JAMESTOWN S'KLALLAM TRIBE
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Senate Committee on Indian Affairs
June 28, 2007

Statement of the Honorable W. Ron Allen
Chairman, Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim WA 98382

Senator Dorgan, members of the committee, my name is Ron Allen and I am Chairman of the Jamestown S'Klallam Tribe of Sequim, Washington and Chairman of the Washington Indian Gaming Association, an organization of 25 federally recognized tribes who have entered into gaming compacts with the state of Washington and one tribe currently in negotiations. I also serve on the Board of the National Congress of American Indians. I am here today, on very short notice, to discuss a discussion draft of amendments to the Indian Gaming Regulatory Act.

When the original IGRA legislation was being considered by Congress, Indian tribes fought very hard to preserve, to the greatest extent possible, our sovereign right of self-government and our right to regulate our own affairs. State governments fought very hard to include a regulatory role for themselves over gaming in Indian Country within their borders. The resulting Act was a compromise which established a regulatory framework between Tribal, State, and Federal governments.

IGRA clearly delineated Class II gaming regulation as a matter for Tribal gaming agencies and the National Indian Gaming Commission and reserved Class III gaming regulation as a matter for Tribal-State gaming compacts.

Nonetheless, we are here today because the D.C. Court of Appeals addressed something that states attorneys general and tribes thought they already knew—whether or not the Indian Gaming Regulatory Act gave the National Indian Gaming Commission authority to promulgate regulations establishing mandatory operating procedures for Class III gaming in tribal casinos. The court said it did not. We agree.

We do not disagree with NIGC over the importance of gaming control standards or regulations. We simply agree with the court—that Congress intended that the state-tribal compact process would govern the operation of Class III gaming and that is how the Indian Gaming Regulatory Act ("IGRA") was constructed. Every gaming compact for a tribal casino in Washington requires minimum internal control standards which are negotiated between each Tribal gaming agency and the Washington State Gambling Commission. I have attached two exhibits to my testimony from the compacts which list the subject areas for operational standards for table games and the tribal lottery system (electronic games)[1,2]. These cover all of the areas that NIGC is concerned about- accounting, audits, cash handling, security, surveillance, game standards, and player relations. These are just the Table of Contents- the actual documents are huge, and written specifically for each gaming facility.

In addition, each tribal gaming operation is subject to an annual audit by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

The bill under consideration today, "Indian Gaming Regulatory Act Amendments of 2007," would create a confusing, unnecessary, and ultimately conflicting construction of regulations between three government jurisdictions- Tribal, State, and Federal.

And it is completely unnecessary. NIGC has substantial existing authority: IGRA authorizes the NIGC to review and approve tribal gaming regulatory laws, review tribal background checks and gaming licenses, receive independent annual audits of tribal gaming facilities, approve management contracts, and work with tribal gaming regulatory agencies to promote tribal implementation of tribal gaming regulatory ordinances.

In *Colorado River Indian Tribes v. NIGC*, which has inspired this bill, the court held that IGRA does not authorize the NIGC to promulgate or enforce Minimum Internal Control Standards (MICS) over Class III Indian gaming. NIGC apparently believes that a national standard is necessary for every aspect of Indian gaming. Senator Dorgan, let me give you an example of NIGC's MICS cited by the court:

> "The regulations take up more than eighty pages in the Code of Federal Regulations. No operational detail is overlooked. The rules establish standards for individual games, *see, e.g.*, 25 C.F.R. § 542.7, .8, .10, customer credit, *id.* § 542.15, information technology, *id.* § 542.16,

complimentary services, *id.* §542.17, and many other aspects of gaming. To illustrate, tribes must establish "a reasonable time period" not to exceed seven days for removing playing cards from play, but "if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and time frame approved by the Tribal gaming regulatory authority." *Id.* § 542.9(d), (e).

We know that cleaning or replacing playing cards in order to prevent players from "marking" cards and thereby cheating is an important operating procedure, but is a national standard really necessary to address this? Why has NIGC established seven days to replace cards? What if the tribal gaming agency and the state gaming agency said ten days? We would be out of compliance. Why aren't we considering standards for all the commercial casinos as well? Wouldn't the Nevada Gaming Commission benefit from similar federal oversight that this bill would place on the Washington State Gambling Commission and every tribal gaming commission in the state? Or would it be more reasonable to implement internal controls in a Tribal-State co-regulatory process that IGRA created? We think it would.

