

Testimony of
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UNITED STATES SENATE COMMITTEE
on
INDIAN AFFAIRS

OVERSIGHT HEARING on Regulation of Tribal Gaming: From Brick &
Mortar to the Internet

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Chairman Akaka and Members of the Committee, I am pleased to have this opportunity to testify before you today on the topic of regulation of tribal gaming, both on the Internet as well as traditional brick-and-mortar casinos. My past experience gives me a unique perspective due to my time as a mayor from suburban Las Vegas, Nevada State Senator, and as a Member of Congress from Nevada's 3rd Congressional District. At each level of government, I've either voted on gaming regulation or helped implemented it.

Today, I am the President of Porter Gordon Silver Communications, a full-service, bi-partisan government affairs and business consulting firm. With offices in Reno, Las Vegas, Carson City, Washington, D.C. and Phoenix, we offer advice and representation for our clients at the federal, state and local levels of government. We are also affiliated with Gordon Silver, one of the largest law firms in Nevada with a prominent gaming practice.

My current work is also relevant to today's discussion. I have numerous clients with Internet gaming interests including the Poker Players Alliance, an organization of 1.2 million American poker players, whom I am registered to represent at federal level, as well as multiple Nevada casinos and international online gaming companies, which doesn't include federal representation. I also consult on behalf of tribal interests outside of the gaming world. However, I would like to state that my thoughts today are my own and do not speak on behalf of any clients.

I've often described the Las Vegas of 50 years ago as the Wild West. There was little oversight, few regulations or regulatory bodies, and questionable casino ownership. Fast forward to today and you now see Vegas as the gold standard in gaming regulation. We have some of the most stringent licensing standards and toughest enforcement mechanisms. Right now, Mr. Chairman, if you were to apply for a gaming license in Las Vegas, you would be required to submit detailed personal history and financial information and be prepared to deliver five years of bank statements, credit card and brokerage statements, copies of contracts, deeds and titles to all assets, a list and summary of any litigation and such other information as contained in an application form. Further, gaming investigators will spend from four to six months in their review at a cost that ranges anywhere from \$40,000 to over \$1 million, depending upon history of the applicant and the complexity of the information provided, all of which is to be paid by the applicant. Needless to say, there is a strict application process.

This Nevada story parallels how Internet poker operates today. With the lack of federal regulation, online poker players are forced to play on their choice of over 1,700 foreign-based websites with little or no consumer protections and no oversight from federal regulators. There is no guarantee that the cards you see are truly random, or that multiple sites aren't colluding to take advantage of the player, that the person "sitting" next to you is actually a person and not a bot designed to win in the long run,

or even that you'll have access to your money when you choose to cash out. Americans are not going to stop playing poker on the Internet, Mr. Chairman, that's the reality, so we need to view it as our responsibility to provide them a safe environment to play. We need to move from the Wild West of Internet gaming to current Las Vegas-style oversight.

It's clear that any industry which fails to embrace the Internet is doomed to failure. Think of the struggles that newspapers have been going through, or how long it took the recording industry to effectively sell digital music. Gaming is no different. It has already become extremely popular as an online activity, yet the federal government has refused to keep up with the times. It is my opinion that the time is now for the Congress and the Administration to bring laws and regulations into the 21st century by licensing and regulating online poker so those Americans playing today can know that they won't be taken advantage of.

My home state of Nevada is now a great example of how, historically, opposition to Internet poker was the knee-jerk reaction, yet the current times make it inevitable to embrace the benefits of online play. It wasn't long ago when I was taking meetings with brick-and-mortar Vegas casinos who would tell me that if I voted to regulate and license online poker, commercial casinos as we knew them would go bankrupt. Fast-forward a few years to where Nevada now has laws that allow intrastate Internet poker and already issued the first few licenses to accept online wagers, contingent on federal action. My point is that through working together and realizing the benefits that the Internet brings, operators and consumers will be much better off.

