



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

TESTIMONY OF ERNEST STEVENS, JR., CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

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INTRODUCTION

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. My name is Ernest Stevens, Jr., Chairman of the National Indian Gaming Association (NIGA) and a member of the Oneida Nation of Wisconsin. NIGA is an intertribal association of 184 federally recognized Indian tribes united behind the mission of protecting tribal sovereignty and preserving the ability of tribes to attain economic self-sufficiency through gaming and other economic endeavors. I want to thank the Committee for this opportunity to provide our views on the role of tribal governments and the National Indian Gaming Commission (NIGC) as regulators of Indian gaming operations.

INDIAN TRIBES AS GOVERNMENTS

I testified one year ago today before this Committee about the general state of Indian gaming. As I did then, I again would like to first place Indian gaming in proper context, by briefly providing some background about the Constitutional status of Indian tribes in the United States, and discuss briefly what Indian gaming means to Indian country.

As this Committee well knows, before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to their lands. The Nations of England, France, and Spain all acknowledged tribes as sovereigns and entered into treaties with various tribes to establish commerce and trade agreements, form wartime alliances, and preserve the peace.

The United States Constitution specifically acknowledges the importance of trade with tribal governments in the Commerce Clause, which states that “Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” U.S. Constitution, Article I, section 8, clause 3. The United States also entered into hundreds of treaties with tribal governments. Through these treaties, tribes ceded hundreds of millions of acres of tribal homelands to help build this great Nation. In return, the United States promised to provide for the education, health, public safety and general welfare of Indian people. The U.S. Supreme Court later

acknowledged that this course of dealing with tribal governments established a trust relationship between tribes and the United States, with accompanying obligations on the part of the United States towards Indian people.

Over the past two centuries plus, the federal government has fallen far short in meeting these solemn treaty and trust obligations. In the late 1800's, the United States adopted and implemented a policy of forced Assimilation, whereby the federal government took Indian children from their homes, and placed them in military and religious boarding schools where they were forbidden from speaking their language or practicing their Native religions. The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Indian lands, and had the result of further eroding tribal land bases and devastating tribal economies. Finally, the Termination policy of the 1950's again sought to put an end to tribal governing structures, eliminate remaining tribal land bases, and attempted to relocate individual Indians from tribal lands with the help of one-way bus tickets to urban areas with the promise of vocational education.

These policies resulted in death of hundreds of thousands of our ancestors, the taking of hundreds of millions of acres of tribal homelands, the suppression of tribal religion and culture, and the destruction of tribal economies. The aftermath of these policies continues to plague Indian country to this day.

TRIBAL GOVERNMENT SELF-DETERMINATION

Time and time again, these policies were revealed as failures. The persistence and perseverance of Indian people demonstrated to the federal government that Indian country was not going to fade away. On July 8, 1970, President Nixon formally repudiated the policy of Termination and adopted a policy supporting Indian Self-Determination, which seeks to improve Indian education, fosters tribal culture, and enhances tribal economic development, among other goals. Self-Determination remains the Indian Affairs policy of the United States to this day. Tribal governments have seen progress in rebuilding their communities as a result of the Self-Determination policy.

In the late 1960's and early 1970's, tribal governments took self-determination to heart, and opened the first Indian gaming operations to generate governmental revenue to fund essential tribal government programs and meet the shortfalls in the federal obligations to provide for Indian education, health, and the general welfare of Indian people.

State governments and commercial gaming operations challenged the rights of tribes to conduct gaming on their lands. These challenges culminated in the Supreme Court case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The *Cabazon* Court upheld the right of tribes, as governments, to conduct gaming on their lands free from state control or interference. The Court reasoned that Indian gaming is crucial to tribal self-determination and self-governance because it provides tribal governments with a means to generate governmental revenue for essential services and functions.

In 1988, one year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include the promotion of tribal economic development and self-sufficiency, strengthening tribal governments, and establishing a federal framework to regulate Indian gaming. The Act also established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in America, the NIGC is the only federal commission to regulate any form of gaming in the United States.

