

TESTIMONY OF JAMIE HUMMINGBIRD, CHAIRMAN
NATIONAL TRIBAL GAMING COMMISSIONERS & REGULATORS ASSOCIATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING: SAFEGUARDING THE INTEGRITY OF INDIAN GAMING

22 JULY 2015

INTRODUCTION

Good afternoon Chairman Barrasso, Vice Chairman Tester, and Members of the Committee. My name is Jamie Hummingbird. I am a citizen of the Cherokee Nation and Director of the Cherokee Nation Gaming Commission. I am also the Chairman of the National Tribal Gaming Commissioners and Regulators Association (NTGCR), an organization comprised of 64 federally recognized tribes formed for the purpose of promoting the exchange of thoughts, information and ideas in the pursuit of consistent, stable, and fair regulatory practices.

I thank the Committee for the opportunity to address an issue that is at the heart of the mission of the NTGCR, “Safeguarding the Integrity of Indian Gaming,” and to comment on the Government Accountability Office’s report “INDIAN GAMING: Regulation and Oversight by the Federal Government, States, and Tribes” (GAO Report).

BACKGROUND

The seeds of Indian gaming were sewn over 40 years ago when tribes opened the first bingo halls on their reservations and tribal lands as a means of economic development. The revenues produced by these operations were intended to fill the gaps left by limited federal assistance in meeting the basic needs of tribal citizens and, to the extent possible, provide adequate funding for tribal governmental programs and thereby reducing tribal dependence on federal funding.

Though the beginnings of Indian gaming were humble, the introduction of the latest technologies of the day allowed tribes to attract wider audiences and achieve an unforeseen level of success. Such success, coupled with a growing divide in Tribal-State relations, ultimately led to legal conflicts culminating in the landmark Supreme Court case of *California v. Cabazon Band of Mission Indians* of 1987.

In *Cabazon*, the Supreme Court recognized the importance of gaming to tribal economic development efforts and in providing for stable tribal economies. The Court also recognized that tribes, not the states, were responsible for regulating gaming conducted on tribal lands.

Although the *Cabazon* case affirmed the right of tribes to conduct gaming on tribal lands and acknowledged that gaming was being regulated by the tribes, the feeling of unease amongst the states was growing. Citing fears that organized crime would infiltrate and consume Indian gaming – even though there had never been a proven case of organized criminal activity to have taken place at an Indian gaming facility – states called for regulation over Indian gaming by either the states or the federal government.

In 1988, Congress used its plenary power over Indian affairs to adopt the Indian Gaming Regulatory Act (IGRA, the Act) in an effort to formulate a system for regulating gaming on Indian lands and to find balance between the political and economic interests of the state, federal, and tribal governments.

REGULATING INDIAN GAMING

The success of Indian gaming is due in large part to the development and implementation of strong regulatory systems. IGRA sought to establish a regulatory framework under which the tribal governments are recognized as the primary regulators of Indian gaming with the federal and state governments fulfilling defined roles.

To this end, the Act provided for three (3) classifications of gaming and outlined the roles, responsibilities and authorities of the state, federal, and tribal governments respective to each class of gaming. Under IGRA, Class I gaming, which is characterized as traditional, ceremonial tribal games, was under the exclusive jurisdiction of tribes while regulatory responsibility for Class II gaming, consisting of bingo, pull tabs, and other similar games, was to be shared between tribes and the NIGC, with tribes being the primary regulatory authority. Class III gaming, which consists of any game not considered as either Class I or Class II, could only be conducted under the terms of a compact negotiated between a tribe and the respective state in which it resides.

Through IGRA, Congress called upon tribal governments to establish their own gaming laws and regulations. Through tribal gaming ordinances approved by the NIGC Chair, tribes have constructed their own regulatory frameworks and established tribal gaming regulatory authorities (TGRA) to carry out tribal responsibilities under IGRA. Among those responsibilities, TGRAs conduct background investigations on and issue licenses to gaming facility employees and vendors; review and approve all games offered by a gaming facility; perform environmental,

public health and safety inspections; review management and loan agreements; and, conduct audits of gaming facility activities and financials to ensure proper accountability.

