NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

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BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING: SAFEGUARDING THE INTEGRITY OF INDIAN GAMING

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INTRODUCTION

Good afternoon Chairman Barrasso, Vice Chairman Tester, and Members of the Committee. My name is Ernest Stevens, Jr. I am a member of the Oneida Nation of Wisconsin and Chairman of the National Indian Gaming Association (NIGA). NIGA is an association of 184 federally recognized Indian tribes united behind the mission of protecting tribal sovereignty and preserving the ability of tribes to attain economic self-sufficiency through gaming. I thank the Committee for this opportunity to provide testimony on "Safeguarding the Integrity of Indian Gaming" and to comment on the Government Accountability Office's June 2015 Report on "INDIAN GAMING: Regulation and Oversight by the Federal Government, States, and Tribes." (GAO Report).

As I have stated in the past, the Indian Gaming Regulatory Act (IGRA) is far from perfect. However, over 240 tribal governments are making the Act work for our communities. IGRA established a solid foundation to protect the integrity of Indian gaming. Over the past 27 years, tribes have dedicated billions of dollars of tribal government revenues (+$426 million in 2014 alone) to uphold the highest regulatory standards of any form of gaming in the United States.

NATIVE NATIONS PRE-DATING FORMATION OF THE UNITED STATES

I testified in July of 2014 before this Committee about the state of Indian gaming after 25 years under IGRA. As I did then, I would like to again place Indian gaming in proper context that includes the historic background of Native Nations pre-dating the formation of the United States and the adoption of the U.S. Constitution.

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to Indian lands. The Nations of England, France, and Spain all acknowledged tribes as sovereigns and entered into treaties to establish commerce and trade agreements, form alliances, and preserve the peace.

Upon its formation, the United States also acknowledged the sovereign authority of Indian tribes. The U.S. Constitution, in the Commerce Clause, acknowledges the separate distinct

governmental status of Indian tribes, on par with the foreign nations, and among the several states. In addition, through more than 300 treaties, Indian tribes ceded hundreds of millions of acres of tribal homelands to help build this great Nation. In return, the United States made many promises to provide for the education, health, public safety and general welfare of Indian people. The U.S. Constitution specifically acknowledges these treaties as the supreme law of the land.

Over the past two centuries, the federal government has fallen far short of meeting these solemn obligations. The late 1800's federal policy of forced Assimilation authorized the taking of Indian children from their homes and sending them to boarding schools where they were forbidden from speaking their language or practicing Native religions. The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Indian lands, eroded remaining tribal land bases, and devastated our economies. Finally, the Termination policy of the 1950's again sought to put an end to tribal governing structures, eliminate remaining tribal land bases, and attempted to relocate individual Indians from tribal lands.

These policies resulted in the death of hundreds of thousands of our ancestors, the taking of hundreds of millions of acres of tribal homelands, the suppression of tribal religion and culture, and the destruction of tribal economies. The aftermath of these policies continues to plague Indian Country to this day. Despite these policies, tribal governments and individual Indians persevered.

INDIAN GAMING IS TRIBAL GOVERNMENT SELF-DETERMINATION

The United States acknowledged these policies as failures. For 45 years now, the U.S. has fostered an Indian affairs policy that supports Indian self-determination and economic self-sufficiency. *See Nixon Special Message to Congress, July 8, 1970*; *See also, The Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638)*. Every President since 1970 has reaffirmed the self-determination policy and has acknowledged that the federal government's solemn treaty and trust obligations remain fully in force.

In the late 1960s and early 1970s, a handful of tribal governments embraced self-determination and took measures to rebuild their communities by opening the first modern Indian gaming operations. These tribes used the revenue generated from early Indian bingo operations to fund essential tribal government programs and services to meet the basic needs of their communities.

These acts of Indian self-determination were met with legal and legislative challenges by state governments and commercial gaming operations in the federal courts and in Congress. The legal challenges to the exercise of tribal governmental gaming culminated in the Supreme Court's *California v. Cabazon Band of Mission Indians* decision issued in February of 1987.

