

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

ROOM 628 DIRKSEN SENATE OFFICE BUILDING

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INTRODUCTION

Good morning Chairman Dorgan, Vice Chairman Barrasso, and Members of the Committee. My name is Ernest Stevens, Jr., Chairman of the National Indian Gaming Association and a member of the Oneida Nation of Wisconsin.

The National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes united behind the mission of protecting and preserving tribal sovereignty and 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 state of Indian gaming and its regulatory systems.

INDIAN TRIBES AS GOVERNMENTS

To place Indian gaming in proper context, I'd like to first discuss background of the status of Indian Tribes in the United States Federal system of government.

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and those visitors to Indian 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.

When the United States was established, it too recognized the sovereign status of Tribes through treaties for these same reasons. 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. Const., Art. I, §8, cl. 3.

Tribal citizens are referred to in the Apportionment Clause (“Indians not taxed”) and excluded from enumeration for congressional representation. The 14th Amendment repeats the original reference to “Indians not taxed” and acknowledges that tribal citizens were not originally thought to be “subject to the jurisdiction of the United States”. This is important because, by its very text, the Constitution establishes the framework for Federal government-to-government relations with Indian tribes and affirmed 100 years of treaty-making. These treaties guarantee Indian Tribes a right to self-government.

For these reasons, the United States policy on Indian affairs in the formative years of the new Republic was one of respect and recognition that tribal governments were necessary allies to protecting the Union both politically and economically.

As we sadly know, the United States policies on Indian affairs throughout the 1800s abrogated these promises and in the 19th and 20th Centuries, the United States destroyed traditional American Indian economies through warfare, genocide, dispossession and theft of lands. In an article entitled, “Exiles in Their Own Land (2004),” U.S. News and World Report explained that:

The vast primeval forests that once blanketed the eastern United States were once home to millions of Indians. But starting in the 17th century, shiploads of European settlers arrived in superior numbers, bearing superior weapons. By 1830, war, genocide, and pestilence (diseases such as smallpox and measles to which the Indians had no immunity) had conspired to kill most Eastern Indians.

Throughout most of the 19th and 20th Century, our people endured poverty and social dislocation because of the destruction of traditional tribal economies. In *California v. Cabazon Band of Mission Indians and Morongo Band of Mission Indians* (1987), the Supreme Court acknowledged that Indian tribes in California were removed from their lush agricultural lands and seaside dwellings to rocky outcroppings at the edge of the desert. As the Court explained it, California Indians were left with reservations that “contain no natural resources which can be exploited.”

Yet through these hardships, many generations of our grandmothers and grandfathers maintained our original, inherent right to tribal self-government. The Federal Government had a number of programs to promote economic development on Indian lands but few worked because of a lack of infrastructure, natural resources, and capital and remoteness from markets.

TRIBAL SELF-DETERMINATION AND INDIAN GAMING

In the 1960s, Presidents Kennedy and Johnson included Indian Tribes in federal community development programs, in the War on Poverty, and in Civil Right legislation to strengthen tribal self-governance. In 1970, President Nixon formally announced the federal policy supporting Indian Self-Determination, and repudiated the Termination Policy. At the heart of the new policy was the federal government's commitment to foster reservation economic development and helping tribal governments to attain economic self-sufficiency. The federal government began to make available to tribal governments a number of the programs that were used to help state and local governments. These programs provide Tribes with the ability to rebuild their communities, and have created new economic opportunities throughout Indian country.

In addition, in the late 1960s, Tribes began to look for a steady stream of tribal governmental revenue – separate from federal program or appropriation funds. At the time, the recent rise in State government lottery systems caused a number of Tribes to consider gaming as the answer for their budgetary concerns.

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 Court in *Cabazon* 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) to promote “tribal economic development, tribal self-sufficiency and strong tribal government.” 25 U.S.C. § 2702. IGRA established three classes of Indian gaming with a comprehensive framework of regulation for each class of 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 that currently exists to regulate gaming in the United States.

The Indian Gaming Regulatory Act is an important part of the more than forty-year Federal policy supporting Indian Self-Determination that acknowledges Indian Tribes as sovereign governments with authority over their lands, members, and those who enter into consensual relationships with their governments. In the year 2000, President Clinton issued Presidential Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments, which provides:

Our Nation, under the law of the United States ... has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and their territory. The United States ... work[s] with Indian tribes on a government-to-government basis concerning Indian tribal self- government, tribal trust

resources, and Indian tribal treaty and other rights.

On September 23, 2004, President Bush issued an Executive Memorandum affirming Executive Order 13175. The memorandum was addressed to the Executive Departments and Agencies on the Government-to-Government Relationship with Tribal Governments, which explains:

My Administration is committed to continuing to work with federally recognized tribal governments on a government-to-government basis and strongly supports and respect tribal sovereignty and self-determination for tribal governments in the United States.

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. This plan was to be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. Agency heads were also directed to submit to the OMB, within 270 days of the Memorandum and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

It is clear from the actions of the past three Presidents that consultation between sovereigns remains the cornerstone of the Federal-Tribal government-to-government relationship.

STATE OF INDIAN GAMING

In approximately 35 years (22 years under IGRA), Indian gaming has proven to be the most successful tool for economic development for many Indian Tribes. Today, approximately 233 federally recognized Indian Tribes in the lower 48 states (65%) have chosen to use gaming to aid their communities. Indian gaming has helped many Tribes begin to rebuild communities that were all but forgotten. Because of Indian gaming, our Tribal governments are stronger, our people are healthier and our economies are beginning to grow.