IGRA did not come from Indian country. A number of tribal governments strongly opposed the federal legislation. The Act is far from perfect, and the U.S. Supreme Court has added to its imperfections. However, for nearly 23 years, more than 200 tribes nationwide have made IGRA work to help begin to rebuild their communities and meet the stated goals of the Act.

STATE OF INDIAN GAMING

Indian gaming is the Native American success story. For more than three decades, Indian gaming has proven to be the most successful tool for economic development for many Indian tribes. In 2010, 236 of the 565 federally recognized Indian tribal governments operated gaming to generate revenue for their communities.

Many tribes have used revenue from Indian gaming to put a new face on their communities. Indian tribes have dedicated gaming revenues to improve basic health, education, and public safety services on Indian lands. We have used gaming dollars to improve tribal infrastructure, including the construction of roads, hospitals, schools, police buildings, water projects, and many others. Gaming revenues also enable tribes to diversify their economies beyond gaming. Because of capital provided by gaming, tribes have invested in renewable energy projects, retail operations, manufacturing and other entrepreneurial ventures.

For many tribes, Indian gaming is first and foremost about jobs. Indian gaming is a proven job creator, establishing and fostering over 600,000 direct and indirect American jobs in 2010. Indian gaming has provided many individual Indians with their first opportunity at work. Just as importantly Indian gaming is bringing entire families back to Indian country. Because of Indian gaming, reservations are again becoming livable homes, as promised in hundreds of treaties. These American jobs go to both Indian and non-Indian alike. Without question, we are putting people to work.

Indian gaming also benefits federal, state, and local governments. A June 2011 National Public Radio report, titled "Casino Revenue Helps Tribes Aid Local Governments," acknowledged that revenue from the Stillaguamish Tribe of Washington helped prevent additional layoffs at the local Everett, Washington prosecutor's office. The article also noted to the \$1.3 million that the Tulalip Tribes recently gave to the local school district after they heard about possible budget cuts and teacher layoffs. These same scenarios are taking place in more than a hundred local jurisdictions throughout the United States, saving thousands of jobs for American health care workers, fire fighters, police officers,

and many other local officials that provide essential services to children, elders, and others.

In 2010, Indian gaming generated close to \$13 billion for federal, state and local governments budgets through compact and service agreements, indirect payment of employment, income, sales and other state taxes, and reduced general welfare payments. Despite the fact that Indian tribes are governments, not subject to direct taxation, individual Indians pay federal income taxes, the people who work at casinos pay taxes, and those who do business with tribal casinos pay taxes. As employers, tribes also pay employment taxes to fund social security and participate as governments in the federal unemployment system. Indian tribes also made more than \$100 million in charitable contributions to other tribes, nearby state and local governments, and non-profits and private organizations. In short, Indian gaming has become a vital piece of the national economy.

As this Committee has highlighted over the past several years, much more needs to be done. Indian gaming is not a cure all, and many tribal communities continue to suffer the devastating effects of the past failed federal policies. Too many of our people continue to live with disease and poverty. Indian health care is substandard, violent crime is multiple times the national average, and unemployment on Indian reservations nationwide averages 50%. Again, only 236 of the 565 federal recognized tribes are able to use gaming as a means of economic development.

To broaden the economic success of Indian gaming, NIGA is working with our Member Tribes to further encourage tribe-to-tribe giving and lending. Through our American Indian Business Network, we work to highlight the benefits of hiring Native owned businesses and procurement of Native produced goods and services. Empowering tribal entrepreneurs and tribal government owned businesses, will serve to further diversify and strengthen tribal economies.

In addition, we applaud the ongoing efforts of the NIGC to adopt a regulation to implement the Buy Indian Act. The Buy Indian Act, states simply: “so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.” 25 U.S.C. 47. Such a regulation should give preference to qualified tribal government-owned and individual Indian-owned businesses when the NIGC procures goods or services. These efforts fully comport with the stated goals of IGRA to foster tribal economic self-sufficiency.

While much more must be done, Indian gaming has proven to be one of the best available tools for tribal economic development. Indian gaming has helped many tribes begin to rebuild communities that were once forgotten. Because of Indian gaming, our tribal governments are stronger, our people are healthier, and an entire generation of Indian youth has hope for a better future.

