NARRAGANSETT INDIAN TRIBE

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

THE PROVISIONS IN THE 1997 OMNIBUS APPROPRIATIONS ACT WHICH REMOVED THE NARRAGANSETT INDIAN TRIBE OF RHODE ISLAND FROM THE COVERAGE OF THE INDIAN GAMING REGULATORY ACT

MAY 1, 1997—WASHINGTON, DC

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CONTENTS

	Page
Hearing held May 1, 1997	1
Statement of Members:	
Chafee, Hon. John H., a U.S. Senator from Rhode Island	11
Prepared statement of	13
Inouye, Hon. David K., a Senator in Congress from the State of Hawaii, (prepared statement)	68
Kennedy, Hon. Patrick, a U.S. Representative from Rhode Island	2
Prepared statement of	5
Kildee, Hon. Dale, a U.S. Representative from Michigan	9
Miller, Hon. George, a U.S. Representative from California	10
Pombo, Hon. Richard, a U.S. Representative from California	1
Reed, Hon. Jack, a U.S. Senator from Rhode Island	15
Vento, Hon. Bruce, a U.S. Representative from Minnesota	8
Weygand, Hon. Robert A., a U.S. Representative from Rhode Island	17
Prepared statement of	18
Statement of Witnesses:	
Allen, W. Ron., President, National Congress of American Indians	62
Prepared statement	136
Almeida, Patricia, Spokesperson, The Alliance To Save South County	60
Almond, Hon. Lincoln, Governor, State of Rhode Island	33
Prepared statement	80
Boden, Gary, on behalf of Residents Against Gambling Establishments (prepared statement)	157
Ducheneaux, Frank, Attorney at Law	64
Prepared statement	144
Hayes, David, Counselor, Secretary of the Interior	42
Prepared statement	92
Lally, Hon. Donald L., Jr., a State Representative in Rhode Island	58
Prepared statement	109
Noka, Randy, First Councilman, Narragansett Indian Tribe	43
Prepared statement	95
Platner, Ruth, citizen of Charlestown (prepared statement)	167
Roche, Ann, resident of Charlestown (prepared statement)	171
Additional material supplied:	
Excerpt from S.Rept. 100–446	76
H. 5543 of State of Rhode Island General Assembly	114
H. 6023 as amended, Rhode Island General Assembly	117
Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims	151
Legal Analysis of High Stakes Bingo on Lands of the Narragansett Indian Tribe	119
Resolutions of National Congress of American Indians in support for tribal sovereignty and oppose riders which negatively impact tribes	140
List of names of persons and tribes who wrote letters	134
Map of the Indian Reservation	159
Rhode Island Indian Claims Status	130
Rhode Island Coalition Against Casino Gambling (list)	155
Communications submitted:	
Babbitt, Bruce: Letter of September 12, 1996, to Hon John H. Chafee	78
Goodsell, Bruce N.: Letter of April 28, 1997, to Hon. Don Young	149

Page

Communications submitted—Continued

Joint letter from members of Rhode Island General Asembly dated April 22, 1997, to Hon. Don Young and Hon. George Miller 112

Lytle, Karen (Town of Charlestown): Letter of April 28, 1997, to Hon. Don Young 147

NARRAGANSETT INDIAN TRIBE

THURSDAY, MAY 1, 1997,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in room 1324, Longworth House Office Building, Hon. Don Young (Chairman of the Committee) presiding.

STATEMENT OF HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. POMBO. [presiding] I want to start off by apologizing to everybody for not having enough room in the hearing room for everyone. Obviously, this is a small hearing room. We tried to fit as many people in as we possibly could. To start the hearing this morning. I welcome you all here.

I will start off by reading Chairman Wayne Gilchrest's opening statement: "Good morning, ladies and gentlemen. Today we are conducting an oversight hearing concerning the applicability of the Indian Gaming Regulatory Act to the Narragansett Indian Tribe of Rhode Island.

"A long and complicated series of events has led us to this hearing. I do not pretend to understand all of the legal intricacies of all of the laws which are applicable to the Narragansett Tribe and its desire to conduct gaming.

"However, I do understand that in 1978 the Narragansett Tribe acquired its lands pursuant to Public Law 95–395, which provided that those lands would be subject to the laws and the jurisdiction of the State of Rhode Island. I understand that in 1988 Congress passed a law which gave all Indian tribes the right to conduct gaming on their trust lands.

"In 1994 a U.S. Court of Appeals ruled that the 1988 law took precedence over the 1978 law as far as gaming conducted by the Narragansett Indian Tribe is concerned. Then, in 1996, Congress passed another law which amends the 1978 law so that the 1988 law, the Indian Gaming Regulatory Act, does not apply to the Narragansett Indian Tribe.

"We are here today because, in spite of all this legislating, Congress has never held a hearing of the issue of the Narragansett Tribe's rights to conduct gaming. This is a very important issue to the Narragansett Tribe, the State of Rhode Island, and the rest of the tribes throughout the nation. I note that we have received letters on this issue from well over one hundred Indian tribes.

"It is time to hear what the various interested parties have to say. Our witness list includes the Rhode Island congressional delegation, the Governor of Rhode Island, the Administration, the tribe, and several other individuals who bring different perspectives to this hearing.

"At this time I am hereby announcing that I will keep our hearing record open until the close of business on Friday, May 16th. Anybody wishing to submit written testimony may do so until that time. I would now like to recognize the gentleman on my left from Rhode Island for his opening statement."

STATEMENT OF HON. PATRICK KENNEDY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. KENNEDY. Thank you, colleague Richard Pombo, also co-chair of the Portuguese-American caucus. I would also like to acknowledge Governor Romero-Barceló from Puerto Rico and Congressman Dale Kildee and the co-chair of the Native American caucus in the Congress of the United States.

Most of all, I would like to welcome my colleagues from the Rhode Island delegation to this Committee and to this hearing in addition to my former colleagues in the State legislature and my friends in the Narragansett Tribe.

Almost 400 years ago the Narragansett Tribe lived in peace. Before the European settlement of southern New England the tribal government was the sovereign authority over their people and their general welfare. They educated their children, cared for their sick, and fished in the bay that now bears their name.

In 1675 their way of living would come to an end with an event known as the King Philip's War. The European colonists, who had long coveted the lands of the Narragansetts, expanded a feud they had with another tribe and attacked the Narragansetts. The result for the colonists was a clear victory. The result for the tribe was they lost most of their land, many members were killed, and still more were sold into slavery in the Caribbean.

In the 1800's while many of the tribes were being relocated west, the Narragansetts successfully petitioned to remain on their designated tribal territory that included the town of Charlestown. By the end of the century, however, the State had enough of the Narragansetts and summarily abolished the tribe and sold off the remnants of the land to non-Indians.

That is how the State of Rhode Island took possession of the land owned and governed by the Narragansett Tribe. I share this bit of history because it is essential that when we discuss the sovereign rights of the Narragansetts we understand that for over 100 years these rights were denied without the tribe's consultation or consent.

In 1975 the Narragansetts filed a land claim seeking restoration of their aboriginal lands in and around Charlestown. The State and Federal Government consented to the proposal and codified this agreement in the 1978 Rhode Island Indian Claim Settlement Act.

At this time the tribe consented to live by the laws of the State because they lacked Federal recognition and status. In 1983, however, this would all change when the Narragansetts had their sovereignty authority reaffirmed by the Federal Government. It was

at that time that the tribe would begin the process of reclaiming their rights to govern and provide for the welfare of their tribal population.

The tribal government was given the authority to codify law, exercise regulatory power, and levy taxes on their settlement land. Let me be clear: It is this federally recognized sovereign authority that makes the tribe more than just a corporation or a social club. Their lands are no longer owned by the State but rather are held in trust by the Federal Government.

That means that the Congress has the responsibility to treat the tribe and its elected officials on a government to government basis just as we treat States and municipal authorities. Unfortunately, by the time the tribe regained its sovereign status decades of discrimination had taken their toll.

Today with an unemployment rank of almost 40 percent, poor health care, and the lowest standard of living than any other group in Rhode Island the tribe is desperately trying to recover a sense of community and an opportunity for its members. Before this panel addresses today's agenda the gaming rights of the Narragansett Indians, we must also consider their special relationship with the United States and their rights as what Supreme Court Justice John Marshall called a domestic dependent nation.

We must understand that the sovereign rights are all that is left of what the tribe had prior to the European settlement. These rights were reaffirmed in 1983 by an official proclamation of the U.S. Government. This action took place after the 1978 settlement agreement and from that point on permanently changed the relationship between the tribe and the State and the tribe and Federal Government.

To remove those rights now would be to abrogate the sovereign standing of the tribe as in a similar fashion that the State did in the Act of 1880. Yet that is exactly what has happened with regard to the Narragansetts right to game under the Indian Gaming Regulatory Act when Senator Chafee passed his rider last year.

In 1987 the Supreme Court ruled in the Cabazon decision that tribes retain the exclusive right to regulate gaming on Indian lands unless the State prohibits that type of gaming. Deferring to the concerns of the State Congress passed the Indian Gaming Regulatory Act, IGRA, in 1988 to codify U.S. law regarding the sovereign right of tribes to engage in gaming on their lands.

Again, the Supreme Court said the tribes could have the gaming rights. Congress and the States in a panic said, listen, we got to do something about this so they passed IGRA to help the States regulate what the Supreme Court had said those tribes had a right to do. Before Senator Chafee acted last year the Federal courts had conclusively asserted in two separate decisions that the Narragansetts had a right to game under IGRA.

The court argued that it was the Narragansetts' sovereign and civil rights as a federally recognized tribe and that this superseded any agreements that the 1978 Settlement Act established. This does not mean, however, that the tribe could do whatever it wanted because like I said IGRA was a means by which the States had a say with the Federal Government to slow down Native American rights to game on their tribal lands.

So there were provisions put within IGRA that helped check the expansion in gaming per the State's requests and the Narragansetts would be under those regulations as they fall under IGRA, the Federal law. Let me be perfectly clear. According to the law, the Narragansetts despite any rhetoric you hear cannot open a casino without a compact with the State and a voter referendum by the citizens.

This was true before Senator Chafee acted with his rider. IGRA says that unless the tribe obtains consent from the State through a compact it may not operate video slot machines, simulcast racing or video poker as the State already does. Incidentally, the State has allowed for and is considering the expansion of video lottery machines at Lincoln Park and Newport Jai Alai to include more than 1,000 new machines without voter approval.

To me this is a double standard and it highlights the hypocrisy of this rider. Let me say in no way can the citizens of Rhode Island be in danger of a Las Vegas style casino before Senator Chafee acted unless the Governor compacted and the State of Rhode Island voted. Now if you have any question about this we already have an example of this and the State turned down by a 3 to 1 margin nearly Narragansetts Tribe's attempt to ratify a compact with the State.

So we have already seen where the voters of the State had a say with respect to a casino in Rhode Island. The only thing that the Narragansetts could do legally before the Chafee Rider is operate a bingo hall because under Federal law bingo is not considered the same class as any form of video or Las Vegas style gaming.

Yet for reasons unknown they are being held to a higher standard, Narragansetts are being held to a higher standard than the State of Rhode Island because now they are precluded from even doing that. Further, the Narragansetts are required under the law to spend the revenues from any gaming servicing the general welfare to their tribal members.

In other words, they have to spend the money for the benefit of their tribal members and God knows their tribal members need those resources when you consider the fact there is 40 percent unemployment and a deprived situation and depressed economic circumstances that tribe has been living under for so many years.

This is quite a different situation from the State sanctioned gaming operations that, despite a payback to the State, and by the way paid back to the State $90 million roughly and I think the overall revenues from the gaming is roughly half a billion dollars and they kick back $90 million to the State. We wonder where that money is going.

But for the tribe the bulk of their money has to go back to provide for their people. Let me say that I want to impress upon my colleagues who support, and I might add I am the only member of my delegation to carry this position so I respect my colleagues' position on this. I think that they are clearly obeying the wishes of the people of Rhode Island expressed in the referendum.

My colleagues are clearly respecting the wishes of their constituents as expressed in the referenda that we saw in the compact with the Narragansetts. But let me make the point very clear here. Despite the fact that the people with Rhode Island disagree with gam-

ing as I do as I voted against gaming as a State representative and a voter of the State, that does not entitle us to summarily abolish the civil and sovereign rights of the Narragansetts with respect to their rights to game.

I liken this to freedom of speech, you know, we do not like many acts of free speech but does that mean we eliminate the right to free speech? And under the rider, Chafee Rider, the Congress last year in order to curry interest with the people of Rhode Island who by and large are against Las Vegas style casino because they voted that almost 3 to 1, despite their being in disagreement with it there is a process by which we have to follow here and that is a process that is going to establish by the Supreme Court, is going to establish by Federal law, and that says that despite the fact that we disagree with gaming we do not have a right to take away their rights to game, and that is the fundamental argument today in my opinion.

So we look forward to having testimony by my colleagues in the Rhode Island Federal delegation, members of the General Assembly, and the tribe itself on these matters. And before I conclude I would like to submit into the record testimony by, let us see, Senator John McCain, former Chairman of the Committee on Indian Affairs, Senator Daniel Inouye, vice Chairman of the same Committee, Secretary of Interior, Bruce Babbitt, and as well I would like to submit the decisions by the U.S. District Court and First Court of Appeals regarding upholding the Narragansetts' rights as well as various letters from tribal governments around our nation. Thank you, Mr. Chairman.

[The prepared statement of Mr. Kennedy follows:]

OPENING STATEMENT OF HON. PATRICK J. KENNEDY, A U.S. REPRESENTATIVE FROM RHODE ISLAND

Almost four hundred years ago, the Narragansett Tribe lived in peace. Before the European Settlement of southern New England, the tribal government was the sovereign authority over their people and their general welfare. They educated their children, cared for their sick, and fished in the Bay that now bears their name.

In 1675, their way of living would all end with the event known as King Philip's War. The European colonists, who had long coveted the lands of the Narragansetts, expanded a feud they had with another tribe and attacked the Narragansetts. The result for the colonists was a clear victory. The result for the Tribe was that they lost most of their land, many members were killed, and still more were sold into slavery in the Caribbean.

In the 1800's, while many other tribes were being "relocated" West, the Narragansetts successfully petitioned to remain on their designated Tribal territory that included the town of Charlestown. By the end of the century however, the State had enough of the Narragansetts and summarily abolished the Tribe and sold off the remnants of the land to non-Indians.

That is how the State of Rhode Island took possession of the land owned and governed by the Narragansett Tribe. I share this bit of history today because it is essential that when we discuss the sovereign rights of the Narragansetts, we understand that for over 100 years these rights were denied without the Tribe's consultation or consent.

In 1975, the Narragansetts filed a land claim seeking restoration of their aboriginal lands in and around Charlestown. The State and Federal Government consented to the proposal and codified the agreement in the 1978 Rhode Island Indian Claims Settlement Act. At this time, the Tribe consented to live by the laws of the State because they lacked Federal recognition and status.