In 2009, Indian gaming is responsible for 628,000 direct and indirect jobs nationwide and generated \$26.2 billion in gross tribal government revenues (net tribal gaming revenues are much smaller when accounting for payroll, operating costs, overhead, and debt service). Indian gaming is funding essential tribal government services, including schools, health clinics, police and fire protection, water and sewer services, and child and elderly care. Gaming revenues also enable Tribes to diversify their economies beyond gaming. Because of gaming, Tribes have invested in renewable energy projects, manufacturing, and other entrepreneurial ventures.

Indian gaming also benefits Federal, State, and local governments. In 2009, Indian gaming generated over \$9 billion in added revenue for the Federal, State and local governments. 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 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 over \$100 million in significant charitable contributions to other Tribes and their non-Indian neighbors. In short, Indian gaming is not only helping rebuild Indian communities, but it is also revitalizing nearby communities and has become a vital piece of the national economy.

As this Committee has highlighted over the past several years, Indian country still has a long way to go. 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%. However, Indian gaming has proven to be one of the best available tools for Tribal economic development, and tribal governments are committed to protecting and preserving the industry through a strong system of regulation and oversight.

REGULATION AND RESPONSIBLE GAMING

As noted above, Congress, through the Indian Gaming Regulatory Act, established three classes of gaming, the National Indian Gaming Commission, and a comprehensive regulatory system to oversee each form of Indian gaming.

Class I games are social or traditional and cultural forms of Indian gaming, conducted for minimal prizes or in connection with ceremonies or celebrations, and is solely regulated by the tribes.

Class II Indian gaming is defined as bingo and related games played as well as non-banking card games, if those games are otherwise lawful within the states where tribes conduct those activities. Class II gaming is regulated by the National Indian Gaming Commission and Tribal Gaming Commissions (TGC) established and operated by tribal governments.

Class III Indian gaming is defined as all forms of gaming that are neither class I nor class II. Class III games are commonly referred to as casino or “Las Vegas” style gaming. Class III games regulated according to the terms of compacts negotiated between tribal and state governments.

As you can see, it takes coordination and cooperation of three sovereigns 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.

Tribal governments have dedicated tremendous resources to the regulation of Indian gaming. Tribes spent over \$345 million last year nationwide on tribal, state, and Federal regulation:

- \$250 million to fund tribal government gaming regulatory agencies;
- \$80 million to reimburse states for state regulatory work under the Tribal-State Compact process; and
- \$16 million for the NIGC's budget.

At the tribal, state, and Federal level, more than 3,400 expert regulators and staff protect Indian gaming:

- Tribal governments employ former FBI agents, BIA, tribal and state police, New Jersey, Nevada, and other state regulators, military officers, accountants, auditors, attorneys and bank surveillance officers;
- Tribal governments employ more than 2,800 gaming regulators and staff;
- State regulatory agencies assist tribal governments with regulation, including California and North Dakota Attorney Generals, the Arizona Department of Gaming and the New York Racing and Wagering Commission;
- 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.

Tribal governments also employ state-of-the-art surveillance and security equipment. For example, the Mashantucket Pequot Tribal Nation uses the most technologically advanced facial recognition, high resolution digital cameras and picture enhancing technology. The Pequot's digital storage for the system has more capacity than the IRS or the Library of Congress computer storage system. In fact, the Nation helped Rhode Island state police after the tragic nightclub fire by enhancing a videotape of the occurrence, so state police could study the events in great detail.

Indian gaming is also protected by the oversight of the FBI and the U.S. Attorneys. The FBI and the U.S. Justice Department have authority to 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 governments work with the Department of Treasury Financial Crimes Enforcement Network to prevent money laundering, the IRS to ensure Federal tax compliance, and the Secret Service to prevent counterfeiting. Tribal governments have stringent regulatory systems in place that compare favorably with Federal and state regulatory systems.

No one has a greater interest in protecting the integrity of Indian gaming than tribes. As noted above, Indian gaming provides the best opportunity for tribal communities to attain economic self-reliance in generations. Under IGRA, Tribal Gaming Commissions are the day-to-day front line regulators of Indian gaming.

The National Indian Gaming Commission (NIGC) plays a leading role in monitoring the regulation of Indian gaming at the Federal level. The Commission is comprised of a Chairman and two Commissioners, each of whom serve on a full-time basis for a three-year term. The Chairman is appointed by the President and must be confirmed by the Senate. The Secretary of the Interior appoints the other two Commissioners.

The NIGC has authority to approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of IGRA. The NIGC also is vested with authority to approve management contracts for class II gaming and class III gaming. In addition, the NIGC adopts regulations for the assessment and collection of civil fines for regulatory violations.

With regards to Class II gaming, 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.

However, in support of the regulatory framework established by the Tribal-State Compact process under IGRA, the NIGC has a background role in overseeing Class III gaming. When a Tribe and State have a valid compact:

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

CONCLUSION

The Indian Gaming Regulatory Act has worked well to promote “tribal economic development, self-sufficiency, and strong tribal governments,” as Congress intended, and as discussed above, Indian gaming is a Native American success story – and indeed, a true American success story for the Nation as a whole, as many Native Americans begin to see the promise of the American dream of a job and economic self-sufficiency.

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.