The *Cabazon* Court upheld the right of Indian tribes, as governments, to conduct gaming on their lands free from state interference. The Court reasoned that Indian gaming is crucial to Indian self-determination, noting that gaming provides the sole source of governmental revenue and is the major source of employment for many tribes. The *Cabazon* Court acknowledged that state governments –even those subject to the Termination Era Public Law 83-280—have no role to play in regulating Indian gaming as long as they do not criminally prohibit all forms of gaming

in the state. The *Cabazon* Court also acknowledged that Indian tribes had enacted their own regulations to monitor the integrity of Indian gaming – at times in cooperation with the U.S. Department of the Interior.

After *Cabazon*, states and commercial gaming interests increased their legislative efforts, urging Congress to reverse the decision. Their primary rationale for opposing Indian gaming was the threat of organized crime. However, this Committee found that after approximately fifteen years of gaming activity on Indian reservations there had never been one proven case of organized criminal activity. Senate Report No. 100-446 at 5 (Aug. 3, 1988). The Committee acknowledged that "the interests of the states and of the gaming industry extended far beyond their expressed concern about organized crime. Their true interest was protection of their own games from a new source of economic competition…. [T]he State and gaming industry have always come to the table with the position that what is theirs is theirs and what the Tribe have is negotiable." *Id.* at 33.

Many tribal leaders opposed the legislative proposals that became IGRA, in large part because of the requirement that tribal governments enter into compacts with the states in order to conduct class III gaming. These leaders reasoned that Indian tribes entered into solemn treaties with the United States, not the several states. In addition to opposing Indian gaming, states had generally opposed tribal sovereignty, seeking to regulate, tax, and impose jurisdiction over Indian lands.

However, on October 17, 1988, approximately 18 months after the *Cabazon* decision, Congress enacted IGRA. The stated goals of IGRA are: promoting tribal economic development and self-sufficiency; strengthening tribal governments; and establishing a federal framework to regulate Indian gaming. The Act established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in the United States, the NIGC – which is dedicated to the oversight of Indian gaming – is the only federal agency to regulate gaming in the U.S.

IGRA is a compromise that balances the interests of tribal, federal, and state governments. Nevertheless, the Act is grounded in the fundamental principle of law that "by virtue of their original tribal sovereignty, tribes reserved certain rights by entering into treaties with the United States, and that today, tribal governments retain all rights that were not expressly relinquished." Senate Report No. 100-446, at 5 (Aug. 3, 1988) ("Statement of Policy"). This principle guides determinations regarding the scope of tribal regulatory authority under IGRA.

THE STATE OF INDIAN GAMING TODAY

Before moving on to discuss Indian gaming regulation, it is also important to first discuss the benefits of Indian gaming to again provide proper context. In 2014, 245 tribal governments operated 445 gaming facilities in 28 states, generating $28.5 billion in direct revenues and $3.8 billion in gaming-related ancillary revenues *(including hotels, food and beverage, entertainment)* for a total of $32.3 billion in total revenues. Without question, Indian gaming is the most successful economic development tool for many Indian tribes.

Indian gaming revenues are helping meet significant shortfalls in basic needs. Tribes use Indian gaming revenues to improve basic health, education, and public safety services on Indian lands.

Tribes are also using gaming dollars to improve tribal infrastructure, including the construction of roads, hospitals, schools, police buildings, water projects, and many others.

For many tribes, Indian gaming is first and foremost about jobs. In 2014 alone, Indian gaming operations and regulation delivered 310,438 direct American jobs. When indirect jobs are added to the mix, Indian gaming generated over 684,000 jobs in 2014 alone. These American jobs go to both Indians and non-Indians alike. Indian gaming resources are making our reservation homelands livable once again as promised in hundreds of treaties.

In addition to revitalizing tribal communities, Indian gaming is benefitting our nearby local government neighbors. In 2014, Indian gaming generated over $13.9 billion for federal, state and local government budgets through compact and service agreements, indirect payment of employment, income, sales and other state taxes, and reduced general welfare payments.

