

TESTIMONY OF
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BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON
“INDIAN GAMING: THE NEXT 25 YEARS”

JULY 23, 2014

My name is A.T. Stafne and I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I would like to thank the Committee for the opportunity to share our perspective, as a large, rural, remote, and impoverished Tribe that has seen little economic benefits from Indian gaming over the last 25 years.

The sparsely populated Fort Peck Reservation spans 2.1 million acres of Montana’s northeastern plains, which is roughly twice the size of Glacier National Park. Our Reservation’s Indian population is approaching 8,000 while our overall Tribal enrollment is approximately 13,000 members.

Our Reservation remains one of the most impoverished communities in the country. Nearly half of the people living on the Reservation are below the federal poverty level. Recent U.S. Housing and Urban Development (HUD) data reveals that nearly 1,600 Native families residing on the Reservation have household incomes from less than 30% of Median Family Income to 80% of Median Family Income. Roosevelt County, where most of our Reservation is located, has the poorest health in the state of Montana. Moreover, our review of recent data suggests that the average age of death of Fort Peck Tribal members in the past two years is 51 years of age. It is not surprising,

then, that almost half the population living on the Reservation is under the age of twenty-four. Thus, we are a poor, unhealthy, and young community.

In an effort to improve the social and economic conditions on our Reservation, Tribal leadership at Fort Peck entered into a gaming compact under the newly adopted Indian Gaming Regulatory Act with the State of Montana in 1992. Although Las Vegas or Atlantic City-style gaming did not, and does not now, exist in Montana, Class III gaming, as it is defined under the Indian Gaming Act, was permitted. Specifically, the State sanctioned its lottery, video poker and keno, limited live poker, and horserace betting, along with a handful of games of chance. During our negotiations, Montana took the position that it could not agree to a compact that allowed the Tribes to engage in games that were not permitted in the rest of the State—a position the State continues to maintain.

Although we did not, and do not believe that Congress intended to allow states to impose its laws and policies upon tribes in the context of on-Reservation gaming, litigation was not a viable alternative for us. Of course, the Supreme Court closed that door for us in the *Seminole* decision, which barred tribes from suing states that did not negotiate gaming compacts with tribes in good faith. And in the *Rumsey Rancheria* case, the full Ninth Circuit court of appeals held that states can lawfully limit tribes to just the type of Class III games played elsewhere in the State, as Montana does.

The Fort Peck Tribes have done the best we can in these restricted circumstances, but it has not been good enough to improve conditions on our Reservation in any major way. The State of Montana and the Fort Peck Tribes entered into a Compact in 1992, which was modified several times over the years and rewritten a few years ago. The basic tenets of the compact remain consistent with Montana's original position of allowing only those types of games permitted under state law. Under our compact, then, we have conducted video poker and keno, limited live poker and a few other games of chance since 1992.

The nature of these games is to redistribute money among the players, with a payout of roughly 90% of the money played. In other words, the Tribes and its licensees

share in only about a 10% profit margin. Although gross gaming receipts total roughly \$10 million per year, the Tribes' annual profit on those receipts is normally less than \$500,000. Therefore, gaming provides very little income to our Tribes.

We have no major metropolitan area anywhere near our Reservation. Indeed, the total population of Montana is only about 1 million, despite being geographically, the fourth largest state in the nation. Still, tourism is a sizeable industry in Montana. Although Montana's policy makers have not decided to include large-scale gaming in its array of tourist activities, Montana's tribes should not be precluded from making that policy decision themselves.

The ability of Tribal leadership to make decisions concerning our Reservation has never been more important than now. Unprecedented oil exploration and development is occurring in the Bakken just off our Reservation. Our services and infrastructure are struggling to keep up with the dramatically increased demand and population increases as a result of the neighboring boom, but we are receiving little in return. Despite the federal government's promotion of Bakken oil exploitation, it has done little to fund the ailing communities surrounding the Bakken. Similarly, the State of Montana has been unable to keep pace with the rapidly increase demands in cities and counties surrounding the Bakken.