Now, more to the point of this hearing, how does the regulation of Internet gaming intersect with tribal interests. According to Wikipedia, there are 555 federally-recognized Indian tribes, and according to the

NIGC, there are over 200 tribes engaged in some form of gaming. Moreover, there are roughly 445 non-tribal land-based or riverboat casinos within the US. No one reasonably believes that the U.S. market for Internet poker will support hundreds or even dozens of free-standing poker sites, and even many existing gaming facilities are unlikely to have the resources to launch their own free-standing Internet poker site. However, as I will discuss in a minute, there are numerous commercial opportunities for tribes and commercial casinos that can help them embrace the Internet to market their casinos and have a new channel of distribution to their customers without creating any cannibalization to their brick-and-mortar businesses. The critical ingredient for a successful Internet poker site is liquidity -- having the critical mass of players such that any player can find the game they want, at the stakes they want, and at the time they want.

While no one can say for sure what the market would look like if H.R. 2366 or similar legislation is enacted, from the experience in Europe, we can surmise that there will be several ways in which tribes could profitably participate in the market other than simply as a free-standing licensee.

Many gaming tribes already have an established regional base of brick-and-mortar players who frequent their casinos. They could launch their own Internet sites and market to their brick-and-mortar players. For tribes without brick and mortar facilities, they could possibly partner in a consortium relationship with tribes who have casinos to increase the market share. Under this scenario, an existing gaming tribe could launch a poker site that could be utilized by other tribes where one played directly from the site and players would be actually playing on the lead tribal casino's software in a poker room where they are networked with other players who are also playing on the site. Indeed, if all, or a large swath of Indian country got together and launched shared sites, it could conceivably dominate the marketplace. Each tribe would have a URL of a site under their name, and market it to their players, but all those

players would be networked with players from other tribes' sites across the country. Such an operation could dwarf even the large branded Las Vegas companies.

I feel like there has also been a perception, particularly in 2010 and 2011, that this was a fight between commercial gaming and tribal gaming, and, to be sure, commercial gaming was far more supportive of poker licensing legislation than Indian Country was. That was before the Department of Justice reversed its position on the application of the Wire Act to non-sports betting.

Since that decision, state lotteries have been increasingly aggressive in trying to get onto the Internet, providing traditional drawing tickets, but also providing other Internet games, including virtual scratch-off tickets that make computers function like slot machines. The vast majority of revenue for tribal gaming comes from slot machines, and that is because slot machines are relatively scarce on non-tribal land. If, however, you have state lotteries effectively turning every computer in the state into a potential slot machine, the competitive effect on tribal gaming is obvious. States like Delaware, Maryland, Illinois, Massachusetts and Georgia are already taking steps to take their lotteries online, and if they succeed, then others are bound to follow. I don't think tribal or commercial gaming interests would object to state lotteries selling their traditional drawing tickets on the Internet, but tribal and commercial gaming interests have been pretty clear that they do not think online slot machines are in the interests of commercial gaming, tribal gaming, or gaming consumers, for that matter. Poker is a small part of their brick-and-mortar business and does not pose a threat. On the other hand, full scale casinos create many other economic and policy issues.

If states seek to expand their lotteries to provide slot machine play into everyone's homes, the threat to commercial and tribal gaming is obvious. I would expect that this outcome would be unacceptable

to those concerned about the societal impacts of gaming as well. However, in the absence of some federal legislation setting the rules of the road for Internet gaming, that outcome is likely in many states. Most versions of federal Internet gaming or poker legislation would prevent this; H.R. 2366 would only allow Internet poker to be played on the Internet, with Internet slots and other games clearly illegal under federal law. The emerging fault line isn't commercial vs. tribal gaming, but traditional gaming operations versus lotteries.

In conclusion, the story of brick-and-mortar casino regulation is not so different than what we're now doing with Internet gaming. The debate we're having may seem arduous and contentious at times, but it is a discussion that needs to be happening. My experience in Nevada gives me great hope and, if history is any indication, I'm confident we will design a strong regulatory structure that protects the consumer, respects tribal concerns, and is in the best interests of everyone involved.

Thank you, Mr. Chairman, for allowing me to share my thoughts with the Committee today and I look forward to answering any questions you may have.