Finally, it is with pride that we report that Indian tribes made more than $100 million in charitable contributions to other tribes, nearby state and local governments, and non-profit and private organizations. This statistic is unique to Indian gaming and not surprising given Indian Country's cultural history of sharing and caring for our neighbors. Through the Great Recession, tribal contributions helped prevent layoffs of local government public safety offices, teachers, health care workers, fire fighters, and many other local officials that provide essential services.

Of course, far too many Native communities continue to struggle with poverty and related social ills. Unemployment on Indian reservations nationwide averages 50 percent. Indian health care remains substandard. Violent crime is multiple times the national average. Our Native youth are the most at-risk population in the United States, confronting disparities in education, health, and safety. Thirty-seven percent of Native youth live in poverty. Native youth suffer suicide at a rate 2.5 times the national average. Fifty-eight percent of 3- and 4-year-old Native children do not attend any form of preschool. The graduation rate for Native high school students is 50 percent.

I applaud this Committee for its work in recent hearings to shine light on the struggles facing Native American youth. Indian gaming is part of the answer, but all of us—tribal leaders, parents, mentors, federal agencies, and Congress—can and must do more to provide opportunities for Native youth and for all citizens of Indian Country.

REGULATION: CONTINUING TO SAFEGUARD THE INTEGRITY OF INDIAN GAMING

Tribal governments realize that none of the benefits of Indian gaming would be possible without a strong regulatory system to protect revenue and preserve the integrity of our operations. For many tribes, Indian gaming is the sole non-federal source of revenue to fund the basic needs of our communities. As a result, no one has a greater interest in protecting the integrity of Indian gaming than tribal governments.

To provide Congress with an update on the state of Indian gaming regulation, the Government Accountability Office (GAO) in June of this year issued a report on "Indian Gaming: Regulation and Oversight by the Federal Government, States, and Tribes." The stated objectives of the Report were to examine: (1) tribal and state government regulation of Indian gaming; (2) the

NIGC's regulation of Indian gaming; and (3) the Interior Department's compliance with IGRA under the tribal-state compact review process. *(GAO Report at 57).*

TRIBAL AND STATE GOVERNMENT REGULATION OF INDIAN GAMING

As noted above, many tribal leaders raised concerns and opposition to IGRA prior to enactment. The primary reason that many Indian tribes opposed the legislation was IGRA's requirement that tribal governments enter into compacts with state governments for class III Indian gaming. When Congress debated IGRA in the mid-1980s, tribal-state relations were not only contentious – in many cases they were hostile and combative. This Committee, through its Report on the bill that became IGRA, sought to put many of these concerns to rest:

> It is a long and well-established principle of Federal Indian law as expressed in the United States Constitution, reflected in Federal statutes, and articulated in decisions of the Supreme Court, that unless authorized by an act of Congress, the jurisdiction of State governments and the application of state laws do not extend to Indian lands….
>
> In determining what patterns of jurisdiction and regulation should govern the conduct of gaming activities on Indian lands, the Committee has sought to preserve the principles which have guided the evolution of Federal-Indian law for over 150 years. In so doing, the Committee has attempted to balance the need for sound enforcement of gaming laws and regulations, with the strong Federal interest in preserving the sovereign rights of tribal governments to regulate activities and enforce laws on Indian land.

Senate Report 100-446, at 5 (Aug. 3, 1988) ("Statement of Policy").

The text of IGRA provides for exclusive tribal government jurisdiction over class I gaming. It acknowledges primary tribal government regulatory authority over class II gaming. The NIGC has direct authority to monitor class II gaming on Indian lands on a continuing basis. The Act leaves the bulk of the details for the regulation of class III gaming to be determined by compact negotiations between tribes and states. However, the Act acknowledges that the NIGC will maintain a secondary oversight with regard to class III regulation. While tribes take on the primary regulatory role, IGRA requires coordination and cooperation with the federal and state governments to make this comprehensive system work.

