended in person.

I. Welcome

VIAB Chair Brandon Custalow welcomed Board members, Work Group members, representatives of the Secretary of the Commonwealth's office, members of the Wolf Creek Indian Tribe and counsel, and guests.

II. Call to Order

VIAB Chair Brandon Custalow called the meeting to order at 4:11 pm.

III. Approval of Minutes and Agenda

Chair Custalow asked if anyone had questions about the minutes of the December meeting that had been distributed electronically. Mr. Hurd asked to be heard on the minutes. Chair Custalow



declined that request. Ms. Langan moved that the minutes be approved, and Ms. Adkins seconded the motion. The minutes were approved unanimously. Chair Custalow asked if anyone had changes to the proposed agenda. Hearing none, Dr. Spivey moved approval of the agenda; the motion was seconded by Ms. Langan and approved unanimously.

IV. Board Discussion on Final Recommendation

Chair Custalow opened the floor to AG representative Ross Phillips regarding the letter from the Petitioner dated January 23, 2023. Mr. Ross stated that nothing in the letter limits the Board's discretion to make a determination on the petition at this time. He further stated that the Board has the discretion to interpret the criteria and determine the weight to give them.

Chair Custalow then proceeded to the Work Group's and Board's questions for the Petitioner based on the Petitioner's presentation at the last Board meeting.

Question 1. From slide #28: Please provide documentation that 'Arkeelooks' is a tribal name, rather than a personal name. This name appears on a response line for listing an applicants' grandparents' children's English and Indian names.

Petitioner's response (Mr. Hurd): The Tribe's position is not that it's an Indian tribe, but the name of an ancestor (a genealogical claim) and related people also known by that name.

Work Group member Jean Kelley asked why this information was not in the petition? Mr. Hurd stated that it was in attachments and subsequent material. Ms. Kelley responded that it's not in the narrative and this is important information.

Work Group chair Buck Woodard commented that this brings up the general question about material presented at the Petitioner's presentation *vis a vis* the original petition. Dr. Spivey offered that her question might clarify this issue.

Work Group member Pamela Ross noted that the Work Group stressed to the Petitioner that the petition's narrative should be tied to the evidence and documents in a coherent narrative.

Ms. Kelley noted that having the materials organized in an FTM program would have been useful. Mr. Hurd replied that Petitioners should have been advised of this earlier.

Chair Custalow noted that the Petitioner has the burden of proof to provide an accurate and thorough narrative.

Question 2 From slides #31-33: While the Plecker era impacted the Indian people of Virginia, how did this effect the Petitioner, whose family was not resident in Virginia during this time?

The Petitioner (Mr. Hurd) handed out a list of family members born between certain years. The Petitioner's position is that not only did Walter Plecker change records during his time as head of the Bureau of Vital Statistics, but that he went back retroactively through all records into the 1790s. The Petitioners further asserted that this activity likely continued past 1942.



Dr. Kimball asked if there is evidence that Plecker retroactively manipulated records in every county courthouse since that's where most such records would reside. Reply: Yes, the assertion is that every record was manipulated.

Chair Custalow stated that he has seen records changed by Plecker and it can easily be seen visually that changes have been made in the documents. He further stated that the Petitioner's reply to the question is based on assumptions not evidence.

Dr. Spivey asked if the U.S. census was also modified? The Petitioner stated that they are not claiming that the census was modified, but the records are not reliable because people of Indian heritage were afraid to report their ethnicity. Chair Custalow stated that many Indians did indeed assert their identity even in the Plecker era. Dr. Spivey noted that the 1870 U.S. Census is the first population schedule to specifically call out Indians as a category.

Question 3. From slide #36: Please provide evidence of this new assertion that "Lesters were well known to be Native American and Cherokee people throughout their family history." Petitioner's genealogy does not provide documentation for the parentage of either Alexander Abner Lester or Martha 'Patsy' Arthur. If Conley's book has information, the pages should be provided.