All of the operational areas that NIGC is concerned about are addressed in the internal control standards developed jointly between the Washington Tribal gaming agencies and the Washington State Gambling Commission. They are specific to the games and the gaming facilities. They are updated for changes in technology or new game play features,

in a process that is continuous and ongoing. In fact, new internal controls are being written by our regulators as we discuss this, to accommodate new game features of the compact amendments for 27 tribes which were approved by the Department of Interior on May 30, 2007.

I would like to include for the record copies of letters written by the Chairman of Washington State Gambling Commission, Curtis Ludwig, and Washington Governor Christine Gregoire addressing this same issue (MICS), but in the context of S. 2078 introduced by Senator McCain last year[3,4,5] (attached).

Governor Gregoire (who is also a former three-term state attorney general) states in her March 28, 2006 letter to Sen. McCain,

> "[a]n additional level of enforcement will negatively impact our state's long-standing relationship with the tribes regarding Class III gaming, without providing any substantial benefit, and will interfere in our state's authority to regulate gambling activity."

Washington Gambling Commission Chairman Curtis Ludwig writes on January 13, 2006:

> "Pursuant to the compacts with Washington Tribes, Commission staff has been involved with Class III gaming regulation for more than thirteen years. Our Tribal Gaming Unit has 19 agents, whose work is solely devoted to tribal gaming, and an Electronic Gambling Lab that tests and approves all Class III electronic games offered in tribal casinos.

> The Commission believes that an additional layer of regulation is unnecessary for Washington's Tribal casinos. Although the MICS provide a starting point for internal controls and should be available as a resource for states and Tribes, they are not specific to Washington gaming. Moreover, they do not provide regulations for some critical gaming activities, such as our State's electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact."

Senator Dorgan, the Washington State Gambling Commission says that the national standards in NIGC's MICS are not specific to Washington gaming and do not cover some critical gaming activities. However, the internal controls established by the Tribal gaming Agencies and the State gaming agency are specific and address all gaming activities.

And yes, Senator, I do understand that the draft language of this bill includes an "opt-out" clause giving NIGC the option of excusing from NIGC regulation, a tribe with a tribal-state compact which includes minimum standards that meets the standards established by NIGC. So, if you follow that circular reasoning, NIGC still sets the standards, regardless of the standards that the tribal and state regulators establish in the compacts. The only language that tribes would support is if the option to "opt-out" would be a decision of the tribe, not NIGC. As I said before, we believe that internal controls should be specific to games, technology, and facilities, and that can best be done by tribal and state regulators working together.

Finally, we have not seen any record established that shows that Indian tribes are incapable of regulating their own affairs. We have seen no record established that there is a crisis or scandal in Indian gaming operations. The amendments in this discussion draft are unnecessary. Thank you.

XXX

Attachments

1 Standards of Operation and Management for Class III Activities

2 Rules Governing Tribal Lottery Systems

3 Letter from Governor Gregoire to Sen. John McCain, March 28, 2006

4 Letter to Governor Gregoire from Gambling Commission Chairman Curtis Ludwig, January 13, 2006

5 Chart of Gaming Jurisdiction Subject areas by Washington State Gambling Commission, April 2006

APPENDIX X

to the

_____ - STATE OF WASHINGTON

CLASS III GAMING COMPACT

RULES GOVERNING

TRIBAL LOTTERY SYSTEMS

APPENDIX A

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION - STATE OF WASHINGTON

CLASS III GAMING COMPACT

STANDARDS OF OPERATION AND MANAGEMENT

FOR CLASS III ACTIVITIES

APPENDIX A

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION - STATE OF WASHINGTON

CLASS III GAMING COMPACT

STANDARDS OF OPERATION AND MANAGEMENT FOR CLASS III GAMING

CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
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March 28, 2006

The Honorable John McCain
Chair, Senate Committee on Indian Affairs
241 Russell Senate Office Building
Washington, DC 20510

Dear Senator McCain:

I am writing to share my concerns and those of the Washington State Gambling Commission (WSGC) about action the Senate Indian Affairs Committee will soon take on S. 2078 regarding the Indian Gaming Regulatory Act (IGRA).