In 1983, however, that would all change when the Narragansetts had their sovereign authority reaffirmed by the Federal Government. It was at this time that the Tribe would begin the process of reclaiming their rights to govern and provide for

the welfare of the Tribal population. The Tribal government was given the authority to codify law, exercise regulatory power, and levy taxes on their settlement land.

Let me be clear, it is this federally recognized sovereign authority that makes the Tribe more than a corporation or a social club. Their lands are no longer owned by the State but are held in trust by the Federal Government. That means that Congress has the responsibility to treat the Tribe and its elected officials on a government-to-government basis just as we treat States and municipal authorities.

Unfortunately, by the time the Tribe regained its sovereign status, decades of discrimination had taken its toll. Today, with an unemployment rate of almost 40 percent, poor health care, and a lower standard of living than any other group in Rhode Island, the Tribe is desperately trying to recover a sense of community and opportunity for its members.

Before this panel addresses today's agenda—the gaming rights of the Narragansett Indians—we must consider their special relationship with the United States and their rights as what Supreme Court Justice John Marshall called a "domestic dependent nation."

We must understand that sovereign rights are all that is left of what the Tribe had prior to the European settlement. These rights were reaffirmed in 1983 by an official proclamation of the U.S. Government. This action took place after the 1978 settlement agreement and from that point on, permanently changed the relationship between the Tribe, the State, and the Federal Government.

To remove those rights now would be to abrogate the sovereign standing of the Tribe in a similar fashion to the State's act of elimination in 1880. Yet, that is exactly what has happened with regard to the Narragansetts' right to game under the Indian Gaming Regulatory Act when Senator Chafee passed his rider last year.

In 1987, the Supreme Court ruled in the Cabazon Decision that tribes retain the exclusive right to regulate gaming on Indian lands unless a state criminally prohibits that type of gaming. Deferring to the concerns of States, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988 to codify U.S. law regarding the sovereign right of Tribes to engage in gaming on their lands. The legislation was enacted on a bi-partisan basis to balance the rights of tribes and interests of states and local communities.

Before Senator Chafee acted last year, the Federal courts had conclusively asserted in two separate decisions that the Narragansetts had a right to game under the IGRA. The Courts argued that it was the Narragansetts' sovereign and civil right as a federally recognized tribe and this superseded any agreements that the 1978 Settlement Act established. This does not mean, however, that the Tribe could do whatever it wanted. The Narragansetts were still subject to the guidelines of IGRA and all other Federal laws which were passed by Congress.

Let me be perfectly clear... According to the law, the Narragansetts, despite any rhetoric, cannot open a CASINO without a compact with the State and a voter referendum by the citizens. This was true BEFORE Senator Chafee acted with his rider.

IGRA says that unless the Tribe obtains consent from the State through a compact, it may not operate video slot machines, simulcast racing, or video poker as the state already operates. Incidentally, the State has allowed for and is considering the expansion of video lottery machines at Lincoln Park and Newport Jai Alai to include more than one thousand new machines without voter approval. To me this is base hypocrisy.

Let me say again, in no way were the citizens of Rhode Island in danger of a Las Vegas style casino before Senator Chafee acted unless they approved it with their vote. To say otherwise is a complete falsehood and an attempt at deceiving public opinion about what the Tribe is legally able to do.

The only thing that the Narragansetts could legally do before the Chafee rider is operate a bingo hall, because under Federal law, bingo is not considered in the same class as any form of video or Las Vegas style gaming. Yet for reasons unknown, they are being held to a higher standard than the State of Rhode Island is held to. At every turn the Tribe has complied with every law and regulation that applies to it. Everything from Federal environmental statutes to building code specifications, the Tribe has followed the law.

Further, the Narragansetts are required under the law to spend the revenues from any gaming servicing for the general welfare of the Tribal members. That means education, health care housing, and other public initiatives. This of course is quite different from the State sanctioned gaming operations that, despite a payback to the state, are for-profit in nature.

Let me say that I want to impress upon Senator Chafee my utmost respect for him and all that he has done, and continues to do, on behalf of the citizens of Rhode Island. Although I concur with the Senator on many issues, I cannot agree with him

or any of his supporters, whether they are Republican or Democrat, on this specific issue.

In my view, his rider, which was the result of a last-minute political deal and which came without any hearings or consent from the Tribe in the last session of Congress,

•was unjust,

•in violation of the Equal Protection Clause of the Constitution as it singles out one Tribe from every other,

•and is discriminatory as it nullifies the civil rights of an entire people in the name of political expediency.

Clearly, the political play here is to come to this Committee, state that you oppose all kinds of gaming and that the Narragansetts are trying to circumvent the law because they say they are special. As I have indicated, the Tribe is only looking to follow the law. This type of gamesmanship is wrong and serves only to deny the Tribe its rights and opportunities under the Constitution, which were affirmed by our Federal judicial system.

I would like to ask everyone to consider what effect the Chafee rider has on not only the Narragansett Tribe but all citizens, Native American or otherwise. On September 30, 1996, the governing authority and Constitutional rights of the Tribe were removed because of a perceived popular opinion in the State of Rhode Island. Further, this action was taken without the due process or due respect owed to the Tribe.

Imagine...a civil rights law without a hearing or official comment by the Tribe. Truly, if it can happen to one Tribe or group, it can happen to anyone. I find this action unconscionable with regard to a people's civil rights. I will not agree to it because it is wrong and I will never support it for political gain.

I have told the Narragansetts that I am against casino gaming in Rhode Island. Further, I am opposed to the expansion of gaming that already exists in Rhode Island. To that end, I have written to the leaders of the state legislature, urging them to reject any initiative to expand upon the existing or proposed gaming infrastructure in the State. In my opinion, Rhode Islanders can be against gaming and be for the civil rights of the Tribe. Just as I would defend a person's right to argue an issue that I wholly oppose, I now defend the Tribe's Constitutional right to a bingo hall that I would rather not see built.

Although I would be the first citizen of Rhode Island to vote against a Casino, it is not my right or privilege to legislate on the civil rights of a Tribe because it is popular to do so. If other civil or Constitutional rights were subject to the same capriciousness, there would be no way of protecting the weak or less fortunate from the strong or politically connected. This issue is about sovereignty and the law, not gaming.

The tribes in this nation have been subject to years of unconscionable discrimination because it was easy to do so. Popular opinion in other states, at other times, have created a painful history for Native Americans which has caused Indian Country to now rank first in poverty and last in education and health care. Is Rhode Island prepared to go down that same road?

For my part, I do not have that luxury as a member of this Committee to take Indian issues lightly. Oftentimes we are Native Americans' last hope when it comes to protecting their rights. Clearly, if it was my goal to take the "political action" as opposed to the "right action," I would be sharing the position of Senator Chafee and his supporters.

If anything, I hope that this hearing will serve to educate the public to learn that there is more to this issue than a Las Vegas style casino that simply will not happen in Rhode Island unless the people vote for it to happen.

If we choose not to listen to the rhetoric and scare tactics, we will understand that the Narragansetts are a proud people who have been discriminated by our own government.

We will find that they are just trying to pull themselves up from their own bootstraps and move out of extreme poverty in a way that will not hurt the lives of other Rhode Islanders.

We will determine that they are citizens like us who have to abide by the rules and statutes of our Government.

And we will conclude that they have painfully earned their sovereign status and that to take it away from them now would be to once again break their spirit and any hopes that they have for the future.

Again, let me say that I have the utmost respect for my colleagues from Rhode Island and I want to thank each of them for coming today. I am looking forward

to hearing their testimony and followup with questions that will take us beyond the rhetoric and bring clarity to this issue.

I am also particularly interested to hear the testimony of Frank Ducheneaux, who served as Counsel on the House Indian Affairs Committee during the time of the 1978 Rhode Island Settlement Act and the passage of IGRA in 1988. I believe that his perspective on this issue will prove critical as he was privy to the entire legislative process of both acts.

At this time, I would like to enter into the record statements in support of the Narragansetts' sovereign rights by the following people:

Senator John McCain, former Chairman of the Senate Committee on Indian Affairs;

Senator Daniel Inouye, Vice Chairman of the same committee; [May be found later in hearing.]

Secretary of Interior Bruce Babbitt; [Letter at end of hearing.]

Decisions from U. S. District Court and First Circuit Court of Appeals upholding the Narragansetts rights; [Placed in the hearing record files of the Committee.]

And letters from Tribal governments throughout our nation. [These letters were placed in the hearing record files of the Committee and a list of names and tribes can be found at end of hearing.]

Thank you.

Mr. POMBO. Without objection they will be included. I have to ask the audience to refrain from demonstrations during the hearing. We have a very long hearing and it is against the rules of the House to allow the audience to do so. Do any other members have opening statements that they would like to make at this time? Mr. Vento.

STATEMENT OF HON. BRUCE VENTO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. VENTO. I will be very brief, Mr. Chairman, and I appreciate the scheduling of this hearing which obviously is an important issue with regards to the Native American Gaming Regulatory Act which was passed. I think the burden or the concern here, and I know that Senator Chafee and Congressman, now Senator Reed, and Mr. Weygand and our colleague on the Committee are able representatives and especially Senator Chafee, you are given credit at least for this. Obviously, you did not do it alone in terms of implementing this, what I think is going to be a moratorium hopefully.

And I suppose that the concern is that this was something done quickly because of confusion. I think the burden in this issue lies in terms of demonstrating that there is some problem with the operation of the basic law that was passed in the early 1980's. We thought that in passing this and working with Congressman Udall and others on it—and I know the staff member, Frank Ducheneaux, is testifying today—that we were avoiding exactly the type of event where we would have a policy that would work disparities on various Native American groups in various States.

My State obviously has gaming. We have formed a compact. I do not know what broke down in Rhode Island in terms of this issue, but I am hopeful that there will be a resolution that you, I think, have a special responsibility and the other Members to lead in looking for.

We certainly are very concerned about this as acting as a precedent. We think that very often that Native Americans should have this right as a sovereign nation and within our State I can report to you that in Minnesota it is working. I do not know if everyone is happy but it has not seemed to cause economic disruption gen-

erally in terms of what has occurred with regard to other business and industries.

We still raise a lot of money from the lottery and from other activities in our State and I notice that Rhode Island itself has a stellar record of raising money via the gaming activities of the State. So I am hopeful that there will be resolution. I think the burden, as I said, rests with the sponsors of this moratorium with this provision to demonstrate that there is somehow a problem that was not going to be worked out in terms of a compact at the State level where I think the proper safeguards were in place, were working as far as I can see. But there is obviously opportunity at some time for a Governor or a legislature to come to agreement with regards to the providing an orderly means by which Native American gaming could have occurred in Rhode Island as it has in some other States where compacts have existed.

So knowing the work and the record of the delegation I am optimistic that this can be resolved. I think the Committee here obviously heard a venue that is not necessarily and is very much concerned. As a member of the Resources Committee we are very concerned about representing and being fair advocates for Native Americans.

I and other members of this Committee I think generally are so. We appreciate your being here today and I am going to shut up so I can hear from you all and learn more by listening. Thank you.

Mr. POMBO. Mr. Kildee.

STATEMENT OF HON. DALE KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman. I am very pleased we are having this hearing today affecting the legislative rider passed in the last Congress which I feel was a real attack about sovereignty. Sovereignty is the basis of all our discussions when we discuss the Indian tribes.

They do not have a sovereignty that was granted to them by the U.S. Government. They have a sovereignty that they retained. They have a sovereignty that they had before the first European settlers came to this country. That sovereignty is their most precious possession. I do not think anyone would ever think to attach a rider effecting the lottery of the State of Michigan and we have a big lottery in the State of Michigan.

Michigan is a big gaming State but no one would have tried to attach a rider to a bill affecting the lottery of the State of Michigan because the State of Michigan is a sovereign State. We have representatives of a sovereign nation in this room today and that sovereignty is something that we have to recognize and we can live with and everyone can prosper with it.

In my State of Michigan I have 11 sovereign Indian nations. I helped five of them get their sovereignty restored. Let me tell you the European settlers and the African settlers in Michigan really respect that sovereignty. There is a great mutual accord between the sovereign State of Michigan, the sovereign tribes, and the European, Asian and African settlers in the State of Michigan.

That can happen. It can happen if we provide leadership, moral leadership. This is a legal problem, it is a moral problem and it is

a constitutional problem. The Constitution says that this Constitution and all treaties entered into are the supreme law of the land and that is very important. I think that when we approach a sovereign nation we approach it with the idea that they have sovereignty, we treat them as well as we would treat the State of Michigan. Thank you very much. I yield the balance of my time.

Mr. POMBO. Thank you. The ranking member of the full Committee, Mr. Miller.

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Thank you very much, Mr. Chairman. I want to thank Mr. Kennedy for prevailing on our Committee to hold these hearings and to thank Congressman Young for agreeing to these hearings. This is an important and very fundamental matter. As Mr. Kildee has pointed out, sovereignty is the most fundamental element of the relationship between this government and the Native Americans of this country.

When we passed the Indian Gaming Regulatory Act, what we attempted to do was to provide a parity in terms of the ability to negotiate between the Indian nations and the State governments and that if the State government made a decision that it wanted to engage in gambling then the Indian nations, the sovereign nations, had the same right to do that.

As we all know, Indian nations come in different forms, different sizes and different backgrounds. Since we have passed the Act some have reestablished their lands, reestablished their rights that were wrongfully taken from them, illegally taken from them, and have been able to pursue gambling in a number of different States.

Some have sued for the right to do that, some have negotiated, many very successfully, with Governors throughout the nation. In my own State, some have decided to push the envelope and perhaps maybe go beyond where the State law allowed them to go in terms of what the State permits in gambling activities.

They now find themselves in court. That is the process. That is the process by which these independent sovereign nations engage in order to achieve their rights under the Indian Gaming Regulatory Act. What it really requires is good faith negotiation. Good faith negotiation by the people of the State and the Governor acting on their behalf with the Indian nations.

But there is a very fundamental principle under this, and that is once the State decides to engage in gambling then the Indian nations have the same right to that same level of gambling, the same types of games. But, for a State to have the right to come and just unilaterally destroy that process is such an incredible insult to the Indian nations of this country.

And I think it is such an incredible insult to a law that for all its troubles and all its tribulations and all its difficulties, works. The fact is that in many, many States where negotiations have been started, negotiations have been successfully completed. In my own State we have seen people try to unilaterally come in and disrupt good faith negotiations in the process.

But those negotiations will continue. They are difficult. I oppose parts of them and I support other parts of them. But what we do

not do in that process is simply disenfranchise an Indian nation from participating in the national law that was designed to allow them to participate in gambling activities should a State make that determination.

There is a very easy answer for the many States that somehow just cannot suffer Indian gambling but think that gambling is good for everyone else. They can decide not to have gambling within their borders, and then nobody can have gambling within their borders. But if they decide to be a little bit pregnant then everybody gets to be a little bit pregnant.

Now sometimes those are tough political decisions because you do not want to tell somebody "no" and somebody else "yes," but this law is about parity. This law is about good faith negotiations and this law should not be unilaterally struck down with riders in the middle of the night. I thank you for holding the hearing.