TRIBAL GOVERNMENT REGULATION OF INDIAN GAMING

That's what is at stake. Tribal governments realize that none of these benefits would be possible without a strong regulatory system to protect tribal revenue and to preserve the integrity of our operations.

With regard to regulation, IGRA established a three-tiered system. This Committee's 1988 report on the Act makes clear the original intent for the regulatory system under the Act:

“[IGRA] provides for a system of joint regulation by tribe and the federal government for class II gaming on Indian lands and a system of compacts between tribes and states for regulation of class III gaming. The bill establishes the NIGC as an independent agency within the Department of the Interior. The Commission will have a regulatory role for class II gaming and an oversight role with respect to class III gaming.”

Senate Report 100-446, at 1 (Aug. 3, 1988).

This regulatory system vests local tribal government regulators with the primary day-to-day responsibility for regulating Indian gaming operations. This only makes sense, because no one has a greater interest in protecting the integrity of Indian gaming than tribes.

This framework contrasts from the failed framework of criminal jurisdiction in Indian country where tribes rely on federal officials to investigate and prosecute crimes that occur on Indian lands from offices and courtrooms that are often located hundreds of miles from Indian country. Despite recent reforms, this system is a proven failure. Washington, D.C. is simply not equipped to police Indian lands or make local decisions for tribal communities.

While tribes take on the primary day-to-day role of regulating Indian gaming operations, IGRA requires on coordination and cooperation with the federal and state governments (in the case of class III gaming) to make this comprehensive regulatory system work. The tribal, state, and the federal governments must all work hand-in-hand to ensure the effective regulation of Indian gaming.

Under the Act, the NIGC has direct authority to monitor class II gaming on Indian lands on a continuing basis and has full authority to inspect and examine all premises on which class II gaming is being conducted.

Class III gaming is primarily regulated through a framework established through individual tribal-state gaming compacts. Here the two sovereigns agree upon a framework to regulate class III gaming based on arms length negotiations. As noted above, Congress intended that the NIGC would maintain an oversight of class III gaming. As a result, under the Act, the NIGC:

- reviews and approves class III tribal gaming regulatory laws and ordinances;
- reviews tribal background checks and gaming licenses of class III gaming personnel;
- receives and reviews annual independent audits of tribal gaming facilities, including class III gaming (all contracts for supplies and services over \$25,000 annually are subject to those audits);
- approves all tribal management contracts; and
- works with tribal gaming regulatory agencies to ensure proper implementation of tribal gaming regulatory ordinances.

This comprehensive system of regulation is expensive and time consuming, but tribal leaders know what's at stake and know that strong regulation is the cost of a successful operation. Despite the Recession, tribal governments have continued to dedicate tremendous resources to the regulation of Indian gaming. In 2010, tribes spent more than \$345 million on tribal, state, and federal regulation:

- \$250 million to fund tribal government gaming regulatory agencies;
- \$80 million to reimburse states for state regulatory activities negotiated and agreed to pursuant to approved tribal-state class III gaming compacts; and
- \$16 million to fully fund the operations and activities of the National Indian Gaming Commission.

The Indian gaming regulatory system employs more than 3,400 expert regulators and staff to protect Indian gaming. Tribal governments employ approximately 2,800 gaming regulators and staff. Among the ranks of tribal regulators are former FBI agents, BIA, tribal and state police officers, former state gaming compliance regulators, military officers, accountants, auditors, attorneys and bank surveillance officers. In addition, state governments employ more than 500 state gaming regulators, staff and law enforcement officers to help tribes regulate Indian gaming. At the federal level, the NIGC employs more than 100 regulators and staff.

In addition to the NIGC, a number of other federal officials help regulate and protect Indian gaming operations. Tribes work with the FBI and U.S. Attorneys offices to investigate and prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility – this applies to management, employees, and patrons. 18 U.S.C. §1163. Tribal regulators also work with the Treasury Department's Internal Revenues Service to ensure federal tax compliance and the Financial Crimes Enforcement Network (FinCEN) to prevent money laundering. Finally, tribes work with the Secret Service to prevent counterfeiting.