Vesting local tribal government regulators with the primary day-to-day responsibility for regulating Indian gaming operations stands in stark contrast to the failed policy that generally continues to plague criminal jurisdiction in Indian country. Regarding criminal jurisdiction, tribes are forced to rely on federal officials to investigate and prosecute most major crimes that occur on Indian lands often from offices and courtrooms that are located hundreds of miles from Indian Country. Despite recent reforms, the system of criminal justice in Indian Country is a proven failure. Washington, D.C. is simply not equipped to police – or in the case of Indian gaming, regulate—Indian lands or make local decisions for tribal communities.

With specific regard to tribal and state government regulation of Indian gaming, the June 2015 GAO Report indicates a varying levels of state regulatory involvement. The GAO reports that:

in 75 percent of class III Indian gaming operations—states have a moderate regulatory role (11 states); seven states have an active regulatory role in 17 percent of class III Indian gaming operations; and states hold a limited regulatory role in 8 percent of class III operations. *(GAO Report at 27-29).*

These differing levels of state regulatory involvement are not surprising. This Committee expected as much when developing the Act, noting that "The terms of each compact may vary extensively depending on the type of gaming, the location, the previous relationship of the tribe and state, etc…. The Committee recognizes the subparts of each of the broad areas [subjects for compact negotiations] may be more inclusive." Sen. Rept. No. 100-466 at 14.

While many tribes initially opposed IGRA for its tribal-state compacting requirement, over the past twenty-seven years, many tribal and state governments have worked to forge relationships many thought unheard of in 1988. In some cases, compact negotiations have been exhaustive, time consuming and costly to both parties. In other cases, they have gone smoothly. In a few unfortunate cases, states have refused to negotiate compacts in good faith pursuant to IGRA as intended by Congress. *(This significant flaw in the Act is discussed in more detail below).*

Over the past several decades overseeing gaming activities on Indian lands, tribal governments and tribal regulators have gained significant expertise in the field of gaming regulation. Early on, many tribal regulators came directly from federal and state gaming regulatory bodies, law enforcement, and judicial systems. Many others had backgrounds in commercial gaming regulation, banking, and accounting. However, today, many tribal regulators are homegrown, learning directly from these experts—exactly as IGRA intended. State governments have acknowledged this expertise, and rather than take on duplicative regulatory costs, some states – through compact negotiation process – have chosen to defer to tribal government expertise.

In addition to meeting and exceeding the regulatory requirements of IGRA and the NIGC's regulations, tribal regulators have formed associations such as the National Tribal Gaming Commissioners and Regulators, the Tribal Gaming Protection Network, the Wisconsin Indian Gaming Regulators Association and many others. These organizations have taken an innovative approach to regulation by sharing vital information on individuals and threats to gaming operations as well as best practices of what is working to better protect tribal resources.

Grounded in the policy fostering Indian self-determination, this tripartite system of regulation was revolutionary at the time of its implementation. Over the past twenty-seven years, the system has proven to be incredibly successful in providing first class regulation and in balancing the interests of separate sovereigns in a financially responsible manner.

THE NIGC'S ROLE IN REGULATING INDIAN GAMING

As noted above, while there are dozens of forms of gaming in the United States, the NIGC is the only federal agency that directly regulates any form gambling. While IGRA provides that tribal – state compacts will primarily govern the regulation of class III Indian gaming, the Act authorizes the NIGC to monitor class II gaming on a continuous basis. IGRA also acknowledged that the NIGC would maintain a role in regulating class III gaming.

The GAO Report notes that "[a] key difference between class II and class III gaming is that IGRA authorizes the Commission to issue and enforce minimum internal controls standards (MICS) for class II gaming but not for class III gaming." *(GAO Report at 32)*. However, the Report also indicates that tribal-state class III gaming compacts include requirements for MICS.

Tribal governments have understood the importance of MICS for decades. It is for this reason that the NIGA-National Congress of American Indians Gaming Task Force established model tribal MICS for tribal regulators prior to the NIGC adopting is own federal MICS.

The MICS enable tribal regulators to protect our resources, and to protect the integrity of our games. The MICS generally prescribe methods for removing money from games and counting it so as best to prevent theft; methods for the storage and use of playing cards so as best to prevent fraud and cheating; standards for maintaining security of electronic games access and requiring investigations under certain circumstances; and minimum resolutions and floor area coverage for casino surveillance cameras, among other areas.