Mr. POMBO. Do any of the other members have opening statements at this time? If not, I will turn to Mr. Kennedy to introduce the first panel. They are all representatives.

Mr. KENNEDY. Thank you, Mr. Chairman. I would like to welcome my colleagues from Rhode Island once again. Although this is one issue we differ on there are so many more that we agree on so with that I would like to first introduce the senior senator from the State of Rhode Island and former Secretary of the Navy and former Governor of the State of Rhode Island, and that is Senator John Chafee. Senator.

STATEMENT OF HON. JOHN H. CHAFEE, A SENATOR IN CONGRESS FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Representative Kennedy, Mr. Chairman, and members of the Committee. First, I appreciate this opportunity to testify before your Committee today in strong support of the appropriations legislation we enacted last year to preserve the integrity of the Rhode Island Indian Claims Settlement Act of 1978.

I think it is very important to follow through the history of what took place. I am pleased to be joined this morning by my colleagues, Senator Reed, Representative Weygand, and also our Governor Lincoln Almond who will be on this next panel. As Representative Kennedy has mentioned all members of the Rhode Island congressional delegation, both Republican and Democrat with the exception of Representative Kennedy support the legislation enacted in 1996.

Importantly, Congressman Weygand, whose district includes the proposed site for this gaming, supports the legislation. Now a bit of history. In 1978 in exchange for 1,800 acres of land in the town of Charlestown, Rhode Island, the Narragansett Indian Tribe agreed that these lands "shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island."

The other parties to the agreement including the State and the representatives from Charlestown, a small rural community in the southern part of our State, were all part of this agreement. Importantly, later that year Congress codified this very agreement into Federal law. The Rhode Island Indian Claims Settlement Act, Public Law 95–395, is part of the law of the nation.

Gambling did not become an issue until 1988 when Congress enacted IGRA. During Senate action on that bill, former Senator Pell and I worked with Senator Inouye, then Chairman of the Select Committee on Indian Affairs, to ensure that the Rhode Island Settlement law would not be disturbed by IGRA, and the State jurisdiction would continue to apply.

At Chairman Inouye's urging, Senator Pell agreed to withdraw this provision that we had, in other words the provision providing for Rhode Island protections that were in the bill. And in return a colloquy took place in which the Chairman stated, and the colloquy is the last part of my statement, the Chairman stated, "The Narragansett Indian Tribe clearly will remain subject to the civil, criminal and regulatory laws of the State of Rhode Island."

This colloquy as well as report language which accompanied the bill appears at the conclusion of my testimony. In 1992 the Narragansett Indian Tribe sought to commence compact negotiations toward the establishment of Class III casino in Charlestown. The State took the issue into the U.S. District Court to uphold the terms of the Rhode Island Settlement law.

Regrettably, the District Court held that, notwithstanding our legislative history "the Gaming Act is applicable to the tribe's settlement lands." In 1993, the Court of Appeals for the First Circuit in a 2 to 1 decision upheld the lower court's ruling on gaming, but concluded that State law jurisdiction applied in all other respects.

In other words, the only part of this Rhode Island Indian Claims Settlement Act that was affected was the gaming part, not the balance of it dealing with State jurisdiction. This decision left us no choice but to press for remedial action in Congress to preserve the integrity of the 1978 agreement and the associated Federal law.

Over the next few years members of our delegation presented testimony before the Indian Affairs Committee and held numerous meetings with the principals. Our efforts were to no avail. In 1994, despite protest from many quarters, Governor Sundlun reversed direction, our Governor at the time, and negotiated a compact with the Narragansett Indian Tribe.

In accordance with Rhode Island law, which requires local and statewide voter approval of any proposal to expand gambling the measure went before the voters in November. On election day the citizens rejected the Narragansett casino proposal, as well as four other proposals, gambling proposals, across the State.

The Narragansett proposal was rejected by 54.2 percent of the State's voters and by an almost 2 to 1 margin in the town of West Greenwich, one of our towns the tribe had selected over the town of Charlestown. On the very same ballot the statutory requirement for voter approval of gambling expansion was added to the State constitution.

In other words, the State constitution was amended to require any expansion of gambling to go before the people. Previously that had been the law and now it was in the constitution. The Narragansetts then amended the draft management contract they previously had filed with the National Indian Gaming Commission for a Class III casino.

The amended version provided only for the establishment of Class II high-stakes bingo facility which does not require State ap-

proval. At that stage, the National Indian Gaming Commission approval would have occurred at any time. We then went to the Appropriations Committee in the Senate to try and resolve our dilemma. As a consequence of these efforts, our provision to exempt the settlement lands from IGRA and to preserve the 1978 Rhode Island Settlement law, became part of the omnibus appropriations law last September.

This law is now being challenged. As we sit here, there is a court case on this very matter in the District Court here in the District of Columbia. The Narragansetts have sued to overturn the 1996 provision on the grounds that it violates the equal protection clause of the Constitution.

I remain hopeful that the District Court will reaffirm the clear purpose of the 1978 law by leaving this most recent congressional enactment in place. To do otherwise in my judgment would be a real injustice. If the Narragansetts want gambling they can proceed just as other citizens have to do in our State, go to a referendum in the community, go to a referendum in the State likewise.

I remain firmly opposed to efforts to force gambling upon Rhode Island without voter approval. My door is always open as it has been to help members of the Narragansett Tribe who are interested in pursuing other forms of economic development. We, myself and my staff, have asked for suggestions from the tribe for economic development proposals.

Our offer has clearly been made to the tribe. We cannot dictate what they should have for economic development. We seek their proposals. I thank the Committee.

[The prepared statement of Senator Chafee follows:]

TESTIMONY BY THE HONORABLE JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Mr. Chairman. I appreciate testifying before your Committee today in strong support of legislation, enacted last year as part of the Omnibus Appropriations Act, to preserve the integrity of the Rhode Island Indian Claims Settlement Act of 1978.

It pleases me to be joined by my colleagues Senator Reed, Representative Weygand, and our Governor, Lincoln Almond. All members of the Rhode Island congressional delegation, both Republican and Democrat—with the exception of one—support the appropriations provision we were able to enact last year. Importantly, Congressman Weygand, whose district includes the proposed site for an Indian gaming facility, supports this legislation.

In exchange for 1,800 acres of land and an agreement that those lands "...shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island," the Narragansett Indian Tribe agreed to the extinguishment of all aboriginal land claims in 1978. The other parties included officials from the State of Rhode Island and representatives of Charlestown, Rhode Island, the affected community—a small rural town in the southernmost part of our State.

Importantly, later that same year, Congress codified this very agreement into Federal law as the Rhode Island Indian Claims Settlement Act (PL 95–395). Rhode Island became the first of many states to have an Indian land claims settlement agreement enacted by Congress.

The subject of gambling did not become an issue until a decade later when Congress enacted IGRA. During Senate action on that bill in 1988, former Senator Pell and I worked with Senator Inouye, then Chairman of the Select Committee on Indian Affairs, to ensure that the Rhode Island Settlement law would not be disturbed by IGRA, and that state law jurisdiction would continue to apply.

In fact, Senator Pell had secured language in the IGRA bill to this very effect. However, at Chairman Inouye's urging, he agreed to withdraw this provision in return for a colloquy which provided verbal assurances from the Chairman that "...the Narragansett Indian Tribe clearly will remain subject to the civil, criminal and reg-

ulatory laws of the State of Rhode Island." That colloquy, as well as report language which accompanied the bill, appear at the conclusion of my testimony.

In 1992, the Narragansett Indian Tribe petitioned then-Governor Sundlun to commence compact negotiations toward the establishment of a Class III casino in Charlestown. Based upon the Rhode Island Settlement law and the legislative history surrounding IGRA, the State took the issue into U.S. District Court to obtain a declaratory judgment that IGRA does not apply with respect to these lands.

Regrettably, the court held that, despite our legislative history, "...the Gaming Act is applicable to the Tribe's settlement lands. The State appealed that ruling to the U.S. Court of Appeals for the First Circuit and, in 1993, a 2–1 decision was rendered. While upholding the lower court decision on gaming, the appellate court concluded that state law jurisdiction applied in all other respects.

The appellate decision clearly contravened the Rhode Island Settlement law, despite all the assurances we were given during Senate deliberations on IGRA in 1988. This situation left our State and its congressional delegation no choice but to press for remedial legislation in Congress to protect the integrity of our 1978 land settlement agreement with the Tribe, as well as the Federal law enacted that same year.

In 1993 Senator Pell and I, and other members of the Rhode Island congressional delegation, began an intensive effort to enact remedial legislation. Over the next few years, members of our delegation presented testimony during IGRA reauthorization hearings before the Indian Affairs Committee, and held numerous meetings with the principals. Our efforts were to no avail.

A few other important developments bear mention.

In 1994, despite protest from many quarters, Governor Sundlun reversed direction and negotiated a compact with the Narragansett Indian Tribe. Because West Greenwich, an adjoining town, offered a more favorable casino site than Charlestown, it was designated as the location for the gaming facility. In accordance with Rhode Island law, which requires local and statewide voter approval to expand gambling in the state, this measure was then placed on the ballot that same year.

When the citizens came to decide the fate of this and four other casino referenda on election day in 1994, the answer was a resounding "no" to all five. The Narragansett referendum was rejected by 54.2 percent of the State's voters, and by an almost 2–1 margin in the Town of West Greenwich.

Of note, on that very same ballot, Rhode Island voters further solidified their rights to approve or reject gambling expansions by adding the statutory requirement for a referendum to the State Constitution itself.

Though West Greenwich had been rejected, the Sundlun compact—as structured—provided for a fallback to the Tribe's settlement lands in Charlestown. A final compact to that effect was approved by the Department of Interior in December 1994. However, the Sundlun compact was nullified by a U.S. District Court in 1996 when it ruled the former Governor had exceeded his authority under the Rhode Island Constitution by not obtaining the General Assembly's consent to enter into compact negotiations.

Given these developments, the Narragansetts then amended the draft management contract they previously had filed with the National Indian Gaming Commission (NIGC) for a Class III casino. The amended version provided only for the establishment of a Class II high-stakes bingo facility, which does not require state approval. At that stage, we believed NIGC approval would soon be granted.

We then went to the Appropriations Committee in the Senate to try and resolve our dilemma. As a consequence of these efforts, our provision to exempt the settlement lands from IGRA and to preserve the 1978 Rhode Island Settlement law, became part of the omnibus appropriations negotiations toward the end of fiscal 1996. During those discussions, White House Chief of Staff Leon Panetta agreed to the inclusion of this provision in the final package. Given the approaching elections, and the desire to avoid another government shutdown, the White House could easily have killed this amendment, but chose not to do so.

This provision of law is now the subject of a legal challenge in the U.S. District Court here in the District of Columbia. The Narragansett Indian Tribe has sued to overturn the provision on the grounds that it violates the Equal Protection Clause of the U.S. Constitution. We now await the Court's decision.

It is our determined view that a deal is a deal, and we have now taken the necessary steps to resolve a legal quagmire which has caused considerable havoc for the citizens of our State, and particularly those in the Charlestown area. The 1996 law has restored the integrity of the Rhode Island Indian Claims Settlement Act and upheld the primacy of State jurisdiction over the Tribe's settlement lands in Charlestown.

If the Narragansett Indian Tribe wants to bring casino gambling to Rhode Island, it must first gain the approval of local and state voters through the referendum process mandated by Rhode Island's Constitution, as must any other individual or entity with that objective.

Mr. POMBO. Thank you. Senator Reed.

STATEMENT OF HON. JACK REED, UNITED STATES SENATE

Senator REED. Thank you, Mr. Chairman, for this opportunity to testify. Over the last several years, the Narragansett Indian Tribe has sought authority to conduct gaming operations. I have opposed those efforts as I have opposed other expansions of gambling in Rhode Island.

In my 6 years as a member of the House, I had the privilege of working closely with the tribe on many issues. I respect their determination to secure economic progress for the tribe, while maintaining their culture and traditions. However, I do not share their sincere belief that gaming is the path to long-term economic progress for the tribe or for the State of Rhode Island.

Gambling is at the core of this hearing. I will be the first to admit that the State of Rhode Island would have a more compelling moral argument if it did not rely upon millions of dollars of gambling revenues each year. But I would also add that the tribe's arguments about sovereignty and fairness are weighed down by the fact that the focus of their activities is to secure permission to conduct gaming operations. In a very real sense, gambling poisons the water on both sides.

I do not support gambling as the long-term solution to the economic problems facing our communities, our States, or our Indian tribes. Gambling simply takes too great a toll on the people it engages and the areas it dominates. According to Professor Robert Goodman, who has studied and written about this subject at great length, gambling frequently leads to a decline in jobs by diverting dollars away from consumer products and other recreational activities.

In his thoughtful 1995 report to the Senate entitled, "The Explosive Growth of Gambling in the United States", Senator Paul Simon echoed this concern, stating, "The promises of what legalized gambling will do for a community or State almost always are greatly exaggerated."

This harsh reality differs sharply from the pictures put forth by gambling proponents, who often present gaming facilities as offering economic salvation. Gambling revenues come disproportionately from lower income residents, who can least afford such losses. Studies have shown that people earning less than $10,000 per year spend twice as much money, as a percentage of their income, on gambling as people making between $30,000 and $40,000 per year. People earning less than $10,000 per year spend four times as much money, as a percentage of income, on gambling as people making more than $80,000 per year.

In addition, gambling takes a very heavy toll on individual Americans. It can be addictive, and every bit as painful and costly as addiction to alcohol and drugs. Also, the costs of gambling include increased crime. The American Insurance Institute has estimated that 40 percent of all white-collar crime has its roots in gambling.

Despite the historical legacy of gambling in Rhode Island and the State's obvious dependence on gambling revenue, the people of Rhode Island have endeavored throughout this decade to limit the expansion of gambling by any proponent, including, but not limited to the tribe. In 1990, for example, Rhode Island voters rejected a proposal to establish off-track betting in Pawtucket, Rhode Island. Within 4 years, the State severely restricted charitable organizations' games of chance.

In 1994, Rhode Island voters passed an amendment to the State Constitution, by a 2–1 margin, requiring that any future expansion of gambling in the State win local and statewide voter approval. Contemporaneously, voters rejected five separate plans to establish gambling casinos in Rhode Island, including a proposal by the Narragansetts.

These referenda clearly indicate the popular opposition in Rhode Island to the expansion of gambling; opposition which is not motivated by the identity of the promoter, but, I believe, by the conviction that gambling will not lead to long-term and widespread economic development.

In addressing these issues, the Narragansetts stress their sovereignty. In point of fact, the tribe has sovereign powers. But according to the controlling decision of the United States First Circuit Court of Appeals, the Rhode Island Indian Claims Settlement Act of 1978 still has effect, conferring concurrent jurisdiction to the State and tribe in certain situations.