A critical component of IGRA is the local control that it provides for negotiating state-tribal gaming compacts, particularly in relation to Class III gaming. Washington has entered into gaming compacts with 27 of our state's 29 federally recognized tribes. Each compact has been negotiated in a government-to-government manner, taking into account the unique circumstances present in Washington and in the local communities where tribal casinos will be located.

The WSGC has successfully regulated Class III gaming, in cooperation with the local tribes, for more than 13 years. The WSGC has a specific Tribal Gaming Unit composed of 19 agents, whose work is solely devoted to tribal gaming regulation. This unit has developed an expertise in the regulation of Class III gaming within Washington and works closely with each tribal gaming authority. In addition, the WSGC operates a state-of-the-art Electronic Gambling Lab, which tests and approves every Class III electronic game offered in a Washington tribal casino.

Increasing the National Indian Gaming Commission (NIGC) authority to regulate Class III gaming infringes upon local control and is unnecessary, considering Washington's strong regulatory controls. The NIGC internal controls are not specific to Washington gaming and do not provide regulations for some critical gaming activities in our state. For example, our electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact, would not be regulated under NIGC controls. An additional level of enforcement will negatively impact our state's long-standing relationship with the tribes regarding Class III gaming, without providing any substantial benefit, and will interfere in our state's authority to regulate gambling activity.

I hope you will reconsider expanding the authority of the NIGC over Class III gaming in Washington. Our state is proud of its tribal gaming regulatory program and believes local control over Class III gaming is in its best interest, having proven successful for the past 13 years.

Again, thank you for your consideration of this matter.

Sincerely,

Christine O. Gregoire
Governor

cc: Senator Patty Murray, Washington State
Senator Maria Cantwell, Washington State
Senator Byron Dorgan, Vice Chair, Committee on Indian Affairs

STATE OF WASHINGTON

GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

January 13, 2006

The Honorable Christine Gregoire
Washington State Governor
Post Office Box 40002
Olympia, Washington 98504-0002

Dear Governor Gregoire:

We are writing to seek your assistance in expressing our concerns regarding two current legislative efforts in Congress which would subject Washington Tribes to an increase in fees paid to the National Indian Gaming Commission ("NIGC"), and would authorize an unnecessary expansion in the regulatory authority of the NIGC. We respectfully request your assistance in contacting Washington's Congressional delegation and lobbyist regarding these problems.

First, Senate Bill 1295, which was passed by the United States Senate on December 12, 2005, contains a provision that would authorize the NIGC to impose a fee on each compacted gaming Tribe not to exceed 0.080 percent of the gross gaming revenues for all tribal gaming operations. Washington Tribes could pay close to $1 million in additional federal regulatory fees each year under this proposal.

Under its compacts with Washington's Tribes, regulatory enforcement in Tribal casinos is accomplished through a partnership between the Tribes and the Washington State Gambling Commission ("Commission"). Each Tribe is required to have its own Tribal Gaming Agency (TGA), independent from the Tribe, which provides on-site regulation for casino operations. Under the compacts, the Tribes reimburse the Commission for the costs that the Commission incurs in its regulatory work with the Tribes. The Commission incurred over $1.4 million for state costs to regulate Class III gaming for the 12-month period between October 2004 and September 2005. These costs were billed to the Washington Tribes. These fees do not include amounts paid by the Tribes for their own on-site regulatory programs.

Second, the Commission is even more concerned about the NIGC's request to "clarify its authority" over Class III gaming activity. During a hearing before the Senate Committee on Indian Affairs, the NIGC Chairman testified that his Commission had submitted a draft bill to Congress to "clarify the NIGC's authority to regulate Class III gaming

generally, and to promulgate and enforce its MICS (Minimum Internal Control Standards) regulations for Class III gaming specifically."