The GAO Report also acknowledges that the NIGC conducts regular site visits to both class II and class III Indian gaming operations. During these visits, the NIGC provides training and technical assistance, reviews class II MICS compliance and –with the consent of tribal regulators— reviews class III tribal internal controls; reviews of background checks for key employees, conducts surveillance reviews, conducts facility license compliance for public health and safety, conducts internal audit reviews, conducts gaming ordinance reviews and conducts other regulatory compliance reviews. *(GAO Report at 40-43).*

With regard to audit reviews, the NIGC requires all tribal gaming facilities to have an annual financial statement audit pursuant to NIGC Regulation Part 571.12 and IGRA. This requires all tribal casinos to have a their financial statements audited by a certified public accounting firm, which require the financial statements to conform with generally accepted accounting principles (GAAP) and that the audit is completed in accordance with generally accepted auditing standards. These audited financial statements, agreed upon procedure (AUP) reports, and other documented communication are submitted within 120 days of the facility's fiscal year-end. In addition, the NIGC issues an annual compliance report to the Secretary of the Interior that lists every tribal casino and their compliance related to audits and other compliance related regulations. The majority of the CPA firms that audit tribal casinos specialize in that niche or have an industry specific team that are experts in Indian gaming. Grant Eve, the gaming partner of the accomplished accounting firm Joseph Eve, CPA, has worked with commercial casino in Las Vegas and with gaming operations throughout Indian Country. Mr. Eve has repeatedly testified that Indian gaming operations meet or exceed the standards of commercial casinos.

In addition to these activities, the NIGC's class III regulatory powers also include: reviewing for approval class III tribal gaming regulations and ordinances, reviewing all tribal management contracts, and monitoring the implementation and enforcement of class III tribal gaming ordinances and provisions of tribal-state compacts. Congress also vested the NIGC with broad authority to issue regulations in furtherance of the purposes of IGRA.
Along with the NIGC, a number of other federal officials help regulate and protect Indian gaming operations. Tribes work with the FBI and U.S. Attorneys offices to investigate and

prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility – this applies to management, employees, and patrons. 18 U.S.C. §1163. Tribal regulators also work with the Treasury Department's Internal Revenues Service to ensure federal tax compliance and the Financial Crimes Enforcement Network (FinCEN) to prevent money laundering. Finally, tribes work with the Secret Service to prevent counterfeiting.

This comprehensive system of regulation is expensive and time consuming, but tribal leaders know what is at stake and know that strong regulation is the cost of a successful operation. Through the Recession, tribal governments continued to dedicate tremendous resources to the regulation of Indian gaming. In 2014, tribes spent $426.4 million on tribal, state, and federal regulation:

- $320.2 million to fund tribal government gaming regulatory agencies;
- $85.6 million to reimburse states for state regulatory activities negotiated and agreed to pursuant to approved tribal-state class III gaming compacts; and
- $20.6 million to fully fund the operations and activities of the National Indian Gaming Commission.

This funding employs over 6,500 tribal, state, and federal regulators working together to maintain the integrity of Indian gaming.[1] This includes approximately 5,900 tribal government gaming regulators, and approximately 570 states regulators. At the federal level, the NIGC employs more than 100 regulators and staff.

Against this backdrop of comprehensive regulation, the FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration of organized crime on Indian gaming.

NIGA applauds the work of the current Administration's Department of Justice for its increased cooperation and coordination of FBI agents and U.S. Attorneys with tribal gaming regulators, tribal police, and tribal justice officials. In past years, tribal governments raised a number of concerns that U.S. Attorneys refused to prosecute cases that fell below a certain dollar threshold. This Administration has generally removed those arbitrary thresholds and is working with tribal justice officials to investigate and prosecute all crimes against Indian gaming operations. More generally, this Administration has made it a priority to investigate and prosecute all crimes on Indian lands, which has been a welcome change to the far too many victims of violence in Indian Country. This sends a strong message that any crimes in Indian Country or against Indian gaming operations will be prosecuted to the fullest extent of the law, and has proven a strong deterrent.