In its 1994 decision on these issues, the First Circuit Court ruled that the Indian Gaming Regulatory Act did not extinguish this jurisdiction, but modified it with respect to gaming. Thus, referring to the Settlement Act's provision that the Narragansetts' "settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island," the Court concluded, "This means the State continues to possess a quantum of regulatory authority."

Even with tribal jurisdiction over certain categories of gaming, there are other issues related to the development of tribal lands, such as zoning and traffic control, where the State could arguably claim jurisdiction. As a result, any significant development, gaming or otherwise, would likely touch upon issues of State control. Therefore, as a practical matter, the State and the people of Rhode Island would need to be involved in crafting any long-term solution to these issues.

Last year's Omnibus Appropriations Act included language to ensure that the people of Rhode Island have the opportunity to participate in this process. The Chafee amendment requires the Narragansetts to win local and statewide approval before pursuing gaming on their lands.

As I noted earlier, this requirement applies to any group that wants to expand gambling in Rhode Island, under a 1994 amendment to the State Constitution. I supported the Chafee amendment.

Mr. Chairman, I would like to thank you again for this opportunity to testify. I appreciate the Committee's willingness to provide a forum to discuss these issues.

While I disagree with several of today's witnesses on gambling, I believe that we have a common commitment to promoting economic development, not only for the Narragansett tribe, but for Indian tribes across the country. There has been a great deal of interest in our differences on gambling.

I can only hope that this Committee, and all members of the House and Senate, will demonstrate the same level of interest in the budget process to ensure that the Federal Government maintains its commitment to all Indian tribes, and that the Narragansetts in particular have the resources they need to meet their health care, education, and economic development goals. I thank the Chairman and yield back my time.

Mr. CLINGER. [presiding] Robert Weygand, please, you are next, U.S. House of Representatives.

STATEMENT OF HON. ROBERT A. WEYGAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. WEYGAND. Thank you, Mr. Chairman and my colleague, Patrick Kennedy, and all of my colleagues here as well as the Rhode Island delegation. I want to thank the Chairman and particularly Congressman Kennedy for convening this hearing today.

Regardless of our opposing viewpoints I think it is healthy and wise for us to air the differences in this setting. As a Congressman who represents the district in which the Narragansett Indian Tribe is located, I am especially pleased to be here to present my viewpoints and the viewpoints of the constituents in my district.

As so eloquently stated by Congressman Kennedy, Congressman Vento, Congressman Kildee, as well as Congressman Miller, there has been a very long and important history determining the sovereign rights of Native American Indian tribes throughout this country.

I would like to quickly summarize the problem that we are facing. It is really more of a legal and constitutional issue than a moral issue. In 1975 the Narragansett Tribe of Indians sued the State of Rhode Island. As a body, as Congressman Kennedy said, they had existed for many hundreds of years before they took that action in 1975.

They did not need the 1983 agreement with regard to being federally recognized or the 1988 IGRA Act to allow them to do this. They as a tribe, as a body, that was recognized by the courts moved forward on a suit in 1975. That in 1978 was consummated by a contract, a contract between the State of Rhode Island and the Narragansett Indian Tribe.

Regardless of any other constitutional or State or Federal law that passed, there was a contract that was agreed to that is the basis of the argument before us today. In 1978, we also codified that contract with the Indian Settlement Act. We then inadvertently reversed the Indian Settlement Act in 1988 with IGRA. We then reversed IGRA in 1996 with the Chafee amendment to the Omnibus Appropriations Act.

Quite frankly, we have had a yo-yo bouncing back and forth statutorily on Indian gaming. The fundamental issue we have is that there is a contract between the Narragansetts and the State of Rhode Island. As Senator Reed had mentioned, we must fulfill

our obligation to help the Narragansetts economically, to help them through health care, to help them provide the kind of opportunities they not only deserve but they most emphatically require as part of their original Native American rights.

But we also have another problem. The people of Charlestown, the people of the second congressional district have voted numerous times and said no to gambling. As Congressman Miller says so aptly, if you are a little bit pregnant you are fully pregnant. So if the State of Rhode Island really wants to do away with gaming on the Indian reservation they should take a movement to move gaming away from the entire State of Rhode Island.

But one of the basic problems is we had a contract with the Narragansett Indians that supersedes all others. In fact, this should not be settled before this Congress, it should be settled before a court of law because in fact what we have is a tribe making an agreement outside of their sovereign rights with the State of Rhode Island that said "we will abide by your laws."

As a former lieutenant Governor and now as the Congressman from this district, I think the proper forum is the Federal court, and not this body. The people of our district, the people of Rhode Island, have been emphatic. They feel that their civil rights are being threatened. The Narragansetts feel their sovereignty and civil rights are also being threatened.

The agreement that was passed in 1978 by representatives of the Narragansett Indian Tribe and the representatives of the people of Rhode Island, to me, still holds the stance that what we should be doing is working for a mutual agreement and as Congressman Miller said that in fact represents and agrees to their sovereignty, their rights, and work something out.

I cannot stress that the contract must be recognized by this body. It is a contract of law. It is not a moral contract. It is far and away very constitutional and that is the crux of the problem we have here. Statutes have come and gone. The 1978 Indian Settlement Act, the IGRA Act, and the Chafee amendment have all bounced back and forth but the contract between the Narragansetts and the State of Rhode Island still stands and that is what we should abide by.

I want to thank my colleague from Rhode Island, Congressman Kennedy, and you, Chairman Young, for allowing us to testify here today.

[The prepared statement of Mr. Weygand follows:]

STATEMENT OF THE HONORABLE BOB WEYGAND, A U.S. REPRESENTATIVE FROM RHODE ISLAND

Thank you, Chairman Young for convening this hearing on Indian gaming issues in Rhode Island. I appreciate your invitation and welcome this opportunity to present my views. I'd also like to thank the other members of the committee, especially my colleague from Rhode Island, Congressman Kennedy, for being here this morning.

As the Congressman who represents the district in which the Narragansett Indian Tribe's land is located, I am especially pleased not only to present my views and the views of the majority of my constituents in the second congressional district on this contentious issue, but to hear the input of the Narragansett Indians. I have always been a firm believer in problem solving through open and honest communication—and this hearing is another avenue to open the lines of communication between our opposing viewpoints.

Although the history behind this hearing has been well outlined throughout the hearing thus far, I believe it is appropriate to briefly touch upon how that history shapes my views. In 1978, a commission, comprised of a majority of Narraganetts, signed an agreement with the State of Rhode Island, which was later codified into Federal law by the Rhode Island Indian Claims Settlement Act of 1978. As part of the agreement, all parties, including the tribal representatives, agreed that the tribe would be subject to the civil, criminal and regulatory laws of the State of Rhode Island.

As you know, when gambling was seen as a profitable, yet questionable, method to raise money for cash starved tribes, Congress enacted the Indian Gaming Regulatory Act in 1988 to govern Indian gaming in our country. During debate on the floor of the U.S. Senate on the Indian Gaming Regulatory Act, Senators Claiborne Pell and John Chafee of Rhode Island received assurance from the bill's sponsor and Chairman of the Select Committee on Indian Affairs, Senator Daniel Inouye, that the Narragansetts would still follow state laws and regulations.

I would ask Mr. Chairman that a copy of this colloquy be inserted into the record. [See Attachment A]

Unfortunately, in 1993 the United States District Court ruled that despite clear legislative intent as presented in the colloquy the provisions of the Indian Gaming Regulatory Act superseded the Rhode Island Indian Claims and Settlement Act. In an effort to clarify that the Indian Gaming Regulatory Act did not supersede the Rhode Island Indian Claims Settlement Act, Senator Chafee inserted legislative language into the Omnibus Appropriations Act for Fiscal Year 1997. This language clarified the intent of the Pell-Chafee-Inouye colloquy.

I feel the Narragansetts should live within the context of the agreement tribal representatives signed in 1978 and feel that if they wish to offer expanded gambling on their reservation it should be done in accordance with the laws and constitution of the State of Rhode Island.

My support for the Chafee amendment to the Appropriations Act, in addition to my belief in the appropriateness of the original agreement signed by the Narragansetts and the State of Rhode Island, stems from my long held opinion that gambling is an unhealthy manner in which to grow an economy. This stance on expanded gambling has been repeatedly affirmed by the voters of Rhode Island, who, since 1972 have consistently voiced their intention to halt any further expansion of gambling within the state's borders. In fact, Mr. Chairman, the voters of Rhode Island voted against a proposal by the Narragansett Indian Tribe to locate a gambling facility on their land in West Greenwich in 1994.

At this point, Mr. Chairman, I ask unanimous consent that the statewide results of eight separate statewide gambling referenda be inserted into the record. [See Attachment B]

The voters of my state also amended their state constitution in 1994 to make it more difficult to expand any further gambling within our state. I would like to insert in the record the results of that referenda to illustrate Rhode Islanders aversion to any expansion of gambling. [See Attachment C]

As you can see by both the separate gambling referenda and the amendment to the state constitution—the voters of Rhode Island and my district have stressed time and time again their vehement opposition to any expansion of gambling.

While I respect the rights and responsibilities of Native Americans to govern themselves within their sovereign nation, expanded gaming transcends the tribe's borders and I believe an expansion of gambling and its consequences affect everyone within the larger community.

As the Congressman from the area surrounding the reservation, let me clearly state my willingness to work cooperatively with the Narragansetts as they strive to provide the best quality of life for the members of their tribe. Although the Narragansetts and I may not agree on this particular issue, I hope we can work together on the many other issues of mutual interest.

Again, thank you for providing us this forum today. Thank you Mr. Chairman.

ATTACHMENT A

Colloquy of Senator Claiborne Pell, Senator Daniel Inouye, and Senator John Chafee in relation to the Indian Gaming Regulatory Act

Mr. PELL, Mr. President, I would like to thank you the managers of S. 555, the Indian Gaming Regulatory Act, and particularly the chairman of the Select Committee on Indian Affairs (Mr. INOUYE), for their hard work and patience in achieving a consensus on this important measure.

In the interests of clarity, I have asked that language specifically citing the protections of the Rhode Island Indian Claims Settlement Act (Public Law 95–395) be stricken from S. 555. I understand that these protections clearly will remain in effect.

Mr. INOUYE. I thank my colleague, the senior Senator from Rhode Island (Mr. PELL), and assure him that the protections of the Rhode Island Indian Claims Settlement Act (P.L. 95–395), will remain in effect and that the Narragansett Indian Tribe clearly will remain subject to the civil, criminal, and regulatory laws of the State of Rhode Island.

Mr. CHAFEE. Mr. President, I too would like to thank the chairman (Mr. INOUYE) and members of the Select Committee on Indian Affairs for their cooperation and assistance. The chairman's statement makes it clear that any high stakes gaming, including bingo, in Rhode Island will remain subject to the civil, criminal, and regulatory laws of our State.

ATTACHMENT B

Rhode Island Gambling Referenda Results; 1972–1994

1972

Dog Racing—"Shall the act passed by the general assembly at the January, 1972 session entitled "An Act Authorizing dog racing" be approved?

Approved: 137,286 47 percent
Reject: 155,566 53 percent

1990

Establishment of Gambling Facilities Town of Burrillville—"Approval of this question would authorize the Town of Burrillville to establish a harness racing facility in the Town."

Approved: 100,145 34 percent
Reject: 194,064 66 percent

Off-Track Betting Facility in the city of Pawtucket—"Approval of this question will authorize the Division of Racing and Athletics to license an off-track betting facility in the city of Pawtucket and will authorize payment of States taxes and commissions from the off-track betting facility to cities and towns to be used for the relief of local residential property taxes."

Approved: 115,968 37 percent
Reject: 200,767 63 percent

1994

city of Providence—Gambling—"Shall a gambling facility and/or activity be established in the city of Providence?"

Approved: 73,868 23 percent
Reject: 249,159 77 percent

city of Pawtucket—Gambling—"Shall a gambling facility and/or activity be established in the city of Pawtucket?"

Approved: 45,824 14 percent
Reject: 270,216 86 percent

Town of Lincoln—Gambling—"Shall a gambling facility and/or activity be established in the Town of Lincoln?"

Approved: 90,658 28 percent
Reject: 232,493 72 percent

Town of Coventry—Gambling—"Shall a gambling facility and/or activity be established in the Town of Coventry?"

Approved: 48,064 15 percent
Reject: 266,642 85 percent

Town of West Greenwich—Gambling—"Shall a gambling facility and/or activity be established in the Town of West Greenwich?"

Approved: 153,099 46 percent
Reject: 179,644 54 percent

ATTACHMENT C

Approved Amendment to the Rhode Island Constitution, 1994

Proposition to Amend the Rhode Island Constitution-Voter Approval Required for Expansion of Gambling—"Shall Article 6 of the State Constitution be amended and approved to add the following Section: Section 22. Restriction of Gambling.—No act expanding the types of gambling which are permitted within the state or within any

city or town therein or expanding the municipalities in which a particular form of gambling is authorized shall take effect until it has been approved by the majority of those electors voting in a statewide referendum and by the majority of those electors voting in a referendum in the municipality in which the proposed gambling would be allowed. The secretary of state shall certify the results of the statewide referendum and the local board of canvassers of the city or town where the gambling is to be allowed shall certify the results of the local referendum to the secretary of state.

Approved: 207,949 68 percent
Reject: 98,574 32 percent

Mr. CLINGER. I want to thank the panel. I would like to just make a few comments and I am going to show you how bipartisan I am, I am going to let Mr. Kennedy chair the meeting. I did not go to Hershey either. I do not know how many else did. That is an inside joke for those that are not aware of it.

The thing that strikes me because I was the author along with Mo Udall and both of our pictures hang in this hall for the Indian Gambling Commission and the Indian gambling federally recognized ability for them to do so. One thing that bothers me, Senator Reed, is this is not about the evil of gambling.

If gambling was considered evil by all you would not have bingo. You have bingo in Rhode Island, don't you, sanctioned by the State?

Senator REED. I do not believe we do. We have limited bingo. I think the top prize——

Mr. CLINGER. But it is like someone just said you cannot be part pregnant, you are all pregnant. You do have bingo.

Mr. WEYGAND. We have games of chance.

Mr. CLINGER. You do have video slots, by the way, sanctioned by the State. What else do you have? Do you have a lottery?

Senator REED. We have a lottery. We have horse racing. We have dog racing.

Mr. CLINGER. You have dog racing. You have some kind of racing, let us put it that way. Every time I go to one I lose so I do not really like one. My wife always wins though. She always picks a name. I try to win the books. But this is about whether this tribe has a right, and I happen to agree with you, Congressman, it is in court but what concerns me the most when people cast gambling as an evil thing and when other people participate in it if we could eradicate gambling across the United States then that is what we ought to do.

Every State has passed a lottery. Every State that has legalized gambling, every State that has some form of wagering ought to eliminate it. And that be your wish, I do not know, but this argument today is about a tribe that was recognized by the State of Rhode Island, by the Federal Government and Federal laws that were passed.