The Petitioner (Mr. Hurd) replied that the Connelly book was not meant to be a genealogy. He stated that it is well documented that Lester is child of Gabriel Arthur and Rebecca Arthur. The Petitioner handed out a Wiki-tree entry. Chair Custalow asked Jean Kelley to weigh in on this issue. She replied that this is not a reliable source.

4) From slide #37: Please provide genealogical documentation of Arminda/Amanda Rooark's connection to the Petitioner. Her father was Meshach "Shake" Stephens from the Stephens family of Fentress County, TN. Her husband is listed as "L. Riddell." This application has no information as to the reason she is using the "Roark" surname. Additionally, the rejection of this application was predicated on Arminda/Amanda Roork's testimony of where her grandparents had lived and when they moved to Tennessee. Because her grandparents moved prior to any of the Cherokee treaties or rolls beginning in 1833-34, no work was done to establish whether they were Cherokee or formerly resided in any Cherokee towns or areas.

Also, please provide evidence this rejected application was "recognized" by the Court of Claims as proof of Cherokee ancestry for Arminda/Amanda Rooark.

The Petitioner again pointed to the records from the Eastern Cherokee applications. Response to second part of question: Again, points to application documents. Brandon called on Jean Kelley regarding this claim. She asked, "So, there is no evidence the court of claims accepted Cherokee ancestry?" Petitioner again pointed to application and associated documents.

5) it appears that new evidence was presented at the meeting as a part of their presentation, in particular genealogical information that I don't recall being a part of any of the materials shared and submitted by the petitioner. I am thinking of references to Arkeelook/Attakullakulla,



Louise Graham Milam, and Amanda Roark's application to Eastern Band. I would like the petitioner to clarify what information was included in the presentation that was not in the original materials submitted – in short, I want to hear directly from them a list of the references/information shared in the presentation that were not included in the petition materials. I would like to know why this information was not included in the submitted materials?

The Petitioner replied that they had already dealt with Arkeelook/Attakullakulla and Amanda Roark. The Petitioner noted that the photograph of Louise Gran Milam was part of documentation for the petition.

Dr. Kimball asked if the 1942 circular from Walter Plecker was in the original petition. Ms. Annette Price replied that it was part of the documentation.

Now that the Petitioners had answered the questions from the Work Group and Board, Chair Custalow thought that it would be appropriate to take some public comment. Dr. Spivey made a motion to amend the agenda, but our legal representative, Mr. Phillips, informed us that was not necessary.

Chair Custalow asked for public comment against the petition:

Chief Hoskins, Chief of Cherokee Nation, and attending virtually, thanked the chairman and Work Group. He stated that the Wolf Creek group is not a tribe and suggested that they seek recognition with the federal government. He considers it offensive that they pose as a tribe. He stated that the Cherokee tribe is rooted in tradition, culture, and documentation. On behalf of Cherokee enrolled members (including those living in Virginia), he opposes their continued attempts to “pose as a tribe.”

Chair Custalow asked for public comment for the petition:

Mr. Hurd replied on behalf of the Petitioners. He stated that he and his clients have respect for Cherokee Nation but that they disagree with the claim that those tribes have the right to say who else can be Cherokee. He stated that they are not claiming a right to be part of their tribe, but as a tribe drawing together remnants of the Cherokee who did not leave. He argued that the Cherokee nation shouldn't be able to prohibit the reorganization or reemergence of other Cherokee tribes. He stated that many recognized tribes are not as large as the Petitioners.

Mr. Hurd also took exception to Chief Hoskins accusation in his letter that the Wolf Creek Cherokee's minority business license was obtained fraudulently. He demanded that Chief Hoskins write a letter withdrawing that “defamatory” statement.

Mr. Hurd said he was glad to hear that Ms. Langan and Dr. Kimball agreed that the Wolf Creek Cherokee have indigenous ancestors based on their previous comments. He claimed that just one ancestor would satisfy the criteria and asked the Board to rule in favor or take no position.



Ms. Langan and Dr. Kimball both replied that this was a misstatement of their comments and that they did not believe a Cherokee ancestor had been proven based on the evidence presented.

The Board then proceeded to an open discussion of their positions on recognition and the petition.