In addition to the TGRAs, other tribal governmental departments and agencies, such as risk management, environmental health, environmental protection, tax commission, and law enforcement may also be involved in overseeing activities at tribal gaming facilities. TGRAs have reporting responsibilities to their respective tribal governments, as well.

TGRAs routinely communicate and coordinate regulatory efforts to federal agencies other than the NIGC. Information and reports on financial matters are provided to the Internal Revenue Service (IRS), the Financial Crimes Enforcement Network (FinCEN), and the Secret Service. In addition, the assistance of the Federal Bureau of Investigation and Department of Justice is sought for the prosecution of violations of criminal statutes, when appropriate.

Tribal commitment to providing strong regulation over Indian gaming is evident when considering the investment made by tribal governments in their TGRAs. Collectively, tribes across 28 states employ nearly 4,000 tribal gaming regulators and spend over \$320 million in tribal resources annually to oversee the 484 gaming facilities noted in the GAO Report. These figures do not include compliance staff employed by the gaming operations.

With the wide range of responsibilities placed on TGRAs, the skill sets of TGRA staff must be equally diverse. Many tribal gaming regulators possess law enforcement experience while others maintain professional certifications such as Certified Fraud Examiner, Certified Public Accountant, Certified Internal Auditor, and Certified Information Technology Professional. As technologies change and the gaming and regulatory environments evolve, so must tribal regulatory staff. It is for this reason that many tribal gaming ordinances and some tribal-state compacts require regular training for regulatory staff.

The IGRA established the National Indian Gaming Commission (NIGC) and instituted a federal regulatory structure applicable to all tribes regardless of their state of residence. IGRA focuses the NIGC's regulatory authority largely on monitoring Class II gaming with limited authority over Class III activities. The NIGC has an operating budget of approximately \$20 million and employs 100 staff across seven (7) regional offices and two (2) satellite offices to carry out its responsibilities under IGRA.

A majority of tribes have entered into compacts with their respective states for Class III gaming. In general, the compacts contain requirements similar to those found in IGRA and NIGC regulations with respect to licensing, internal control standards, and financial accountability. The aspects that vary the most depending on the jurisdiction are the types of games allowed for play and the regulatory structure and authorities of the state. The regulatory roles and

responsibilities are negotiated as a part of the compacting process and vary by state; the lead regulatory role belonging predominately to tribes.

The GAO Report identifies the different approaches taken by the states and acknowledges the state regulatory structures and activities are influenced by the regulatory systems used by TGRAs and the level of resources dedicated to those efforts. According to the GAO Report, states employ 444 regulators whose combined budgets exceed \$52 million per year. Other estimates place the state budget total closer to \$83 million per year. In recognition of the capabilities of TGRAs, many states have refrained from unnecessarily recreating a regulatory system as extensive as that which tribes collectively operate. By relying on the tribal regulators, states are able to conserve funds for use in other areas.

It is clear that, with over 4,000 full-time regulators on staff and a combined annual investment of over \$400 million by state, federal, and tribal governments, Indian gaming is being afforded a level of protection higher than almost any other industry in the United States.

GAO REPORT SCOPE AND RESULTS

The Government Accounting Office was asked to review the current state of Indian gaming and undertook a twenty-month study as a result. Particular emphasis was given to the state of regulation in the industry. The GAO was asked to review: 1) the Department of the Interior's (Interior) review process that ensures tribal-state compacts comply with IGRA; 2) how states and selected tribes regulate Indian gaming; 3) the NIGCs authority to regulate Indian gaming; and, 4) the NIGCs efforts to ensure tribal compliance with IGRA and NIGC regulations.

The GAO Report provided insight into the extensive process followed by Interior in reviewing and acting on tribal-state compacts. The review of Interior's past 17 years worth of compact reviews showed that tribal interests have been protected through Interior's two-pronged analysis with less than four percent of 516 submitted compacts being disapproved.