I think that is what the debate has to concentrate on and I am not chastising you. I just want to stress that because it is very difficult for me to have much sympathy for somebody that says gambling is evil when they also condone it. And I am concerned that we talk about the nice latitudes that were given about taking care of this tribe by health care, welfare, all these other things. It is out of the largess of the government which is the problem we have with American natives today.

It has probably been the one group of people that have been, I think, abused, misused, and misrepresented for many centuries in the halls of this Congress and I am very concerned that for the first time we see some progress in many areas. Yes, there are some areas that have to be watched. That is up to the Gaming Commission and the recent commission that has been appointed to see if there is any evil, illegal, Mafia-type activities occurring with Indian gambling.

If Indian gambling is being conducted according to Federal and State law on an equal basis it is my understanding now with the Senator's amendment that this tribe cannot even participate in bingo, yet the State does. They cannot participate in slots, yet the State does. They cannot participate in dog racing, yet the State does. And that is not a fairness doctrine.

And so I am going to suggest that we keep to the issue of the fairness doctrine of the law that was passed out of this Committee by Mo Udall and I believe I am the only one else that was here, and Mr. Kildee, that we implement that law correctly, and that is what this hearing is about. Mr. Kennedy here is now the Chairman.

Senator CHAFEE. Mr. Chairman, I wonder if I might——

Mr. CLINGER. Yes, please, Senator. I am sorry.

Senator CHAFEE. I think it is very, very important to remember two things. One, that when the lands were turned over to the Narragansetts back in 1978 an agreement was entered into and the agreement said that the tribe would be subject to the criminal and civil laws of the State of Rhode Island. That was an agreement.

And subsequently that was amended by the IGRA provision unbeknownst to both the Chairman at the time who presented it as you recognized from the colloquy that we had at the time and it was not known when IGRA was adopted that it eliminated the provisions for the State having the civil and criminal control of the lands. That was not known when that was done.

Mr. CLINGER. Senator, can I ask a question? Has the State lost the other parts of the agreement or only the gambling agreement?

Senator CHAFEE. No, the Court of Appeals in the First Circuit said that all the other provisions of the law apply, Rhode Island civil and criminal jurisdiction still is there except for the gambling provisions which were superseded—the right to gamble which was superseded by IGRA. Some are saying that the tribe has complete sovereignty over everything it does. No, they are still bound by the agreement that took place in 1978 except for the gambling provision.

And, furthermore, if the tribe wishes to have gambling, casino or high-stakes bingo, we do not have high-stakes bingo in our State, not sponsored by the State, but if they want it they can do what everybody else in the State can do. Any community, any entity can seek a referendum on the State level and on the community level, the town level and get it if the voters approve.

That is what we are battling for, Mr. Chairman. We are fighting to retain the jurisdiction of the people of the State of Rhode Island to approve all gambling if they wish it.

Mr. CLINGER. OK, can I ask you a question though? I am trying to get to this and then Mr. Gilchrest will have to take over

again as he is now here, but you say if the people agree but how many people are in this tribe?

Senator CHAFEE. I do not know, about 2,500.

Mr. CLINGER. How many people in Rhode Island?

Senator CHAFEE. A million.

Mr. CLINGER. A million, OK.

Senator CHAFEE. Not a million voters, a million people.

Mr. CLINGER. What I am saying is if in fact this tribe as a community decides they want slots, video, horse or dog racing they still have to come to you to get the approval to do so.

Senator CHAFEE. That is right.

Mr. CLINGER. But that is not really fair because the fact is you allowed it by State regulation already for other communities. You cannot put this 2,500 people against 1 million.

Senator REED. Mr. Chairman, any expansion of gambling in the State of Rhode Island, a new enterprise, would have to be approved by a local community referendum and by a State of Rhode Island referendum. I believe that would apply to high-stakes bingo hall if a non-Indian promoter was seeking that.

That is the situation here and let me respond to your comments. I recognize as you do very readily that the State of Rhode Island depends upon gambling revenue, but I would like the panel to recognize also that over the last several years the State of Rhode Island and the people of Rhode Island through popular votes have done a great deal to prevent the expansion of gambling.

I think it is based not on any particular animus to any promoter but by the concept that this is not healthy for the economic development of the State and, in fact, by all the other problems associated with gambling. I do not think you can absolutely disassociate discussion of the nature of gambling from the discussion today.

Now let me also respond to your legal points, which I agree these are issues. The First Circuit decision interpreting not just IGRA but also the Land Claims Settlement Act declared that there is still residual sovereignty for the State of Rhode Island and that sovereignty implicates any development of a large scale enterprise of any kind on the tribal lands.

But let me also suggest, with respect to Senator Chafee's argument in the colloquy with Senator Inouye, there was a 2 to 1 decision. The dissenting judge, Judge Coffin, read the colloquy between Senator Pell and Senator Inouye and his conclusion, an eminent jurist——

Mr. CLINGER. Senator, with all due respect, colloquy means very little. We have found that out recently in numerous hearings we had because your administration has denied any colloquy or any content in this Congress. We wrote the law, not on this issue but other issues so colloquy don't stand up in court. You are a lawyer, you ought to know that.

Senator REED. Mr. Chairman, I would just like to make a point that the dissenting judge gave entire credibility to the colloquy and would have ruled that the State had full jurisdiction over all types of operation. My point is that the legal questions here are quite close, but the one issue that is quite clear legally is that the State still has residual, a quantum of authority over the tribe.

So we are not talking about, as I think some of these people on the panel suggest, the absolute sovereignty of the tribe versus the absolute sovereignty of the State. In fact, in this situation neither one has absolute sovereignty.

Mr. CLINGER. I feel little much like the time I got in a argument in a saloon one time with a gentleman and lady and I proceeded to punish the gentleman and lady who hit me in the head with her high heel. It was her husband. I did not realize that. So I am sort of mixed in between here but I want you to know where I am coming from.

I am very reluctant to get involved in State's rights issue but I am also very much in defense of a law passed out of this Committee and I do not think we ought to be using a tribe as an example when for the first time we have tribes that are now I think benefiting immensely, yes, and sometimes jealously, resentfully by other people immensely in other areas and have done quite well.

And I do not like the largess of the government of keeping them in the position as we have done in the past on the reservation without any chance of going forth. I have been to many of the reservations across this country and believe me, we should not be proud of what we have been doing.

Our system is not working. The BIA is not working. This Congress is not working and people ought to be able to make a benefit to themselves if we give them an opportunity to do so. We could argue this all day long but, Mr. Gilchrest——

Mr. WEYGAND. Mr. Chairman, if I could just add to your comment. I think the key to this is what you mentioned a little while ago and that is the contract that was signed. If they signed a contract today after IGRA, after the Chafee amendment, or after the Indian Settlement Act, it would be acknowledged as well.

The Narragansett Indian Tribe existed 400 years ago, exists in 1997, but in 1978 they signed a contract that is legal and binding and that is really the key.

Mr. CLINGER. And if the court rules against you then what are you going to do?

Mr. WEYGAND. Then the court rules against you. You must give them that right because they are then voiding the contract. But, quite frankly, they would have a contract as you and I could have a contract that would provide stipulations that you place on me. As long as I agree to the terms as the Narragansetts did with the State of Rhode Island.

Mr. CLINGER. We passed the law that preceded your law that did recognize them as a Federal tribe. They were recognized as a Federal tribe and it did allow them certain advantages as being a Federal tribe, and that is the argument in court, I will agree with you on that.

Mr. WEYGAND. And in 1988 we recognized them but they existed long before. They formally adopted an agreement in which they had representatives of the tribe. That is the biggest problem, Mr. Chairman.

Mr. GILCHREST. [presiding] I would like to say one thing for the record that the Chairman, Mr. Young, was in that saloon collecting money for the Salvation Army. Mr. Kennedy.

Mr. KENNEDY. Thank you, Mr. Gilchrest. This is where the argument hinges. The argument is that in 1978 there was an agreement and barring everything else that is the agreement that should be respected. The Federal Government supersedes State, OK. The District Court recognized that, the Supreme Court recognizes that.

I just do not understand how difficult it is to not understand you do not get frozen in time in 1978. *Plessy* v. *Ferguson* is no longer the law of the land. It was a contract, if you will, at the time. But we had Brown come in after it and superseded and overturned it because it was the latest.

We had IGRA come after the Indian Claims Settlement Act. It was a Federal recognition. The Circuit Court of Appeals recognized it. I mean I just—how, Senator Chafee, can you hold on to this argument that 1978 can still——

Senator CHAFEE. Well, may I respond, Mr. Chairman? I think it is very, very important that we recognize what the First Circuit Court said. They said the following, and I refer to page 2 of the decision. And this is the Circuit Court of the United States, First Circuit. "After careful reconnaissance of a legal landscape we hold that Congress' grant of jurisdiction to the State of Rhode Island Indian Claims Settlement Act of 1978 remains valid." In other words, that law remains in effect without—if I might finish, "we also hold contrary to the tribe's importuning that the grant includes civil regulatory jurisdiction."

Then it goes on. At that juncture the tide turns. "We conclude despite the State's vehement protest that the Gaming Act does not specifically exempt the lands in question." In other words, just as we have been saying right from the beginning everything remained in effect except the gaming provisions, the provisions dealing with gambling. And there we have it.

And if you follow onto page 16 this just gets rid of the suggestion that somehow the 1978 law is just washed away. Not at all. I read now at the bottom of page 16. "The tribe's basic position is that even prior to the Gaming Act, Section 1708 of the Settlement Act did not constitute a valid conferral of jurisdiction because, until Federal recognition occurred in 1983 the tribe had no jurisdiction to relinquish."

What the court is saying the tribe is arguing is that when they entered the deal in 1978 they were not entering into anything. Nobody from the tribe was really doing it. It was not a valid deal and when the tribe got Federal recognition in 1983 that supplanted everything. That seems to be your argument as I understand it, Representative Kennedy.

This is what the court said. "This resupinate (which I am not sure what it means) reasoning stands logic on its ear. The tribe did not surrender jurisdiction in 1978. Rather the tribe, the State and the town came to an agreement, spelled out in the Joint Memorandum of Understanding to ask Congress, among other things to grant jurisdiction to the State. The tribe has articulated no reason why regardless of its legal status, Congress lacked the power to effectuate this jurisdictional grant. In any event, the tribe is mistaken in its professed belief that it lacked jurisdictional power at the time of the Settlement Act." There you have it. The court says

that was a deal in 1978. It was not wiped away by any subsequent grant of Federal recognition. That is the law.

Mr. KENNEDY. But the Narragansetts are a federally recognized tribe. After 1978 the Narragansetts became a federally recognized tribe.

Senator CHAFEE. That is right.

Mr. KENNEDY. Hence, the IGRA applies, and you said in that court case that you cited to me that but for gaming the agreement stands and I agree with you, OK? The case that we have before us today is whether your rider can preempt the IGRA and if it does then it carves out an exception to the Narragansett Tribe from every other tribe under IGRA in this whole country.

Senator CHAFEE. That is not accurate. If you look at the Maine Settlement Act, for example, it confers jurisdiction on the State and provides that no subsequent Federal law may disturb the jurisdiction without specific reference. The South Carolina Catawba Indian Settlement Act. Also see the Massachusetts Settlement Act. It is going back and forth now as you know. And the Florida Micasuki Settlement Act.

Mr. KENNEDY. What I am asking you, with respect to IGRA——

Mr. GILCHREST. The time of the gentleman has expired. If we have a little time after the other members—we do have to move along. There is a number of other witnesses that need to testify today. I recognize Mr. Kildee.

Mr. KILDEE. I will take some time now and yield some, Congressman Kennedy. The Court of Appeals did say that the provisions of IGRA apply with full force to the lands. Then it was your rider that struck the effectiveness of that.

Senator CHAFEE. That is right.

Mr. KILDEE. Then why should the Indians in Rhode Island have less rights than the Indians of Michigan?

Senator CHAFEE. Well, because in Rhode Island they entered into an agreement. We do not know——

Mr. KILDEE. After your 1978 land settlement the Narragansetts became a federally recognized tribe which gives them a higher status recognition. I am just puzzled why you feel that you cannot address the problems of Rhode Island as the people of Michigan, the people of other States are doing it. You have really put your Indians, Indians within the borders of Rhode Island who are sovereign in a lesser status than the Indians of Michigan or California or Arizona, Minnesota. Why are they of less status?

Senator CHAFEE. I do not know anything about the Michigan situation, Michigan and Minnesota and so forth. I do know that there are a series of Land Settlement Acts and Rhode Island is one of them. Rhode Island has a Federal law. It is not just a State law. It was entered into and ratified by the Federal Government. It is a Federal law, the Rhode Island Indian Claims Settlement Act.

Mr. KENNEDY. Senator, what other tribes in this country are treated the same way the Narragansetts are? You said there are a lot of other Indian Settlement Claims Act. Tell me one tribe that is treated like the Narragansetts under IGRA?

Senator CHAFEE. I do not know what arrangements other tribes entered into when they did their land settlement. I do know what Rhode Island did.

Mr. KENNEDY. But that is the preemption——

Senator CHAFEE. Let me just finish. Rhode Island and the Indians entered into a deal. Now maybe they do not like it now, apparently they do not, but there it was 1,800 acres of land and some cash settlement likewise. A deal was entered into.

Mr. GILCHREST. Mr. Kildee has the time.

Mr. KILDEE. We had some State-recognized tribes in Michigan and then they got Federal recognition. Federal recognition did confer upon them a higher status. What really puzzles me is that the court did say the provisions of IGRA did apply to the Narragansetts and you took that away from them and that puzzles me why you feel that the Indians of Rhode Island should be treated less than other Indians in this country. Let me ask one other question and then I will yield back to Mr. Kennedy.

Senator CHAFEE. Can I answer that question?

Mr. KILDEE. Certainly.

Senator CHAFEE. As I say, Rhode Island entered into an agreement and the court said that despite ensuing Federal recognition that agreement was valid.

Mr. KILDEE. But they said IGRA still applied.

Senator CHAFEE. In most respects except for IGRA. Now if you look at the colloquy and what took place, it was our understanding when we approved of IGRA, that is, when Senator Pell and I voted for it, that pursuant to the Chairman's statements it was clear that this did not apply, did not in any way undermine the Rhode Island Land Claims Settlement Act. In other word, Rhode Island jurisdiction——

Mr. KILDEE. The court said you were wrong.

Senator CHAFEE. The court said we were wrong.

Mr. KILDEE. Right, so you were wrong, you were wrong.

Senator CHAFEE. The court said we were wrong.

Mr. KILDEE. The court said you were wrong and then you went back to try to remedy your mistaken impression when you voted. Let me ask this. Jack, you said that any group, that requirement applies to any group, any group. Now is a sovereign tribe just any group? Is a sovereign tribe the same as a Donald Trump corporation? Are you trying to lump a sovereign tribe into the Donald Trump corporation?

Senator REED. Well, under the State law, Mr. Kildee, any proponent, be it Donald Trump, the tribe, or local promoters would have to use the same procedure for the expansion of gambling.

