

**TESTIMONY OF U.S. SEN. DAVID VITTER  
BEFORE THE COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**JULY 27, 2005**

**OVERSIGHT HEARING ON IGRA SECTION 20 EXCEPTIONS  
AND OFF-RESERVATION GAMING**

Mr. Chairman, Mr. Vice Chairman, I am pleased to be here today to express my concerns about the proliferation of off-reservation Indian casino gambling. This is an issue that directly affects my home state of Louisiana as well as numerous other states. It is an issue of national significance. I want to thank you for inviting me to testify.

In 1988, when Congress passed the Indian Gaming Regulatory Act, gambling on Indian reservations was a small industry. At that time, virtually no one foresaw the future growth in “class III” casino-style gambling, or that Indian gambling would become an \$18 billion per year industry, with 400 casinos in 30 states across around the nation.

Amendments to reform the law are needed, in particular, to discourage the recent trend known as “forum shopping,” or “reservation shopping,” by Indian tribes. That is the troubling practice, on the part of a growing number of tribes, of selecting lands to which the tribes have little or no connection, for the sole purpose of building casinos at the most economically advantageous location.

As widely reported in the press, various tribes are now attempting to claim rights that would allow them to engage in gambling operations in states where they have no

reservation or trust land status. Tribes making such claims include landless tribes as well as tribes with an existing reservation. Affected states include California, Illinois, Ohio, Colorado, Oregon, New York, and Louisiana, among others:

\* **California.** By one account, as many as 40 tribes are pursuing off-reservation gambling proposals in California alone. The state is already home to approximately 55 Indian casinos. I commend the members of this Committee for recently approving, by a bipartisan 10-3 vote, a measure authored by our colleague, Senator Dianne Feinstein, which would make it more difficult for one California tribe to proceed with an off-reservation casino.

\* **Ohio.** Although Ohio has no federally recognized Indian tribes, the Eastern Shawnee Tribe of Oklahoma is trying to open casinos in multiple Ohio locations. The tribe is pushing its casino proposals with help from non-Indian investors, against the wishes of many Ohio folks. The tribe has sued the state to seek reparations for tribal lands in Ohio that were taken 170 years ago.

\* **New York.** Another example of possible “forum shopping” by tribes is New York State, where several out-of-state tribes and additional in-state tribes have attempted to negotiate for casinos in the Catskills area to settle land claims.

\* **Louisiana.** And of course, my home state of Louisiana, may provide another example of “forum-shopping.” The Jena Band of Choctaw, which is here today to testify before this Committee, attempted to take land into trust for gambling purposes in an area of my state, Louisiana, that is outside of its traditional service area.

I think that the history of the Jena Band is instructive; and it is one example with which I am familiar. The Jena Band has been rejected in its pursuit of land for a casino in

two counties in Mississippi, has made a number of applications for land across Louisiana, and I understand it has considered land in Texas as well. I am concerned about this attempt at “forum shopping” for the purpose of building a casino, which seems to be the sole interest of this tribe.

The Jena Band received Federal recognition in 1995. After receiving recognition, the tribe courted the Rapides Parish Police Jury (the county government) in July 1996 with promises to pay them up to 6% of the net profits made off of a proposed casino. However, then Louisiana Governor Mike Foster opposed their attempts and refused to negotiate a compact. The Jena Band actually filed a federal lawsuit in an attempt to force the Governor to negotiate with them but the judge threw out the lawsuit in December 1996.

The tribe then reached out to Mississippi, and actually was rejected by two counties in 2001: Greene and Tishomingo. Mississippi’s Governor stated he would refuse another Indian casino in Mississippi. So the Jena looked back to Louisiana. In October 2001, on hearing that the Jena might be looking to their parish, the Sabine Parish Police Jury passed a resolution declaring their opposition to a casino.

The Jena and former Governor Foster then quietly negotiated a compact, centered on Vinton, Louisiana, and sent it to the Bureau of Indian Affairs for approval in January 2002. There was a real outcry against having a proposed casino there, including written opposition from Louisiana Congressman Jim McCrery, U.S. Senator Mary Landrieu as well as over 30 other members of the U.S. Congress, including myself. The BIA rejected the compact on March 7, 2002.

