

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

LUMBEES FROM ROBESON, LRDA BRANCH
#1, MICHIGAN CHAPTER, et al,

Plaintiffs,

Civil No. 80-8073-AW

v.

Hon. Robert J. Chrzanowski
(P-11875), Judge

STATE OF MICHIGAN, et al,

Defendants.

Robert E. McFarland (P-17394)
Attorney for Plaintiffs

John Wernet (P-31037)
Attorney for Defendants

ORDER

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STATE OF MICHIGAN, et al,

Defendants.

ORDER

At a session of said Court held in
the City of Mt. Clemens, County of
Macomb, State of Michigan,
on the _____ day of APR 15 1982, 1982

ROBERT J. CHRZANOWSKI

PRESENT: HONORABLE ROBERT J. CHRZANOWSKI
CIRCUIT JUDGE

This matter comes before the Court for consideration of the Consent Agreement entered into between the parties. The Court has reviewed the terms of that Agreement and finds that said terms are fair and equitable and adequately protect the interests of the parties and of the public. Wherefore, being fully advised in the premises,

IT IS ORDERED, that a Consent Judgment is hereby entered in accordance with the Consent Agreement entered into between the parties, the terms of which are expressly approved, adopted, and made a part of this Judgment.

IT IS FURTHER ORDERED that, in accordance with the terms of said Consent Agreement:

1. Within thirty days following the entry of this order, Plaintiffs shall supply the following documents and records to Defendants:

(a) Copies of receipts or other documentation evidencing the actual amount of monies expended by Plaintiffs Flora Locklear Mooney and Charles L. Chavis for tuition payments to qualifying Michigan public universities or junior or community colleges for courses of study which commenced on or after the date each of these respective Plaintiffs was first officially entered upon the Lumbee tribal roll to and including the date of this Order.

(b) Evidence as described in Part II, paragraph 2, of the Consent Agreement relating to the standards employed by the Lumbee Regional Development Association in determining the Lumbee Indian blood quantum of its members.

2. Within twenty days following their receipt of the above-described documents from Plaintiffs, Defendants may file a notice with the clerk of this Court stating whether the evidence pertaining to the determination of blood quantum presented by Plaintiffs is considered by Defendants to be valid and sufficient. Should Defendants object to the validity or sufficiency of said evidence, this question shall be submitted for hearing and determination by this Court.

3. Within thirty days following the filing of the notice described in the preceding paragraph, or following a determination by this Court that the evidence so submitted is

valid and sufficient to enable Defendants verify the Lumbee Indian blood quantum of individual applicants, Defendants shall reimburse Plaintiffs Mooney and Chavis for the actual documented sums expended by these two individuals for tuition payments as provided in Part II, paragraph 3 of the Consent Agreement, provided, however, that such reimbursement shall not exceed the total of \$1,000.00 paid to these two Plaintiffs collectively. No other Plaintiff or class member shall be entitled to receive monetary damages from Defendants arising out of the transactions or occurrences which are the subject of this action.

4. Within fifteen days following payment by Defendants of the reimbursement described above, Plaintiffs shall, in accordance with the terms of GCR, 1963, 524(1), file a Satisfaction of Judgment with the Clerk of the Court acknowledging such payment.

IT IS SO ORDERED.

JOHN G. ROSKOPP

HON. ROBERT J. CHRZANOWSKI
CIRCUIT JUDGE

in absence of Judge _____

Approved as to form and content:

McFARLAND & BULLARD

FRANK J. KELLEY
Attorney General

Robert E. McFarland
Robert E. McFarland
2855 Coolidge, Suite 201A
Troy, Michigan 48084

John Wernet
By: John Wernet
Assistant Attorney General
794 Law Building
525 W. Ottawa
Lansing, Michigan 48913

date 4/12/82

date 3/15/82

3 A TRUE COPY

Barbara Miller
COUNTY CLERK
BY Marilyn Oliver
DEPUTY CLERK

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CONSENT AGREEMENT

STATE OF MICHIGAN
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CONSENT AGREEMENT

NOW COME Robert E. McFarland, McFARLAND & BULLARD, as counsel for Plaintiffs herein, and FRANK J. KELLEY, Attorney General, and John Wernet, Assistant Attorney General, as counsel for Defendants herein, who warrant to the Court and to each other their authority to stipulate and who do hereby stipulate and agree as follows:

I. Background

1. This is a mandamus action brought by Plaintiffs, Lumbees from Robeson, LRDA Branch #1, Michigan Chapter, and certain of its members, against Defendants, State of Michigan and Michigan Commission on Indian Affairs, seeking a declaration of the duties and responsibilities of Defendants under 1976 PA 174, as amended; MCLA 390.1251 et seq; MSA 15.2114(1), that being an act to provide free tuition to certain Indian students at Michigan public

colleges and universities. In addition, Plaintiffs seek monetary damages for all sums expended by them for tuition as the result of the allegedly unlawful failure of Defendants to certify Plaintiffs as qualifying for free tuition benefits under 1976 PA 174. •

2. Plaintiffs bring this action on behalf of a class consisting of all enrolled members of the Lumbee Indians of North Carolina who are residents of the State of Michigan, who are or have been enrolled or qualified for enrollment as students in Michigan public community or junior colleges, or in Michigan public colleges or universities and who otherwise meet the various requirements of 1976 PA 174.