Mr. KILDEE. The Federal law which protects Indians because we protect the sovereignty, we have an IGRA law. IGRA law does not apply to Donald Trump corporations but it does apply for the sovereign Indian nations and the court said IGRA applied to the sovereign Indian nation in Rhode Island and you used the late night provision to try to undo IGRA law which applies to sovereign tribes and not to Donald Trump corporations.

Mr. GILCHREST. The gentleman's time has expired.

Senator REED. Let me respond to Mr. Kildee.

Mr. GILCHREST. You may respond, Senator Reed.

Senator REED. Thank you, Mr. Chairman. Justice Holmes once said a page of history is worth 1,000 pages of logic. The history here begins with the Rhode Island Indian Claims Settlement Act.

The First Circuit Court, the controlling authority in this matter, the decisive voice legally, said that Act still applies. It has not been repealed by implication, except for IGRA.

The presumption, though, and I think this is important, the presumption that led to the agreement in 1978 between the tribe and the State was that the civil and criminal laws of the State would apply. The presumption when IGRA was being debated in the Senate was that these civil and criminal laws of the State would apply.

In fact, at the Circuit Court level, as I mentioned previously, one of the judges, Judge Coffin who has been an eminent jurist in the region for decades, concluded by reading the colloquy that in fact IGRA would not affect the Settlement Act, that in fact under the Rhode Island Settlement Act the civil and criminal laws of the State would still apply.

I think we get back to this point. The meeting of the minds in 1978 about the terms of this agreement and the status of the tribe always included the civil and criminal application of Rhode Island law.

Now the First Circuit said IGRA has carved that out but not by a decisive margin, 2 to 1, and the language in the amendment essentially restores what the presumption was in 1978. The presumption was in 1988 that the civil and criminal laws of the State of Rhode Island apply as they would apply to any, in this case, promoter of gambling.

Mr. GILCHREST. Thank you, Mr. Reed. Ms. Green, do you have any questions?

Ms. GREEN. I have no questions.

Mr. GILCHREST. Thank you. Mr. Kind.

Mr. KIND. Thank you, Mr. Gilchrest. I will yield my time to Representative Kennedy for as much time as he desires.

Mr. KENNEDY. Thank you. I just want to followup with respect to the State still has every opportunity to say no to casino gambling. The people of the State can vote against it. There has to be a compact with the State. Under Senator Chafee's Rider they are preempted from even Class II gaming and that circumvents IGRA.

Senator CHAFEE. This is absolutely right. That was the intention.

Mr. KENNEDY. Right, to circumvent IGRA.

Senator CHAFEE. That is right. We believed what we were told when IGRA was adopted in 1988, that it did not preempt the rights—the civil and criminal laws of the State of Rhode Island in any respect, and subsequently the court decided that indeed it did preempt the laws of the State of Rhode Island as far as gaming goes, and that was not our original understanding.

It certainly was not the understanding of Senator Inouye or Senator Pell or myself and we had a provision in the law at the time that would have clearly stated that Rhode Island was exempt from the provisions in IGRA.

Mr. KENNEDY. It never passed, Senator Chafee. IGRA passed.

Senator CHAFEE. We withdrew that amendment because in return we got the assurances from the Senate in a way that that was—there was no need for it.

Mr. KENNEDY. Well, Senator Inouye has stated that assurances do not carry legal water.

Senator CHAFEE. I know they do not.

Mr. KENNEDY. So IGRA is the law of the land.

Senator CHAFEE. Absolutely.

Mr. KENNEDY. And the Federal Circuit Court upholds this. The Federal Circuit Court——

Senator CHAFEE. The District Court and the Circuit Court subsequently, by a 2 to 1 decision, said that the settlement law did not prevail.

Mr. KENNEDY. That is right.

Senator CHAFEE. And so there we were in a situation that none of us anticipated and so we sought to correct it.

Mr. WEYGAND. OK, but Congressman, could I also respond to that just very briefly? As you well know with all the experience that you have had all of the statutes we pass here are amendable as when the Congress passed the Indian Settlement Act in 1988.

At that time that was an amendment to the 1978 Act, as was the 1996 amendment an amendment. We can do that. This Congress can go back and forth. That is what you did last year—to approve what had been previously thought to be included.

Mr. KENNEDY. OK, so you are basically saying to me it is one upmanship because you got the last say on this because the rider now takes precedence because——

Senator CHAFEE. No, I do not think that is correct. I do not think that is correct.

Mr. KENNEDY. Well, then what do you——

Senator CHAFEE. What I think is correct is that what we codified the agreement of 1978 which everybody thought had always been included in every act since then.

Mr. KENNEDY. But you see the rub here is the Narragansetts, that we had a Federal law. It was passed because of this Congress' belief that under the Supreme Court of the United States, the Supreme Court of the United States said Native American tribes can use their sovereign rights to game, OK, so IGRA came in and said so. We cannot allow this to happen. We passed a Federal law. It affects all federally recognized tribes. Narragansetts are a federally recognized tribe.

OK, so that supersedes. We used to have State's rights in this country, OK. States used to be able to say you could segregate against people, OK. Thank God for the Federal Civil Rights Act because you had superseding, the Federal law came and superseded State law. Now in the case of IGRA, IGRA supersedes State agreements and Senator Chafee's amendment that he believes wants to go back to 1978.

But what I am telling you is in doing that he carves an exception out for the Narragansetts that denies them equal protection from every other tribe under a Federal law passed by the U.S. Congress.

Mr. WEYGAND. And I would say there are really two things in response to that. No. 1, there are civil rights for the people of the State of Rhode Island and the second congressional district. The people of Rhode Island entered into a contract, a legal and binding contract which they thought was going to be fulfilled. After IGRA, it was reversed as you said so aptly by the District Court of Appeals. Under the Chafee amendment it was restored.

So the argument is, is the legal and binding contract legal and binding? My point would be that it should really be settled in a court of law or negotiated with the Governor because tomorrow you could change the Chafee amendment and go back to what it was before, Patrick.

Mr. GILCHREST. The time of the gentleman has expired. Mr. Markey, any questions?

Mr. MARKEY. I just need to make some inquiries here. Is all that we are talking about here bingo? We are fighting over whether or not the Indian tribes can engage in bingo. Is it more or less than bingo?

Mr. KENNEDY. No, you are absolutely right.

Senator CHAFEE. Well, one thing leads to another and as you know it is not just bingo, it is what we call high-stakes bingo. That is——

Mr. MARKEY. What is high-stakes bingo?

Senator CHAFEE. Well, I will have to get an exact definition.

Mr. MARKEY. Are we talking about two bucks or $2,000?

Senator CHAFEE. No, you are talking considerable sums more than that.

Mr. MARKEY. I am honestly in doubt here as to what the discussion is. I am told that casino gambling and racetrack, all of that is out. That is not really what we are debating today. We are debating bingo. If that is accurate I would like to have the debate on those grounds and if high-stakes bingo is in question what is high-stakes bingo just so I can understand it.

In other words, is high-stakes bingo something that looks so much like real casino gambling that you are concerned about it or is high-stakes bingo the way they do it at the Immaculate Conception——

Mr. WEYGAND. I think it is a little bit different, Congressman. I think it is really the Class II gaming, which is a category which includes bingo amongst a number of other things. I think the discussion is not on one type of gaming although to their credit the Narragansett Tribe has said that bingo is really all they are interested in doing.

Mr. MARKEY. But what else could they do under Class II gaming besides bingo?

Mr. WEYGAND. The Governor is here in the next panel and I am sure he will be able to testify more specifically to that.

Senator REED. If I may respond.

Mr. MARKEY. Yes, please.

Senator REED. The issue, the principal issue would be a bingo hall, high-stakes or whatever the stakes. But that would initiate a much more complicated discussion because of the First Circuit holding that the State of Rhode Island still has a quantum of jurisdiction, authority, sovereignty, if you will, as to the tribe over other aspects which would be intimately related to the development of any gambling facility, high-stakes or otherwise, such as traffic control and zoning.

Most of these issues have been not clarified, let me say, and in fact the court suggested in their opinion that any application would engender all of these issues. Let me also suggest because it has

been discussed today several times about the fact that the tribe might be the only one in this position.

Frankly, the Narragansetts' process of recognition, the Settlement Act, all of the understandings on both sides are unique. There is no other tribe that has the Rhode Island Indian Claims Settlement Act. There is no other tribe that has worked its way through the processes they have.

So the suggestion that there is disparate treatment here also goes, I think, to the history of the whole process. And the point that we return to again and again is that the very understanding when this Act was agreed to, when the compact was agreed to, when the lands were ceded, when the settlements were made, when the payments were made, was that the civil, criminal, and regulatory authority of the State would extend to the tribe. Now that is where we are today. We are right back where we were in 1978, I believe, when the deal was struck.

Mr. KENNEDY. I just want to add——

Mr. GILCHREST. I think the gentleman——

Mr. KENNEDY. Mr. Chairman, I wonder if the gentleman would yield. I would like to just followup. The tribe won Federal recognition based upon their own process which they sought for Federal recognition, OK. The Federal Government recognized the Narragansetts as a tribe and hence that is what applies here.

It does not apply that they had the Indian Settlement Claims Act before. That might have applied previous but the Narragansetts were federally recognized and under the law if they are being a federally recognized tribe they have the laws of this Congress apply to them as applies to any other tribe so the Narragansetts are being singled out because they are the only tribe in this country that is being denied the rights under IGRA.

And I might add IGRA puts a lot of provisions in there that forces them to comply with the State law so this notion that without the Chafee Rider the Narragansetts would be able to run amuck in the State without obeying State law is just nonsense. They have to comply with a lot of State laws and IGRA makes sure they do.

So this notion that but for the Chafee amendment, thank God for the Chafee amendment because they would be able to run rampant. No way. IGRA states there are a lot of parameters among them. The tribe cannot conduct any casino-style gaming without the State's approval and without a voter—through a compact and without voter approval.

Now the people of the State of Rhode Island have already said that they did not want gaming in the State so we stopped the Narragansetts from having a casino in the State so what——

Mr. GILCHREST. Mr. Markey's time has expired.

Senator REED. I think I would like to respond. If you would stop with the District Court opinion of Judge Pettine, who effectively indicated that he felt that the Rhode Island Indian Claims Settlement Act was implicitly repealed by IGRA, your argument makes some sense.

But the First Circuit specifically rejected that line of reasoning. They said that in fact the Rhode Island Indian Claims Settlement

Act still applied. The contours of the application are very difficult to define now except for the portion of IGRA——

Mr. KENNEDY. Except for the portion of IGRA. Absolutely right, Jack. Except for IGRA.

Senator REED. But the point here is that I do not believe the court decision said simply by having become federally recognized that the Settlement Act was overthrown and thrown out. Your argument even that the passage of IGRA does not totally——

Mr. GILCHREST. All time has expired. Thank you, Senator. I have one question of my own before we move to the next panel. It does not necessarily deal with the specific legal complexities of this particular issue. I am not sure if we are going to resolve those legal issues here this morning.

However, the purpose of a democracy is to exchange these ideas which we are doing thoroughly and fairly well this morning. But my question is more of a curiosity question about existing law right now. Could one or all of the witnesses explain to me under existing law, under the law that now exists in Rhode Island which we are following, what are the options for the Narragansett Indians on this land as far as gambling is concerned? Are there any options?

Senator CHAFEE. They have any option any citizen in the State of Rhode Island has. They can petition for high-stakes bingo. They can petition for casinos and like every other citizen it goes before the State—it is a State referendum statewide and also in the community.

Mr. GILCHREST. Has that happened—has that petition——

Senator CHAFEE. They sought once for casino gambling and were rejected and now they have gone back and they seek the so-called Class II, the high-stakes bingo that was referred to before. And that is what went up before the Indian Gaming Commission and was rejected.

Mr. Chairman, could I just ask if you might include in the record some documents of 1987 where they turned over, finalized the deeds that went to the Indians of some lands in Rhode Island and the interesting point I make here is that the Bureau of Indian Affairs in connection with all this clearly says that the Rhode Island Land Claim Settlement Act still applies.

In other words, the suggestion from Representative Kennedy that somehow Federal recognition wiped away all the Land Claims Settlement Act of 1978, this clearly rejects this as did the court in the First Circuit.

Mr. GILCHREST. Without objection, so ordered. Thank you, Senator. Congressman.

Mr. WEYGAND. If I could just add on about what is the present law in the State of Rhode Island. In 1994, Mr. Chairman, the people of Rhode Island, as has been mentioned, rejected five referendum with regard to various gaming proposals for casinos—including the Narragansetts.

At that time, they also passed a constitutional amendment which required that any expansion of gaming in the State of Rhode Island had to be approved by two groups of voters: one, the State as a whole, a majority of the voters had to approve of it, and also a majority of the voters within the community in which the facility was

to be located. That is presently within the constitution of the State of Rhode Island.

Mr. GILCHREST. Gentlemen, I thank you for testifying this morning. We have a vote. What we will do right now, if you would like the two Senators and the Congressman can sit up here on the dias and question the other witnesses. Since we have a vote, before we start the new panel we will take a recess and be back here and restart the hearing in 15 minutes. We stand in recess.

[Recess.]

Mr. KENNEDY. [presiding] I would like to begin the hearing once again. On the second panel we have the Governor of the State of Rhode Island, a representative from the Department of Interior, and the Narragansett Indian Tribe being represented by Randy Noka, First Councilman.

Now I would like to introduce the Governor of the State of Rhode Island, former U.S. Attorney, Lincoln Almond, for his opening statement. Governor.

STATEMENT OF THE HON. GOVERNOR LINCOLN ALMOND, STATE OF RHODE ISLAND

Governor ALMOND. Thank you very much, Mr. Chairman. As the Governor of Rhode Island, I appreciate the opportunity to appear before this Committee today to testify on behalf of the people of our State in favor of preserving the Rhode Island Indian Claims Settlement Act and the Chafee Amendment to that Act passed as part of Congress' 1977 Omnibus Appropriations Act.

Our position that the Indian Gaming Regulatory Act must not apply to Settlement Lands of the Narragansett Indian Tribe is based on ensuring the integrity of the deal struck between the State and the Narragansetts with respect to State jurisdiction over that land. It is also based upon the strong and steadfast public opposition to the establishment of a casino by any group, Indian or non-Indian, within the borders of Rhode Island. It is not based on any animosity toward or prejudice against the tribe.

In 1978, the Narragansett Indian Tribe expressly agreed to be bound by the civil and criminal laws of the State of Rhode Island with no exception for laws governing gambling. Subjecting the tribe's Settlement Lands to the same laws which apply to all other Rhode Islanders is not only just and fair, it is precisely what the tribe agreed to in exchange for 1,800 acres of disputed land.

The Rhode Island Constitution does not allow any expansion in the type or location of gambling in Rhode Island unless and until the voters approve. Thus, with the Chafee Amendment, the tribe, like all other Rhode Island interests, may only introduce new types or locations for gambling if the people of Rhode Island vote to allow it.

The tribe obtained the Settlement Lands agreeing to be bound by Rhode Island law. The Chafee Amendment was thus necessary to ensure that the good faith agreement among the tribe, the State and the town in which the Settlement Lands are located was not wrongly breached by the Indian Gaming Regulatory Act.

