COLORADO RIVER INDIAN TRIBES

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Testimony of

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Before
The Committee on Indian Affairs
United States Senate

Hearing on
Discussion Draft Legislation Regarding the
Regulation of Class III Gaming
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9:30 a.m.

Good morning Mr. Chairman and Members of the Committee. Thank you for providing the Colorado River Indian Tribes with the opportunity to testify this morning. My name is Valerie Welsh-Tahbo, and I am a member of the Tribal Council of the Colorado River Indian Tribes (CRIT).

At the outset, I wish to express our gratitude for your willingness to work with the tribes in exploring the possible amendment of IGRA. We understand that the federal courts' decisions in our litigation against the National Indian Gaming Commission have, rightly or wrongly, fed the perception that there is a need for increased federal regulation of Class III gaming. Before directly addressing that question, I'd like very briefly to describe that litigation for those members new to this Committee.

Background of the CRIT v. NIGC Litigation

As we have repeatedly stressed, CRIT did not seek out its challenge to the NIGC's regulatory authority. Like every other tribe in the country, we questioned the Commission's statutory authority to mandate Class III Minimum Internal Control Standards (MICS). When the NIGC began an audit of our compliance with its MICS in January of 2001, we attempted to discuss with the audit team the statutory basis for its audit. Tempers flared, the audit team left with its audit unfinished, and the NIGC issued a notice of violation and assessed a $10,000 fine against the tribe. At that point, we had no choice but to defend ourselves. Our defense was the simple legal position that we shared with most other tribes: the Commission did not have the authority under the Indian Gaming Regulatory Act to mandate Class III MICS. The federal district court

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agreed with our position, and the Court of Appeals for the District of Columbia Circuit affirmed that decision last fall.

As a result of those court decisions, some members of this Committee and others have expressed concern that there now exists a regulatory void, requiring the grant of increased powers to the NIGC to regulate Class III gaming. Certainly in our case, there is no regulatory void. CRIT's gaming activity is vigorously regulated by both the Tribe under tribal law and by the State of Arizona through the mechanism of the tribal-state compact required by IGRA.

The Draft Bill

In considering legislation to address the CRIT decision, it is important to bring the discussion back to the limited subject of what our litigation involved and what the courts actually held. We did not claim, and the courts did not hold, that the NIGC has *no* regulatory authority over Class III gaming; they held only that the NIGC lacked the authority to impose mandatory *minimal internal control standards* on Class III gaming. Those standards regulate the details of how Class III games are conducted for the sole purpose of ensuring that gaming revenues are properly tracked and accounted for.

The "fix" for the CRIT ruling, if needed at all, is quite narrow: expressly authorize the Commission to adopt and require such standards, subject to an opt-out provision for tribes whose tribal law and compacts are sufficiently rigorous.

The Draft Bill we address today goes far beyond that limited need. Indeed, it would authorize the Regulatory Committee – and the NIGC – to develop "minimum standards *for the regulation of class III gaming*." This scope of regulation goes far

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beyond minimum internal control standards, and would confer class III regulatory authority that not even the NIGC has previously claimed or sought. The Draft Bill's grant of authority "for the regulation of Class III gaming" encompasses every aspect of a tribe's Class III gaming operation. It would give the NIGC the broad authority to adopt whatever regulation it wished, subject only to a requirement that it be rationally related to the purposes of IGRA. The elephant gun of total regulation is disproportionate to the perceived flea – minimum internal control standards. It would also eliminate for all practical purposes the primary regulatory role of the tribes and the compacting role of the states.

In its unnecessary overbreadth, the Draft Bill also incorporates one of the most troubling aspects of S. 2078, considered by this Committee during the last session. The "mere" addition of the words "and Class III gaming" to subsections 2706(b)(1), (2), and (4) effectively guts the tripartite scheme of the statute as originally conceived. By giving the NIGC equal (or preemptively superior) regulatory authority with the tribes and the states, a seemingly straightforward amendment would set up the likelihood of inconsistent regulations and render much of the compacting process meaningless.

We would propose instead an amendment limited to the issue of minimum internal controls, incorporated through the existing ordinance approval process. We submitted proposed language to the Committee last year and would be happy to provide it again.

Other Comments

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Bearing in mind that the Draft Bill is the opening point of the discussion, we have a number of additional comments.

First: We believe that a minimum of one year's experience in the regulation of Class III gaming is insufficient for service on the proposed Class III Regulatory Committee ("Committee"). We recommend that the minimum be at least three years.

Second: We strongly recommend that the Bill require that at least two members of the Committee be Native Americans.

Third: If constitutionally permissible, we propose that the Committee be comprised of five individuals, one individual being appointed by each of the Secretary, the Senate Majority Leader, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader.

Fourth: We recommend that the prohibition on Committee members being Commission employees be expanded, to prohibit Committee membership for anyone employed by the Commission within the immediately preceding twelve months.

Finally: We close on a positive note. We are pleased that the Draft Bill recognizes that many Compacts impose rigorous tribal regulation and state oversight that does not need an additional – and additionally expensive -- layer of federal activity. If the opt-out process contemplated by the Draft Bill is ultimately adopted, we hope to participate actively in formulating a procedure that fully respects the experience and wisdom developed by the tribes and states, and avoids needless inter-governmental conflicts.

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I thank you again for giving CRIT the opportunity to offer its views on this important issue. We look forward to working closely with the Committee to develop a Bill that satisfactorily addresses the issue of internal control standards without destroying the delicate intergovernmental balance that has largely worked extraordinarily well for nearly twenty years.

I would be happy to answer any questions the Committee may have.

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