Not only is there a need for greater revenue for government's like ours, we are now realizing the population and traffic increases that could support larger-scale gaming on our Reservation. Thus, there is no better time to consider Indian gaming a means to generate revenue in our region to fund vital governmental services, build infrastructure to enhance our economy, and strengthen our Tribal government.

In 1988 Congress found that "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government," and enacted the Indian Gaming Regulatory Act with a principal purpose "to protect [Indian] gaming as a means of generating tribal revenue."

In looking ahead to the next 25 years of Indian Gaming we must, then, consider whether Congressional policy has been fulfilled and its purposes achieved. What have we learned in the last 25 years?

First, we know that Indian gaming has been, for some Tribes, the largest single producer of revenue in history. For those Tribes engaged in large-scale gaming enterprises, Indian gaming has produced unprecedented income, boosting Tribal economies and Tribal self-sufficiency, and enhancing Tribal government.

Second, we know that despite the success of some Tribes, Indian gaming has provided little benefit to many tribes. Geographical location is a barrier for economic development of any kind, and certainly Indian gaming is not immune from geographical limitations. However, geography is not the only barrier to Tribes interested in seeking self-sufficiency through gaming. Indeed, the long arm of state law and regulation – strengthened by the *Seminole* and *Rumsey* decisions – continues to prohibit many Tribes, including Fort Peck, from obtaining economic independence through gaming.

Third, we know that the realm of Indian gaming has been fraught with costly litigation. Competing interests of tribal, state and federal licensing and regulation, the location of gaming facilities, the type of gaming activity, and the process for the negotiation of gaming compacts, have been a constant topic of litigation over the last 25 years. Although Congress declared that one of the purposes of the Indian Gaming Regulatory Act was “to provide a statutory basis for the regulation of gaming by an Indian tribe,” which includes “clear standards,” the courts have nevertheless been called upon to determine issues involving Indian gaming at a disproportionate rate. Indeed, through litigation, one primary component of the compact negotiation process was struck down, namely Tribe’s ability to sue states who fail to negotiate with Tribes in good faith.

So we know that Indian gaming can serve to fulfill the purposes established by Congress in 1988. Gaming can provide a meaningful source of revenue that strengthens tribal economies, helps tribes in the pursuit of self-sufficiency, and promotes strong tribal governments. If Congress continues to share our view that these goals are important, it should consider the other lessons we have learned in the context of Indian gaming,

including ways to ensure all tribes are afforded an opportunity to benefit from Indian gaming and to curb the unnecessary need for litigation which is costly and time consuming.

In our view, Congress should reconsider the balance of power that now exists between tribes and states with regard to Indian gaming, and in particular, the balance of power in negotiating compacts with Tribes for Class III gaming. Congress cannot change the *Seminole* decision, because *Seminole* is based on the Court's reading of the Constitution—but it could alter the result of the *Rumsey* decision and allow tribes to conduct any Class III games the Tribe wants to play, free of any limits elsewhere in a state that allows Class III games.

Congress should reconsider whether it intended in 1988 to allow states to impose its laws and regulations upon tribes in order for tribes to engage in gaming. We do not think Congress intended for states to dictate to tribes the types of games offered for play, betting and prize limits, or the number of games or facilities. However, after 25 years, it is quite clear as a practical matter that states now hold that power. This leads to uneven results. As just one example, since North Dakota allows tribes to conduct a very broad array of Class III games, our neighboring tribe to the east—the Three Affiliated Tribes of Fort Berthold—is able to operate a far more lucrative gaming casino than we or any Montana tribe can do.

We do not think that was the balance of power Congress had in mind, nor do we think this result is fair or consistent with Congress's unique trust obligation to Indian tribes. We know that there will always be barriers to prosperity, like geography and population. But we truly believe that Congress has the authority and the obligation, consistent with its historic trust responsibility to Indian tribes and our members, to ensure that opportunities for economic advancement and self-sufficiency through gaming are available to all Indian tribes. Thank you for your serious consideration of these important issues.

I would be happy to answer any of your questions.