The regulatory structures contained in those 516 compacts, as agreed to by the tribes and states, vary as previously stated. The GAO classified the varying approaches taken by states into one of three categories – active, moderate, or limited – to describe the depth and frequency of activity performed by each state.

Regardless of the jurisdiction, regulators share common goals: to ensure the integrity of their respective gaming operations, to protect the operation from any corrupting influences, to ensure financial accountability, and to ensure gaming is conducted fairly and honestly by the patrons and the gaming operation. Under this mutual bond, tribes across the country enjoy healthy

working relationships with their state and federal colleagues. Through regular interaction, tribes have been able to demonstrate their ability to effectively regulate tribal gaming facilities.

TGRAs go to great lengths to make sure that they and their gaming operations achieve the highest levels of compliance and dedicate a sizeable amount of human and financial resources to these efforts. TGRAs regularly provide reports on the compliance status of their respective gaming facilities to tribal leadership as well as any state and federal gaming authorities. In the event the desired compliance level is not achieved, however, TGRAs have it within their authority to ensure any departure from regulation is corrected using methods outlined in either compact provisions or TGRA regulations. IGRA contemplated a tribal-federal relationship with respect to Class II gaming and a tribal-state relationship for Class III gaming. State and federal regulators are also able to address issues they feel are not in line with prescribed regulation directly with the TGRA. Upon receiving notice, TGRAs are able to investigate the issue and respond with additional details and, if appropriate, any corrective measures taken to rectify the issue. These cooperative relationships indicate the goal of IGRA to ensure the sound enforcement of gaming laws and regulations is being met.

In recent years, the NIGC introduced the Assistance, Compliance, and Enforcement (ACE) initiative in further support of this goal. Training and technical assistance provided under ACE has allowed tribes with limited resources to access training and services at no cost. I applaud the NIGC's efforts and commend them for designing a program that respects the principal goal of federal Indian policy towards promoting tribal self-sufficiency and self-determination.

The breadth and scope of the NIGC training catalog has been revamped and modernized to include an Information Technology component, inclusive of technology and security assessments. The NIGC has enhanced the ACE initiative and its value to tribes by incorporating training and technical assistance that is relevant to today's gaming landscape.

This same approach has been used in recent years in drafting the minimum internal control standards (MICS) for Class II gaming. The Class II MICS have allowed the NIGC to remain a viable part of the regulatory landscape while respecting the role of TGRAs to design control systems that meet their unique needs.

The MICS covering Class III gaming, however, have not been updated since 2006, as a result of a court decision in which it was concluded that the NIGC did not have authority over Class III gaming. In light of this decision, the NIGC stated it was considering withdrawing the Class III MICS and republishing the standards in non-mandatory guidance form. This section of NIGC regulations has been included in a number of tribal-state compacts. Removing the standards from the current regulatory systems would create a void within the compacts and existing regulatory systems.

The GAO recommends the NIGC seek input from state governments as it contemplates changes to the Class III MICS. The means by which the NIGC would accomplish this are unknown; however, states have participated in developing the NIGC Class III internal controls in prior years by submitting comments on proposed rules and attending the public meetings and consultations held during the rulemaking process.

Any process in which Class III internal controls are addressed must be respectful of each stakeholder's interests. Only through a collaborative effort can the desired result of ensuring the integrity of Indian gaming be achieved.

THE FUTURE OF INDIAN GAMING REGULATION

Tribes and their respective gaming regulatory authorities remain steadfast in their commitment to protect the single-most effective economic development tool available to tribes today – Indian gaming. The regulatory efforts put forth by tribes and TGRAs will remain and continue to evolve to an ever-changing industry.

It is essential to the continued success of Indian gaming for all gaming regulators to maintain a balanced approach towards regulation and compliance with the various rules, regulations, and statutes. This task is best achieved by working together with our state and federal colleagues. Most importantly, however, it is an obligation owed to our tribal citizens. Tribal gaming regulators work tirelessly to ensure the integrity of Indian gaming so that our tribal citizens may reap the benefits from this vital industry.

Thank you, again, Chairman Barrasso and Members of the Committee for the opportunity to appear and provide testimony today. I stand ready to answer any questions you may have.