NIGA also appreciates the increased consultation, training and technical assistance that the NIGC is providing to tribal government regulators, as well as the related NIGC Assistance, Compliance and Enforcement (ACE) Initiative. Increased consultation has begun to repair frayed relationships with tribal governments, and has led to increased coordination, and further improvements to Indian gaming regulation. While IGRA acknowledges tribal regulators as the

[1] Testimony of Tracie Stevens, Chairwoman, NIGC, before the Senate Committee on Indian Affairs (July 26, 2012).

primary day-to-day watchdogs of Indian gaming, tribal regulators and the NIGC share a common goal of ensuring the integrity of Indian gaming and protecting tribal governmental gaming revenue. Many tribal regulatory agencies have the resources and ability to stay informed about the latest technology in gaming regulation, access to information about individuals that have cheated at gaming or pose a danger to tribal operations, and the ability to gain needed training. However, some tribal regulators without resources benefit greatly from expertise that can be offered by NIGC field agents. These tribal regulators suffered under the punitive approach that ignored the need for training and technical assistance.

The GAO acknowledged and summarized this system of regulation and could not point to any significant gaps or weaknesses in the regulation of Indian gaming. As detailed by the GAO in their visits to tribal gaming operations, Indian Country is proud of the job they have been doing on regulation. There is no need for major changes in the current regulatory system.

TRIBAL – STATE COMPACTING PROCESS

The June 2015 GAO Report also examined the role of the Interior Department to uphold the integrity of IGRA through the compact approval process. While IGRA sought to protect and safeguard Indian gaming operations through comprehensive regulation, it also sought to ensure that tribal governments are the primary beneficiaries of gaming to strengthen tribal governments and to help tribes achieve economic self-sufficiency.

Again, many prominent tribal leaders opposed IGRA because of the class III compacting process. These leaders did not trust that state governments would respect their obligations to negotiate in good faith, or more fundamentally—negotiate at all. The text of IGRA, this Committee's Report on the Act, and other related legislative history of IGRA, repeatedly sought to alleviate tribal concerns. Congress clearly balanced tribal and state interests, and expressly prohibited states from using the compact process to protect existing markets or as a means of taxing tribal governments:

> A tribe's governmental interests include raising revenues to provide governmental services for the benefit of the tribal community and reservation residents, promoting public safety as well as law and order on tribal lands, realizing the objectives of economic self-sufficiency and Indian self-determination, and regulating activities of persons within its jurisdictional borders. A State's governmental interests with respect to class III gaming on Indian lands include the interplay of such gaming with the State's public policy, safety, law and other interests, as well as impacts on the State's regulatory system, including its economic interest in raising revenue for its citizens. It is the Committee's intent that the compact requirement for class III not be used as a justification by a State for excluding Indian tribes from such gaming or for the protection of other State-licensed gaming enterprises from free market competition with Indian tribes.

Sen. Rept. 100-446, at 13. The text of IGRA makes clear that the tribal-state compact negotiation process must be limited to activities directly related to Indian gaming. The Act provides that states may negotiate for assessments necessary to defray the costs of regulating

gaming-related activity. However, the Act expressly prohibits states from refusing to enter into compact "negotiations … based upon a lack of authority to impose such a tax, fee, charge, or other assessment." 25 U.S.C. Sec. 2710(d)(4).

Congress and this Committee acknowledged the unique nature of the compact process and the concessions that tribes would be required to make in negotiating gaming compacts with states. However, it balanced these concessions by requiring state governments to negotiate in good faith, and by providing tribal governments the right to sue states in federal court to enforce this obligation:

> In contrast, States are not required to forgo any State governmental rights to engage in or regulate class III gaming except whatever they may voluntarily cede to a tribe under a compact. Thus, given this unequal balance, the issue before the Committee was how to best encourage States to deal fairly with tribes as sovereign governments. The Committee elected, as the least offensive option, to grant tribes the right to sue a State if a compact is not negotiated and chose to apply the good faith standard as the legal barometer for the State's dealing with tribes in class III gaming negotiations…. The Committee recognizes that this may include issues of a very general nature and, and course, trusts that courts will interpret any ambiguities on these issues in a manner that will be most favorable to tribal interests consistent with the legal standard used by courts for over 150 years in deciding cases involving Indian tribes."