Dr. Kimball thanked the Work Group for their patience and hard work and stated that he generally agreed with their recommendations. He stated that he felt the interpretation of the criteria by some Work Group members, especially criteria 3, was too narrow given its language. Clearly this should weigh indigeneity as well. He also stated that even if the Petitioner could provide proof of a single or even a few indigenous ancestors it would not satisfy the state criteria. Recognition is clearly tied to the existence of an organized tribe with traditions, institutions, and culture over time. He also pointed to problematic uses of evidence, notably Plecker's 1940s circular (or so-called "hit list"). He questioned why the Petitioner's key surnames do not appear on that list.

Mr. Woodard, chair of the Work Group, asked to be recognized. He stated that he largely agreed with what Dr. Kimball had said, but he briefly restated his position regarding a narrower parsing of the criteria and guidelines.

Ms. Langan stated that Dr. Kimball had raised her most important points. She said that she had no reasons to doubt that they currently operate as a kinship group but that is not the same as a tribe. She concurred with the Work Group's findings that the case for recognition hadn't been made.

Dr. Spivey stated that she agrees with Ms. Langan and Dr. Kimball. She stated that the Board's primary duty is to follow the stated guidelines and criteria. As a scholar she feels the petition is about an extended family claiming indigenous ancestry but that's not a tribe. Her advice was to follow the Work Group's recommendations.

Ms. Adkins concurred with everything that had been said by her fellow Board members. She sees a family rather than tribe and agrees with the Work Group recommendations.

Chair Custalow thanked the Work Group for the information and guidance that they provided. He concurred that the group has an identity, but it is an extended family not a tribe. He then asked Mr. Phillips, the Board's legal liaison, to lay out the four options available to the Board. Mr. Phillips said that regarding the petition the Board could:

- Recommend to the Secretary of the Commonwealth that the petition be approved
- Recommend to the Secretary of the Commonwealth that the petition be rejected
- Table the petition without prejudice
- Advise the Secretary of the Commonwealth that the Board makes no recommendation

Chair Custalow then asked Board members for a recommendation.



Dr. Spivey noted that based on the stated sentiments of Board members, it seemed that we could move forward with a motion on the petition. She made a motion that the Board recommend to the Secretary of the Commonwealth that she reject the petition for state recognition from the Wolf Creek Cherokee Tribe. Ms. Adkins seconded the motion. The Board voted unanimously to approve the motion.

VI. Public Comment

Chief Custalow then called for a second round of public comment.

Mr. Hurd stated that although he and his clients disagreed with the recommendation, they thanked the Board for its time and effort.

Chief Steven Adkins of the Chickahominy (attending virtually) asked to address a statement that had been made at an earlier meeting of the Board, to the effect that Virginia tribes only received recognition legislatively and might not have been able to do so through the formal federal process. He stated that the Chickahominy Tribe started the federal recognition process with the BIA in 1980. At their last meeting with federal representatives, he was told that they had met the criteria and recognition was forthcoming. He and the tribe decided to be recognized through that process or legislatively, whichever happened first. (He noted that some tribal members who had begun the process with him had subsequently died.) In the end, legislative relief occurred first. He wanted the record to reflect that all seven of the federal tribes in Virginia that received recognition legislatively had pending petitions in the federal system.

Ms. Annette Price stated that there are nine other Cherokee tribes in U.S. and that Virginia should be inclusive of all people. She argued that Chief Hoskins as a “hit list” of tribes that he doesn’t want recognized. She further stated that she has not met any of Cherokee Nation people bringing culture to Virginia audiences. She stated that she was disappointed that the tribal members on the Board did not recognizing Plecker’s influence.

VII. Closing Remarks and Adjournment

The Board scheduled their next meeting for March 9, 2023, to consider revisions to the recognition criteria. They also invite Work Group members.

Chair Custalow made some closing remarks. He again thanked the Work Group for their time and attention. He noted that the Petitioners could submit again.

Chair Custalow asked for a motion to adjourn which was made by Dr. Kimball and seconded by Ms. Langan, and unanimously approved. The meeting was adjourned at approximately 6:30 pm.