3. This Court has jurisdiction over this proceeding pursuant to RJA, § 4401, as amended; MCLA 600.4401; MSA 27A.4401.

4. Defendants assert that their failure to certify individual Lumbee applicants for free tuition benefits under 1976 PA 174, as of the date this action was filed, was not wrongful but, rather, was the direct result of Defendants' inability, despite their good faith efforts, to obtain sufficient documentation which would enable them to resolve two issues, both of which are central to this case:

- A. Is the Lumbee Regional Development Association, Inc., of Pembroke, North Carolina, the tribal organization through which Plaintiffs claim status as Indians, a bona fide Indian tribe qualifying as a "tribal authority" within the meaning of 1976 PA 174, § 2, as amended?
- B. Can Plaintiffs produce satisfactory documentation which would permit Defendants to verify the Indian blood quan-

tum of the individual named Plaintiffs as is required by
1976 PA 174, § 2?

5. As a result of the documents and information exchanged between the parties during the discovery process, the parties hereby stipulate and agree to the following facts relevant to the foregoing issues:

- A. With respect to the issue of tribal status, the parties stipulate that neither the Lumbee Regional Development Association nor any of its predecessor organizations were a party to any federal Indian treaty and, further, that the Federal Government has taken no clear and dispositive action either recognizing or refusing to recognize the Lumbee Regional Development Association of Pembroke as a bona fide Indian tribe. The Association has however, been long recognized and treated as an Indian tribe by the State of North Carolina and, more recently, by the National Congress of American Indians.

- B. With respect to the issue of determining the requisite quantum of Indian blood possessed by individual Lumbee applicants, the Lumbee Regional Development Association has recently promulgated an official tribal membership roll, a copy of which has now been provided to Defendants. Plaintiffs assert that, although the Lumbees have never been a party to a federal treaty and, hence, do not possess a federal treaty roll which can be used to determine blood quantum, the Lumbee Regional Development Association does in fact require significant and substantial documentation of at least 1/4 degree quantum

Lumbee Indian blood prior to the inclusion of any individual upon the tribal roll. Plaintiffs further assert that, as a part of this documentation process, the tribe requires an individual to use historical records such as church, courthouse, and school records from Robeson County to trace his or her ancestors to the Robeson Indian Community to at least the mid-nineteenth century. The parties stipulate and agree that, given the history of the Robeson Indian Community, it is reasonable to assume that most individuals residing in that Community as of the mid-nineteenth century possessed a substantial degree of Lumbee Indian blood.

II. Agreement

Wherefore, in consideration of the foregoing, and as a result of the review by the parties of the various documents and information exchanged through the discovery process, the parties to this action do hereby stipulate and agree to the following disposition of the issues raised by this action:

1. Defendants agree that, because the Federal Government has taken no clear and dispositive action either recognizing or refusing to recognize the Lumbee Regional Development Association of Pembroke, North Carolina as a bona fide Indian tribe, the best evidence currently available concerning that organization's status as an Indian tribe is the recognition of that organization as a tribe by both the State of North Carolina and the National Congress of American Indians. Accordingly, based upon the evidence now available to it, Defendants agree to treat the Lumbee Regional Development Association of Pembroke, North Carolina as a bona fide Indian tribe qualifying as a "tribal authority" within

the meaning of 1976 PA 174, § 2, as amended.

2. Defendants further agree that, upon presentation by Plaintiffs of evidence satisfactory to Defendants that the tribal determination of membership is based upon real and substantial historical documentation of Indian blood quantum dating back at least as far as the mid-nineteenth century Robeson Indian Community, Defendants thereupon will recognize and henceforth accept a determination of Lumbee blood quantum made by the appropriate officials of the Lumbee Regional Development Association of Pembroke, North Carolina.

3. Defendants shall not be liable for any damages based upon the transactions or occurrences which are the subject of this action, except that Defendants agree to reimburse Plaintiffs Flora Locklear Mooney and Charles L. Chavis in the amount of the actual documented sums expended by these two individuals for tuition payments to qualifying Michigan public universities or junior or community colleges for courses of study which commenced on or after each of these Plaintiffs' official date of enrollment upon the Lumbee tribal roll to and including the date of the approval by the Court of this Consent Agreement; provided, however, that the total reimbursement collectively paid to these two Plaintiffs shall not exceed \$1,000. No other named plaintiff or class member shall be entitled to receive monetary damages from Defendants arising out of the transactions or occurrences which are the subject of this action.


4. No costs or attorney fees shall be awarded to any party in this action.

5. Notice of this Consent Agreement and of any court order

entered pursuant to this agreement shall be given to class members by the provision of a copy of these documents to Plaintiff, Lumbees from Robeson, LRDA Branch # 1, Michigan Chapter, which shall disseminate this information among its members.


WHEREFORE, the undersigned counsel for Plaintiffs and for Defendants respectfully request that this Court enter a Consent Judgment in accordance with the terms of the foregoing agreement.

Counsel for Plaintiff:
McFARLAND & BULLARD


Robert E. McFarland
2855 Coolidge, Suite 201A
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Counsel for Defendants:

FRANK J. KELLEY
Attorney General

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