The Jena Band, which has more recently turned its attention to Grant Parish, Louisiana, has argued that it has the ability to force a state into agreeing to a gambling compact, circumventing the state process designed by federal law and instead working directly with the U.S. Department of the Interior. The current Governor of Louisiana opposes the expansion of casino gambling in our state. Even the suggestion that the federal government would ever force states to accept casinos they oppose is troubling.

In June, I joined our colleague, Senator George Voinovich, who is here today as well, and other members of the United States Senate in offering a floor amendment to ensure that governors of affected states will have input when decisions are being made to take land into trust on behalf of Indian tribes for a gambling purpose. This amendment was endorsed by the National Governors' Association, but we did not call for a vote on the Voinovich amendment, due to jurisdictional concerns expressed by certain members of this Committee.

The amendment actually complements a bill I introduced in June. I want to spend a few minutes describing my bill, which is entitled the "Common Sense Indian Gambling Reform Act of 2005" (S. 1260). It is a companion to a nearly identical measure (H.R. 2353) sponsored by Congressman Mike Rogers (R-Michigan) in the U.S. House of Representatives. That House companion measure has 10 cosponsors (including another member of the Louisiana congressional delegation, Congressman Charles Boustany).

Our legislation does not specifically target any particular tribe. Rather, it proposes seven reasonable reforms to current federal law relating to Indian gambling:

\* ***Economic Impact Study Requirement.*** First, the bill that we introduced would require that an economic impact study be conducted of the area within a 60-mile radius of a proposed new Indian casino. The rationale for requiring such a study would be to ensure that we fully understand, before developing a proposed casino, how it would actually hurt or help the surrounding community.

\* ***More Local Input.*** Second, the bill that we introduced would eliminate several existing exceptions to the existing ban on Indian casino gambling under IGRA. Striking these exceptions would ensure that state and local input is garnered and honored before development of a casino can proceed.

The bill require federal officials to consult with officials of all potentially affected state or local government or Indian tribes (not just “appropriate” officials, as under current law) before making what is known as a “two-part determination” with respect to a proposed Indian casino, under the Indian Gaming Regulatory Act. In addition, the bill we introduced requires the state legislature as well as the governor of the state to concur in this two-part determination.

\* ***Enhanced Role For State Legislatures.*** Third, the bill we introduced would enhance the input of state lawmakers in decisions to develop a casino, by clarifying that both a state’s legislature and the governor must approve any new Tribal-State compact for Class III gambling. This part of the bill amends current law, which requires that, before opening a casino, a tribe must enter into a Tribal-State compact governing the conduct of gaming activities.

\* ***Off-Reservation Casinos Rendered Virtually Impossible.*** Third, our bill effectively precludes Indian tribes from proposing new casinos on lands to which the tribes have little or no connection. It does so by imposing these conditions: first, an Indian casino must be on a single, contiguous parcel of Indian lands; and second, the casino must be within the state in which the tribe is primarily located, and on land to which the tribe has its primary “geographical, social, and historical” nexus.

\* ***Additional Background Checks.*** Fifth, the bill we introduced clarifies that any financial top ten interest involved in opening an Indian casino operation will be subject to a background check. The National Indian Gaming Commission (NIGC) would approve all top ten financial arrangements, and would perform the background checks. Experts have testified to the need for greater scrutiny of such financial interests.

\* ***Requirement That Tribes Declare Intent To Gamble.*** Sixth, the bill we introduced also would require a tribe to declare its intent to gamble in its initial application to have lands taken into trust by the United States on behalf of the tribe. Absent such a declaration, the tribe could not later engage in casino gambling on those lands.

\* ***Requirement Of Environmental Impact Study.*** Seventh, and finally, the bill we introduced would change current law by requiring that an Indian tribe must submit a new

environmental impact statement to the Secretary of the Interior if the tribe changes the use of its land from a non-gambling, or general, purpose to a gambling purpose.

There is a widespread and growing concern in Congress about the issue of off-reservation casino gambling. I thank Senators Feinstein and Voinovich for joining me in this effort. I look forward to working with Chairman and Ranking Member of the Indian Affairs Committee to enact sensible reforms. Thank you.