My administration has reached out to the tribe to discuss alternatives to casino gambling that would improve the tribe's economic opportunities. Early in my administration I did meet with the

tribe. After passage of the Chafee Amendment, I sent correspondence on October 7, 1996, and January 6, 1997, to tribal leaders offering to work with the tribe on economic development and issues of mutual concern outside of gambling.

Unfortunately, to date there has been no response. I am hopeful, however, that the tribe may yet work with my administration to attempt to find job opportunities and other assistance for its members. My offer to meet remains open. The Chafee Amendment was necessary to preserve the deal agreed to by the tribe in 1978 and sanctioned by Congress.

Without it, a terrible wrong would have been inflicted on the people of Rhode Island. Although Rhode Island entered into a good faith agreement mandating that the Settlement Lands be governed by Rhode Island law, without the Chafee Amendment, the Indian Gaming Regulatory Act would have unintentionally subverted the Settlement Act's grant of jurisdiction to the State, directly contrary to the intent of all involved in the process.

The Chafee Amendment represents a sound, fair and necessary public policy. If the tribe wishes to institute high stakes gambling, it can seek approval of the people in the same way that all other interests are required to do so under Rhode Island law. Insisting that the tribe follows the rules applicable to everyone else is not prejudice. It is fairness. It is upholding the law.

It is not anti-tribe. It is anti-casino gambling. We should help the Narragansetts achieve economic self-sufficiency, but not through the siren song of gambling. The Chafee Amendment, like the Settlement Act itself, must remain undisturbed.

This morning as I sat here, I heard statements that the Supreme Court ruled relative to the sovereignty of Indian lands and gambling which gave rise to the Indian Gaming Regulatory Act. That Supreme Court decision did not apply to the land of the Narragansetts in Rhode Island because of the Settlement Act.

I have heard conversations here relative to whether this was going to be bingo and what type. The Narragansett Indians right now could do charitable bingo just like any other charitable organization in the State of Rhode Island. The issue is whether they would be regulated under State law with respect to high-stakes bingo.

The reason we talk about bingo is when I became Governor I said I would not negotiate for casino. I litigated the issue of the prior compact so they went back to the issue of bingo. There is no question in my mind that the issue here is high-stakes bingo unregulated by the State of Rhode Island on lands of the Narragansetts with slot machines next and the issue of litigation over gaming and casino gaming.

And there are people out there, in my judgment, who support the Narragansetts and I think it is false support because they see it as the door opener to casino gaming in other areas of the State and they will compete once it is opened. The issue here I think is one of fundamental fairness and I might also add that there are other States right in New England including Maine that have tribes that are subjected to Settlement Acts that do not allow the Indian Gaming Regulatory Act to apply.

I cannot speak for him but I think even the Attorney General of Massachusetts feels the same way, James L. Harshbarger, with respect to the Settlement Act of Massachusetts so we even have situations, I believe, where within the State there were some tribes who cannot have gaming. There are some who cannot because those tribes willingly negotiated that away as was done in Rhode Island.

I prepared much more detailed written comments, Mr. Chairman, for inclusion in the record but I would be most happy to answer any questions on this particular issue. Thank you.

[The prepared statement of Mr. Almond may be found at end of hearing.]

Mr. GILCHREST. [presiding] I have been informed that the Governor of Rhode Island needs to catch a plane so if it is all right with everybody what we will do is we will ask him questions first. He can be on his way and then we can hear from the other two witnesses.

Governor ALMOND. I appreciate that, Mr. Chairman.

Mr. GILCHREST. Yes, sir. Senator Chafee.

Senator CHAFEE. I have no questions.

Mr. GILCHREST. Mr. Kennedy.

Mr. KENNEDY. Yeah, I just want to followup with the idea that the Indian Claims Settlement Act and the 1983 Federal recognition of the Narragansetts were one and the same. The Federal recognition in 1983 had to do with the process that has its own set of criteria and hence the Narragansetts won Federal recognition independent of the Indian Claims Settlement Act.

Still hanging over from the last panel is this notion that we do not have any other way of stopping gambling in the State but for the Chafee Rider. And I want to ask you under IGRA there are provisions, would you not agree, to keep the Narragansetts from establishing a casino in this State?

Governor ALMOND. I disagree with that wholeheartedly. I feel that IGRA, I think everyone knows my position and the Narragansetts have known my position on gaming since before I became Governor when I was United States Attorney, I think as strong as I may be with respect to my feelings on that issue that if I refuse to negotiate there would be a court order negotiation and there would be an agreement beyond my power and in spite of the Florida case.

Mr. KENNEDY. Do you know that the Seminole decision says that you do not have to compact and—in addition to that the State has——

Governor ALMOND. I would not rely on that, Congressman.

Mr. KENNEDY. In addition to that then the voters of the State would have a right, am I——

Governor ALMOND. Oh, no.

Mr. KENNEDY. To casino gamble, they would not have a right——

Governor ALMOND. Once IGRA is in effect but for the Chafee Amendment if you place IGRA back then I would be forced to negotiate, I am sure, or there would be a compact approved by or written for the State of Rhode Island without me and it would give high-stakes bingo, it would give video poker, it would probably give—there would be a legal issue as to whether it would give coin drop slots.

And I think a good argument if I were representing the Narragansett Indians I would take the position that the current gaming in Rhode Island which we are trying to restrict would give rights to a full casino. There is no question in my mind about that.

Mr. KENNEDY. Well, just to—I am sure I can get some other people who can comment to the Supreme Court Seminole decision but it says pretty clearly that barring a compact with the Governor and when you did compact even after that you would have to have voter approval of the State and——

Governor ALMOND. I disagree with that. I think it just merely says that they cannot force me to negotiate but they can force a compact upon the State of Rhode Island. They can do that any time.

Mr. KENNEDY. Well, in that case why don't tribes that currently—why can't they just establish Class III casino gaming if they can just override——

Governor ALMOND. Because the Governors enter into negotiations because that is the best thing to do. If they refuse to enter—I do not think a Governor can refuse to enter into negotiations even though the Supreme Court says they can refuse and eliminate gambling under IGRA in this State. I mean that cannot be done.

Mr. KENNEDY. Well, if this is the case and there was no reason for everyone to support, Congress to support IGRA's means to check the prior Cabazon decision because the whole notion of IGRA was to put the brakes on the Cabazon decision by allowing the States the authority to compact and to if they wanted to eradicate gaming altogether in the State to do that and make those—as IGRA points out, any law that is criminal with respect to this gaming has to be adhered to by the tribes that are seeking to game within the State.

Governor ALMOND. Oh, I disagree with that because, but for the Chafee Amendment, no citizen of the State of Rhode Island can have charitable bingo with limitations or I should say no State can have high-stakes bingo. They are subject to the charitable. But under IGRA you are not subject to the criminal and civil regulatory of the——

Mr. KENNEDY. All right, good point. I agree with you there. I agree with you there but that is a different argument from the casino case that you were just saying—it is different.

Governor ALMOND. I do not see that as different at all.

Mr. KENNEDY. OK. All right, you may not, but they made a distinction between the two classes and that was codified under law.

Governor ALMOND. But you see we allow charitable bingo so therefore you get the basis for going into bingo without the regulation which then becomes high-stakes bingo but we have more than bingo. We have other types of gaming which I think was a terrible error in the State of Rhode Island.

Mr. KENNEDY. I agree with you, Governor. I voted the same way.

Governor ALMOND. But I am trying to reduce business taxes, trying to reduce personal taxes, trying to build the economy of the State of Rhode Island to create jobs. When we are successful all those things will start taking away our reliance on any gambling revenues but we have got to take one step at a time. I understand the system. I live with it.

Mr. GILCHREST. Thank you, Mr. Kennedy. Ms. Green, any questions?

Ms. GREEN. I am still trying—not being an attorney I am still trying to figure out the legalese of this. I can say that I truly have a question. I really—I am perplexed as to why some sort of an agreement cannot be worked out between the tribe and the administration in the State.

You said, Governor, your objection is to casino gaming but it was my understanding from the prior testimony that casino gaming was not the issue, it was the Class II gambling. Are you willing to negotiate——

Governor ALMOND. I am in opposition to casino gaming.

Ms. GREEN. But it exists already, there is Class II gaming in the State or Rhode Island?

Governor ALMOND. With severe limitations on it.

Ms. GREEN. Are you able to negotiate with the tribe on what already exists in the State of Rhode Island?

Governor ALMOND. I do not have a right to that today with the limitations on the criminal and civil laws of the State of Rhode Island being applicable. They are on the same footing as every citizen in the State of Rhode Island.

Mr. KENNEDY. Could I ask the gentlelady to yield?

Ms. GREEN. I yield to my colleague to followup on that question.

Mr. KENNEDY. Thank you. The whole—I appreciate what has been said by the former panel and you, Governor, with respect to they have the same rights and we keep going back to that, but the whole notion here unless you accept it or not is that there is something called tribal sovereignty and they should not be held simply to the same laws because they are their own sovereign status.

Now they do not have all the sovereignty of the world but they have more than not. They are here on a government to government relationship just as you as the Governor of the State is here and that is the rub here because we want to treat them as if they are regular citizens of the State but yet they are a federally recognized tribe with rights and privileges as a federally recognized tribe that we are circumventing as a result of the Chafee Rider and that is just that simple.

Governor ALMOND. But do not single out the State of Rhode Island. Are you going to tell all the other States that have valid Settlement Acts that were not preempted that you are prepared to repeal them?

Mr. KENNEDY. Governor——

Governor ALMOND. Are you going to tell the State of Maine that even though they agreed in a settlement that there would be no application of IGRA that you are prepared without the wishes of the people of Maine to repeal it if that is what has occurred in Rhode Island?

Mr. KENNEDY. No.

Governor ALMOND. There was never an intention in Rhode Island that IGRA preempt the Settlement Act of 1978 and I have to assume although I was not present that everyone who agreed in 1978 agreed to make an agreement that would subject the tribe to the civil and criminal laws of the State of Rhode Island well knowing

that they could go one step beyond and go to trust status. I mean everyone had to know that.

Mr. KENNEDY. Right.

Governor ALMOND. I would be shocked if everyone at the table did not know that could occur. The fact of the matter is there was an agreement, a binding agreement approved by the Congress just like it has been done for many other States. You cannot single out the State of Rhode Island and say, hey, OK, because of technicalities and false assurances on the Floor of the Congress that it was not going to be preempted, that you are now going to turn around and say, hey, you know, you are going to have to reach this agreement with Congress.

Mr. KENNEDY. OK, so they would be subject to the same laws as the State of Rhode Island and retain some sovereignty as a result of the Federal recognition. The State of Rhode Island allows Class III gaming and Class II gaming and yet the Narragansetts would not even be allowed to participate in any kind of gaming as a result of the Chafee Rider. They would be precluded so in essence they would not——

Governor ALMOND. And every other Rhode Islander as it has been since the voters of the State of Rhode Island amended the constitution of the State of Rhode Island because of their problems with this particular issue.

Mr. KENNEDY. OK, the whole point here is they are not regular citizens. That is the thing we are trying to get across here. By virtue of them being tribal members, by virtue of their being a federally recognized tribe, I do not know what you would give them if you took this away. What sovereignty do you acknowledge they have if you are not going——

Governor ALMOND. I am willing to sit down with the Narragansetts at any time that the Narragansetts——

Mr. KENNEDY. Why, they are just a constituent?

Governor ALMOND. The Narragansetts and I—when I first met with the Narragansetts it was not to discuss gaming because I had to be very cautious about opening up negotiations under IGRA but the Narragansetts were gracious enough to acknowledge my opposition, strong opposition, to casino gaming and to meet with me in an agreement not to discuss casino gaming.

I am willing to do that tomorrow. Let me say this, we need the help of the Congress of the United States with respect to this. I was the United States Attorney for 21 years. I know the problems with the Bureau of Indian Affairs. I know the problems of this nation with respect to Indians. Let me say this, can I give you solutions tomorrow? No, I cannot. I do not think anyone on this panel can.

But I can tell you as the Governor of the State of Rhode Island I am willing to do everything that I possibly can to help the Narragansetts.

Mr. GILCHREST. Thank you, Governor. Ms. Green's time has expired. Mr. Weygand. No questions. Mr. Kildee. Did you have questions, Mr. Weygand?

Mr. WEYGAND. Just quickly. Governor, is it not also your intent to try to minimize, reduce or even eliminate the existing gaming within the State or Rhode Island?

Governor ALMOND. Since I have been Governor I have tried to do my best to reform the lottery which was not being operated in the best interests of the State of Rhode Island. I am personally being sued for damages as a result of doing that. I have litigated the issue of expansion of TV bingo and we won that.

I have just written letters opposing the expansion of gambling in two facilities in Newport and Lincoln Downs and I write that not because of this hearing because I strongly believe in it and I believed it all my life. I have voted against greyhound racing in my own community which gives me additional revenue and they can take it as far as I am concerned.

I have seen the other side and I know the Chairman said he did not want to debate the issue of gaming but I have to say that I saw the other side for 21 years and it is not a pretty picture.

Mr. WEYGAND. Also, Governor, is it not true that since the Lincoln facility—for those who are not familiar, in Rhode Island there are two facilities. One is in Lincoln, Rhode Island, which is a dog track which has video slot machines. The other is in Newport which has Jai Alai and since those two facilities have existed, which goes back to the 1970's, no new facilities have been approved by the voters or by the General Assembly.

Governor ALMOND. One of them goes back to the 1940's. We have one major track which is a greyhound track which started as thoroughbred back in the 1940's, I believe. When the siren song of gambling declined and horse racing went out, we had two major tracks to rely on that went under and then it became greyhound.

Let me say this. Greyhound racing in my judgment would not even be sustained in the State of Rhode Island if it had not been for the addition of video poker. It has been declining that badly and neither would Jai Alai.

Mr. WEYGAND. And actually in 1990 the voters voted to disapprove a new facility in Burriville, Rhode Island, with regard to——

Governor ALMOND. And we have the lottery.

Mr. WEYGAND. So what I am getting to is that both your executive policy, as a person of the other party as well as the Democratic General Assembly for the last 20 to 25 years, has been to reduce and minimize gaming in the State of Rhode Island.

Governor ALMOND. With the exception of video poker which we disagreed with but it has been. It has not been successful in my judgment.

Mr. GILCHREST. Mr. Kildee.

Mr. KILDEE. Governor, would you personally like to get rid of all gambling in the State or Rhode Island?

Governor ALMOND. Yeah, I do not think it is good economic development. I do not think it brings any money into the State. I think it just reshuffles jobs and hurts jobs.

Mr. KILDEE. Have you thought of Michigan—I watched the legislature and I voted against it. I voted against the Michigan lottery. But Michigan had all forms of gambling for over 100 years and then they went into the lottery and lottery commission.

Well, if that was still the case and the Indians in Michigan could not game, have you—you personally would like to see all gaming stopped in Rhode Island?