This request was in response to the decision by the U.S. District Court in Washington D.C., where the court held that the NIGC's MICS for Class III gaming exceeded the agency's statutory authority. *Colorado River Indian Tribes v. National Indian Gaming Commission*, (2005 WL 2035946). The court recognized that, under the Indian Gaming Regulatory Act, Class III gambling is subject to regulation by Tribes and states pursuant to the provisions of compacts between the Tribes and states. The NIGC has extensive regulatory authority over Class II gaming, but none over Class III gaming.

Pursuant to the compacts with Washington Tribes, Commission staff has been involved with Class III gaming regulation for more than thirteen years. Our Tribal Gaming Unit has 19 agents, whose work is solely devoted to tribal gaming, and an Electronic Gambling Lab that tests and approves all Class III electronic games offered in tribal casinos.

The Commission believes that an additional layer of regulation is unnecessary for Washington's Tribal casinos. Although the MICS provide a starting point for internal controls and should be available as a resource for states and Tribes, they are not specific to Washington gaming. Moreover, they do not provide regulations for some critical gaming activities, such as our State's electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact.

Because of the strong regulatory structure in our gaming compacts, the Commission believes that fee increases and an additional level of internal control enforcement will negatively impact the Tribal-State relationship without providing any substantial benefit. If these proposals are passed in either pending or future legislation, the Commission would strongly urge that states like Washington that have effective Tribal-State regulatory programs be exempted from such requirements. We respectfully request your assistance in contacting Washington's Congressional delegation and lobbyist regarding these concerns.

Should you have any questions regarding these issues, please contact Director Rick Day at (360) 486-3446.

Sincerely,

Curtis Ludwig
Commission Chair

cc: Senator John McCain, United States Congress – Arizona
Senator Maria Cantwell, United States Congress – Washington State

Senator Patty Murray, United States Congress – Washington State
Representative Jay Inslee, United States Congress – 1st Congressional District
Representative Rick Larsen, United States Congress – 2nd Congressional District
Representative Brian Baird, United States Congress – 3rd Congressional District
Representative Doc Hastings, United States Congress – 4th Congressional District
Representative Cathy McMorris, United States Congress – 5th Congressional District
Representative Norm Dicks, United States Congress – 6th Congressional District
Representative Jim McDermott, United States Congress – 7th Congressional District
Representative Dave Reichert, United States Congress – 8th Congressional District
Philip Hogen, Chairman – National Indian Gaming Commission
Randy Sitton, Regional Director – Region 1– National Indian Gaming Commission
John Lane, Governor's Executive Policy Office
Washington State Gambling Commission

Gaming Jurisdiction Comparison

TGA = Tribal Gaming Agency
SGA = State Gaming Agency
* NIGC = National Indian Gaming Commission
Class III = Casino-Style Gambling
IGRA = Indian Gaming Regulatory Act

	TGA	SGA	NIGC	NIGC 2078
Operational:				
Washington Tribes Electronic Gambling Devices	Yes	Yes	No	Yes
Table Games	Yes	Yes	No	Yes
Cashier Cage/Soft Count	Yes	Yes	No	Yes
Accounting/Internal Audit	Yes	Yes	No	Yes
Security	Yes	Yes	No	Yes
Surveillance	Yes	Yes	No	Yes
Electronic Device Testing & Approval	No	Yes	No	No
Licensing:				
Licensing - Individuals	All Employees	Class III	Key Employees	Yes
Licensing - Equipment Suppliers	Yes	Class III	No	Yes
Licensing - Financiers	Yes	Class III	No	Yes
Licensing - Management Companies/Consultants	Yes	Class III	Yes	Yes
Licensing - Gaming Commissioners	Not Generally	No	No	Yes
Other:				
Public Inquiries/Complaints	Yes	Yes	Yes	Yes
On-Site Regulation	Primary	Co-Regulatory	Periodic	Unknown
Criminal Investigations	Not Generally	Yes	No	No
Gaming Ordinance	Yes	No	Yes	Yes
Class II - Bingo & Pull Tabs	Yes	No	Yes	Yes
Use of Gambling Proceeds	Maybe	No	Yes	Yes

* Minimum Internal Control Standards (MICS) - NIGC has developed these standards and used them to gain jurisdication in Class III gaming. However, IGRA has not provided NIGC with direct authority over Class III gaming.

Prepared by the Washington State Gambling Commission
April 2006