Tribal governments have also invested heavily in high tech state-of-the-art surveillance and security equipment, and employ professional personnel to operate these systems. Tribal surveillance systems are on par with the best systems in the gaming industry, and exceed standards employed by state and commercial gaming operations.

Against this backdrop of comprehensive regulation, the FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration of organized crime on Indian gaming. This system is costly, it's comprehensive, and our record and our experience shows that it's working.

NIGA is encouraged by the Administration's rededication to agency-wide government-to-government consultation with Indian tribes. On November 5, 2009, President Obama issued an Executive Memorandum directing each federal agency to submit to the Director of the Office of Management and Budget (OMB), a detailed plan to implement the policies and directives of Executive Order 13175. Over the past two years, all agencies have submitted and have begun to implement tribal consultation plans, and many have established offices of tribal government relations. These offices have opened countless doors and programs to tribes in agencies that were previously closed to Indian country.

With regard to Indian gaming, at the Department of Justice, the increased cooperation and coordination between tribal gaming regulators, tribal police, and U.S. Attorneys sends a strong message that any crimes in Indian country or against Indian gaming operations will be prosecuted to the fullest extent of the law.

NIGA also appreciates the increased consultation on the part of the NIGC. Increased consultation has begun to repair frayed relationships with tribal governments, and has led to increased coordination, and further improvements to regulation.

NIGA is working with the NIGC to improve several areas, including training and technical assistance, class II gaming regulations, and the facility licensing regulations. Tribal governments are encouraged by the NIGC's ongoing regulatory review. While these areas are detailed in comments to a variety of NIGC proposed rules, I will focus my testimony on the need to review regulations relating to class II gaming.

Class II Indian Gaming

Congress, in enacting IGRA, struck a careful balance among the respective interests of three sovereigns: tribal, federal, and state governments. That balance was critically upset by the Supreme Court's 1996 decision in *Seminole Tribe v. Florida*, which found that a state could refuse to negotiate class III tribal-state gaming compacts in good faith. This decision has resulted in a number of states (that condone and regulate other forms of gaming) exercising veto authority over class III Indian gaming. As a result, Indian tribes in these states rely solely on class II gaming to generate governmental revenue to provide essential services to meet the many needs of their communities.

For most of the past decade, the NIGC has created great uncertainty in the area of class II Indian gaming. With little tribal input, the NIGC in past years developed unworkable gaming classification standards that went beyond the statutory authority granted to the Commission in IGRA and that threatened the economic viability of class II gaming. Many of these proposed regulations sought to limit class II games to only those in play in

1988. This view stands in direct conflict with congressional intent. The Senate Committee Report to IGRA states the following:

The Committee specifically rejects any inference that tribes should restrict Class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting Class II games and the language regarding technology is designed to provide maximum flexibility.

Senate Report 100-446, at 9 (Aug. 3, 1988).

To better meet these intentions, the NIGC should make it a priority to revisit regulations that affect class II Indian gaming in consultation with all tribal governments and tribal regulatory agencies. Specific areas with regard to class II gaming that deserve a closer look include the class II Minimum Internal Control Standards, technical standards for class II gaming, and self-regulation of class II gaming, among other areas.

In this area, NIGA acknowledges the significant efforts of the tribal leaders, tribal regulators, and industry experts of the Indian Gaming Working Group. This Group invested a considerable amount of time and thought into comments and proposals to improve this area of the law and bring it closer to the original congressional intent.

CONCLUSION

In conclusion, the Indian Gaming Regulatory Act has worked well to promote “tribal economic development, self-sufficiency, and strong tribal governments,” as Congress intended. Indian gaming is a true success story for Indian country and the Nation as a whole.

Tribal governments are mindful of what’s at stake, and tribes nationwide have committed significant and precious resources to maintaining a strong, seamless, and comprehensive system of regulation. Much of the credit for this success goes to the tribal leaders who made the decision to spend more than \$345 million to regulate their operations, and to the thousands of men and women who are day-to-day front line regulators of Indian gaming operations. In short, Indian Country is proud of its gaming regulatory history and we are working hard to ensure that tribal gaming regulation remains strong into the future.

Mr. Chairman and Members of the Committee this concludes my remarks. Again, thank you for this opportunity to testify today.