Id. at 14-15.

This compromise and the balance that it struck were short-lived. Eight years after enactment, the United States Supreme Court destroyed the delicate balance to the IGRA compacting process in its 1996 decision in *Seminole Tribe of Florida v. Florida*. Overruling its own precedent, the Court reasoned that, "Even when the Constitution vests in Congress complete lawmaking authority over a particular area [such as Indian affairs], the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996). The Court thus held that Congress did not have the authority to permit tribal governments to bring suit against state governments in federal court to enforce IGRA's good faith compact negotiation obligation. The case effectively shattered the delicate balance in the tribal-state compacting process.

For nearly twenty years now, the Supreme Court's *Seminole Tribe* decision has left tribal governments without a method to enforce the state's obligation to negotiate or renegotiate class III gaming compacts in good faith. While a number of tribes have continued to make IGRA work despite the imbalance, some tribes forced to work with intractable state administrations face the no-win proposition of either not moving forward on a project that could be its only source of governmental revenue or succumbing to what could be viewed as a direct violation of the Act.

While we are pleased that the GAO took a long needed overview of IGRA's tribal-state

compacting process, the Report lacks a true examination of the integrity of that process. The Report also fails to provide recommendations to improve the current process.

Since the Court's 1996 decision, Indian Country has consistently urged Congress to restore balance to IGRA's tribal-state compact process. Restoring balance to this process is the only way to ensure the integrity and the goals of IGRA are met.

NIGA applauds the Obama Administration's efforts to renew diligent review of tribal-state compact provisions and compliance with IGRA, particularly its focus on revenue sharing provisions. The GAO Report confirmed this fact by noting that Interior officials "pay close attention to provisions that dictate terms for revenue sharing between tribes and states to ensure that state are not imposing taxes or fees on Indian gaming revenues prohibited by IGRA." *(GAO Report at 18).* Prior to the current scrutiny, NIGA and our Member Tribes raised significant concerns that the Interior Department ignored its trust obligations to tribes and its legal obligations to ensure that Indian tribes are the primary beneficiaries of Indian gaming activities under IGRA.

Finally, while the subject of Internet gaming is beyond the scope of this hearing, provisions in bills that propose to authorize the activity in the United States could impact existing tribal-state compacts and the future of the compact process. A common example of these provisions is Section 111(e) of H.R. 2888, the Internet Poker Freedom Act. This provision, titled "No impact on the Indian Gaming Regulatory Act", could be read to permit state governments to authorize Internet gaming within state borders in direct conflict with existing tribal-state exclusivity provisions. Tribal governments have invested significant time and resources into the already difficult compacting negotiation process. Congress should not consider legislation that interferes with these agreements. We urge the Committee to work with the Committees of jurisdiction to ensure respect for existing tribal-state gaming compacts and ensure the any federal Internet gaming legislation adheres to the principles outlined in my testimony before this Committee in July of 2014.

CONCLUSION

Indian gaming revenues enable more than 240 tribal governments the ability to provide basic services to our people and rebuild our communities. Tribal governments acknowledge the great importance of what is at stake, and have committed significant resources to protect these gains by maintaining a strong, seamless, and comprehensive system of regulation. Much of the credit for this success goes to the tribal leaders who make the decision each year to spend more than $426 million to regulate their operations, and to the thousands of men and women who are day-to-day front line regulators of Indian gaming. For twenty-seven years, tribal regulators have worked closely with federal and state regulatory partners to provide for the safety of visitors to Indian Country, the integrity of Indian gaming operations, and the security of the vital resources that Indian gaming provides to tribal communities nationwide.

Chairman Barrasso and Members of the Committee I again thank you for this opportunity to testify today. I am prepared to answer any questions you have.