Governor ALMOND. When I say all gaming let me say this. I used to play my father a game of cribbage once in a while for a dime. He enjoyed the competition. The last game, a dollar. I do not have a problem with, for instance, reasonable regulated bingo where people use it for enjoyment. You know, I have seen the other side. I have seen businesses go under as a result of gaming.

Let me tell you this. In 21 years as United States Attorney I cannot remember a major embezzlement case of a Federal bank that was not caused by gambling. I cannot remember one. We used to trace it.

Mr. KILDEE. So you would not be prepared to propose an amendment to the constitution banning all gaming?

Governor ALMOND. To the Rhode Island constitution?

Mr. KILDEE. Yes.

Governor ALMOND. As soon as we can get the State economically in order I would strongly move toward—first of all, we do not want to expand one iota more than we got and I would like to see the restrictions take place and start shrinking it.

Mr. KILDEE. You would like to get some other form of revenue first and then get rid of the——

Governor ALMOND. Well, we got to make our choices. Right now I am trying to put money into investment job credits, research and development, high module income tax to get it down to build jobs. I think we are being successful. The whole issue here is building the economy. That is the issue.

But I am going to tell you that down in—when I look ahead and my vision of Rhode Island does not depend upon gaming revenues.

Mr. KILDEE. I yield to Mr. Kennedy.

Mr. KENNEDY. Thank you. Well, you know, Governor, the Narragansetts have got to make some decisions too and their people are 40 percent unemployed and so it is all fine and well for the State to say, well, we will still collect the gaming revenue till we end it but, you know, because we do not want to give up the ability to fund a lot of the things that we want to fund for our State citizens but you can see the double edged sword here and they are not allowed to do gaming either.

And the fact is we grandfathered in Lincoln and Newport and yet the Narragansetts have been around a lot longer than Lincoln and Newport. If we were to grandfather anyone and I think this is the spirit of the law in terms of respecting sovereignty, we grandfather in the Narragansetts. They have been around longer than we have in this area so it is just to me we do have to recognize tribes as having some separate standing. And I still have not——

Governor ALMOND. There is no doubt in my mind that at some point if you repeal the Chafee Amendment you will have a casino in that area and you will also have casinos in other areas. There is no doubt in my mind about that. Absolutely none. And you will have a State with several casinos. Whether the Indians would ever succeed, whether the Indians would ever succeed against that type of competition is very problematic. They may not.

I do not think anyone, for instance, is ever going to compete with Fox Woods because it would require a $1.6, $1.7 billion initial investment to even get on an even footing. But the issue is that South County where the Narragansett Tribe is located is doing

very well economically right now and I think we are going to do better but let us look to job training, let us look at the issues of the relationship between the Narragansetts and the town of Charlestown.

Let us look at some of the things that they would like to do from the standpoint of economic development. Let us look at the university. Let us look at the School of Oceanography. That gets a lot of money. Let us look at a tone of things. I do not know whether any of them would work but let us look.

Mr. GILCHREST. Mr. Kildee.

Mr. KILDEE. I yield back the balance of my time.

Mr. GILCHREST. Mr. Chafee, Senator Chafee.

Senator CHAFEE. Governor, if I understand the line that Representative Kennedy is pursuing here is that something very significant happened when the tribe was given Federal recognition and that in effect the agreement that was entered into in 1978 was overridden. And I have great difficulty in understanding that argument and wanted to get your thoughts about what the Circuit Court said, what the BIA said.

And in the documents that it signed and that the Narragansett Indian Tribe signed in 1978—long after the recognition of 1983 went through—all these documents, which are signed September 12, 1988, clearly say that this action does not alter the applicability of State law conferred by the Rhode Island Indian Claims Settlement Act. Now do you agree with that or do you——

Governor ALMOND. I would simply say that I think the Settlement Act of 1978 was recognized as a model. I think that everyone who went to the table and negotiated with open eyes, I assume everyone at the table knew that you could take those lands to other steps but I think they negotiated obviously—I cannot imagine the State of Rhode Island negotiating to put language in that they knew very shortly was going to be nullified.

I cannot imagine anyone in good faith thought that any further actions and that has been—whether we argue about that or not that has been positively absolutely settled by the First Circuit Court of Appeals with the exception of gaming and that is the preemption. That is the preemption issue and we feel that that was wrong.

It was not intended by IGRA and we feel that the State of Rhode Island ought to go back to the deal we made. We made a deal for 1,800 acres of land. The State of Rhode Island did, the town of Charlestown did, and where I come from a deal is a deal.

Senator CHAFEE. Governor, one correction I would make. You indicated in your statement that there were false, I think you used the word false inadvertently about the statements in connection with the agreement as we understood it in 1988.

The statements that were made were not——

Governor ALMOND. Yeah, I do not intend to say that. I suffice it that I misspoke. I think everyone has the best of intentions and I think everyone has to take a look at the past and take a look at the future but I do not think anyone here acts in bad faith or anything like that.

Senator CHAFEE. I just wanted to correct that.

Governor ALMOND. I am sorry.

Mr. GILCHREST. Thank you, Senator Chafee. Governor, I just have one quick question and we will let you fly off in safety. Could

you explain your feelings, the statements you made if high-stakes bingo were to be approved it would lead to casino gambling, can you explain that, sir?

Governor ALMOND. I think this all comes about because of the uncertainty relative to the requirement to negotiate casino gaming. They do not have to negotiate. So if you take me out of the picture then you go into the Class II with respect to high-stakes bingo. That of course would be permissible without the Chafee Amendment in the State of Rhode Island without regulation or not subject to the regulatory powers of the State of Rhode Island so it would be unlimited. So I think we talk about that as a given.

If you take away the Chafee Amendment high-stakes bingo is a given. The next issue is what you do with respect to other issues of gaming, whether the Governor negotiates or not and I think I know where that would go, which road that would go down.

Mr. GILCHREST. Thank you very much, Governor. We wish you well on your journey.

Governor ALMOND. Thank you very much and I really appreciate the opportunity to speak and answer questions first so that I can get back for State business. Thank you.

Mr. GILCHREST. Yes, sir. Our other two witnesses, David Hayes and Randy Noka. Did I pronounce that correctly? I appreciate your patience here this afternoon. Mr. Hayes, you are now recognized for 5 minutes.

STATEMENT OF DAVID HAYES, COUNSELOR, SECRETARY OF THE INTERIOR

Mr. HAYES. Thank you, Mr. Chairman, and members of the Committee. My name is David Hayes. I am counselor to the Secretary of the Interior and I am appearing today on behalf of the Secretary. I have submitted a short written statement and I understand it has been added to the record of the hearing.

I would like to supplement the written statement with a few oral remarks. First, I would like to make it clear that the Administration remains opposed to the provision of the 1997 Omnibus Appropriations Act which classifies Indian lands in Rhode Island as non-Indian lands for purposes of the Indian Gaming Regulatory Act.

Secretary Babbitt stated his opposition to this provision in the September 12, 1996, letter to the Senate and his position remains the same today. The Administration's position is based on two principal factors. First, the Administration strongly supports full and even-handed implementation of the Indian Gaming Regulatory Act.

Since 1988 Indian gaming regulated under IGRA has provided substantial benefits to a large number of tribes. As required by law, revenues have been directed to programs and facilities to improve the health, safety and educational opportunities and quality of life for Native American peoples. More than 100 tribes across the Nation participate in gaming activities. I should note parenthetically that despite the importance of gaming to the Native American community no more than 5 percent of the overall gaming revenue generated in the United States is attributable to Indian gaming.

Second, the Administration strongly supports the sovereignty of Indian tribes and the special relationship between tribes and both Federal and State governments. IGRA reflects the principles of tribal sovereignty by recognizing that Indian tribes have special rights as sovereign nations to conduct gaming activities. IGRA also recognizes the legitimate interest of States vis-a-vis gaming but it establishes certain ground rules that apply across the board in governing the Indian and State relationship.

Under IGRA, for example, if a State allows Class II gaming within its borders it cannot deny Class II gaming rights to Indian tribes. And if the State has made the policy choice to allow Class III gaming activities it must negotiate in good faith with tribes to allow tribes to also potentially take advantage of Class III gaming activities under a tribal-State compact. The compact process allows for extensive input from tribes, States, Governors and other public officials.

Section 330 of the Omnibus Appropriations Act effectively precludes the Narragansetts Tribe from enjoying the same sovereign rights and benefits as other tribes. Indeed, this is the case even though the State of Rhode Island allows a range of gambling and gaming activities to non-Indians. Yet the Narragansetts are not allowed as a matter of right to conduct Class II gaming nor are they allowed to undertake the good faith negotiation process laid out for Class III gaming activities under IGRA.

The Administration believes that the withdrawal of the Gaming Act's benefits and the singling out of the Narragansett Tribe in this way is inappropriate. We recommend that the provision be repealed.

I would like to make a final note regarding the interplay between the 1978 Rhode Island Indian Claims Settlement Act and the 1988 Indian Gaming Regulatory Act. We are mindful and respectful of the views of the members of the Rhode Island delegation regarding their views on the original intent of certain language in the Rhode Island Indian Claims Settlement Act. However, we must defer to the First Circuit's decision on the question of whether the language of IGRA supercedes the language of the Settlement Act. The First Circuit found that the language of IGRA controls and that the tribe's rights as sovereign to negotiate with the State on gaming issues particularly in light of the State's current policies permitting a wide range of gaming for non-Indians should not be denied. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hayes may be found at end of hearing.]

Mr. GILCHREST. Thank you, Mr. Hayes. We have a vote but we will go to Mr. Noka before we leave. Mr. Noka.

STATEMENT OF RANDY NOKA, FIRST COUNCILMAN, NARRAGANSETT INDIAN TRIBE

Mr. NOKA. Thank you, Mr. Chairman. I have no problem if you guys want to go vote and come back. I do not know if I put 5 minutes of testimony down for hundreds of years of atrocities. I will defer to the Chairman if you want to go vote.

Mr. GILCHREST. I think we can begin with your testimony and certainly when we come back if you have not completed you may

do so but you will certainly be given plenty of time to answer questions from the members.

Mr. NOKA. OK, well, I will make my testimony itself, sir. OK.

Mr. GILCHREST. Mr. Noka.

Mr. NOKA. Good afternoon, Mr. Chairman, members of the House Resources Committee, ladies and gentlemen. My name is Randy Noka. I am the First Councilman of the Narragansett Tribe, federally recognized Narragansett Tribe, of Rhode Island. I am testifying on behalf of our tribal government, the Tribal Council, and the more than 2,000 men, women and children who are today's Narragansett Tribe. I am joined here by Tribal Medicine Man Lloyd G. Wilcox and tribal attorney Charlie Hobbs of Hobbs, Straus, Dean & Walker.

I want to thank Chairman Young for holding today's hearing on the Chafee Rider to the Omnibus Appropriations Act, passed last September. I also want to again thank Congressman Patrick Kennedy for his courage and determination in making today's hearing a reality.

Had he not spoken out on our behalf and called attention to the injustice perpetrated against us by our own Senator, we would not be here today. We know that Congressman Kennedy does not support gambling in Rhode Island, but he has shown to us that he recognizes and supports the inherent sovereign rights of the Narragansett Tribe and the rights of Indian country.

Last, I acknowledge and thank the many Narragansett members and other Native Americans as well as our non-Native friends that made the trip to be here today. Your presence is proof that solidarity is alive in Indian country, that the spirit of the Native American can never be squashed, that although they have illegally taken our lands and continually trample on our rights they will never be able to take away the essence of who and what we are.

Any lesser people could not have survived as we have. Mr. Chairman, we do have exhibits that we will be entering into the record. I would like to mention particularly Exhibits K, Q, R, and U. U in particular is a petition that has over 3,000 signatures signed by—almost 3,000 signatures signed by Rhode Islanders in support of the Narragansett Tribe in support of what we are trying to do and opposing Senator Chafee in his attack, discriminatory attack, on the Narragansett nation.

It is important for me personally I think to point out that some of the people that were signing the petition did not even care what it said, they just supported the tribe and they opposed what was done to us. They did not even have the time but they did support the tribe and in that respect signed the petition.

I will get right to the point, sir. We are here today to talk about sovereignty and what it means to us and all Native Americans. Particularly we are here to discuss how the sovereign rights of the Narragansett Tribe were attacked last year by what we termed the Chafee Rider. We are here to talk about the total injustice that have been and are continually perpetrated against the aboriginal people of this land.

We are here to talk about how our constitutional rights, including the Equal Protection Clause, were abrogated last year. A personal note is how Senator Chafee brought his legislation last year.

The fact is the courtesy you have given here today, Mr. Chairman, to Senator Chafee and Representative Weygand, my understanding is they are not members of this Committee, but you gave them opportunity to listen to the testimony we have and others and question the panel.

We did not get that chance last year. We never had the chance. We never got the chance. He did not give it to us. His colleagues on the Senate Floor over here and the House. If we had that chance last year, if he brought it the way it should have been brought, we would not be here today. We are confident we would have had the votes to go in favor of the Narragansett Tribe.

The aboriginal people of this land are a proud people. We have never lost touch with our identity, our heritage and our culture. We have survived efforts to assimilate us into non-Native society. We have survived efforts to annihilate us. Throughout history we have always persevered. Chief Justice John Marshall once said, "America is separated from Europe by a wide ocean and was inhabited by a distinct people divided into separate nations independent of each other and the rest of the world, having institutions of their own and governing themselves by their own laws. It is difficult to comprehend the proposition that the inhabitants of either quarter of the globe could have rightful original claims of dominion over inhabitants of the other or over the lands they occupy or that the discovery of either by the other should give the discovered rights in the country discovered which are no pre-existing rights of the possessors."

Unfortunately, since these words there has been mostly hardship, lies and inhumane treatment shown the aboriginal people by the dominant society. Governor Almond spoke of a deal as a deal. That is what Native Americans thought. Hundreds of treaties have been signed by officials of the U.S. Government supposed for the benefit of our people. All have been broken and not honored by the U.S. Government.

To add insult to injury Senator Chafee expects us to honor what is in essence a treaty that we—let me take that back, a corporation, mind you, signed with the State of Rhode Island, not the Narragansett Tribe, the 1978 Settlement Act. That is in essence a treaty and Senator Chafee expects us to honor that while at the same time accept the fact that each and every treaty that the U.S. Government signed with native people were broken and abrogated.

Selective memory serves only the owner of that and it always has with it a blind eye and a deaf ear. Will the U.S. Government ever fully acknowledge and honor the commitments and obligation it has to the aboriginal people of this land? Will the injustices and double standards ever stop? Will we finally be treated with the respect due us but never truly get?

The cold war may be over but America continues to be at war with its own people. The plight of the Narragansett Tribe is not unique in this country. The aboriginal people have forever been persecuted and paying the price for the wanton ways and disregard for others that the dominant society continually lives by.

The history of the Narragansetts is stained with the blood of our ancestors that were killed or died trying to protect our land and

our way of life. The Chafee Rider holds that our settlement lands, aboriginal lands, belonging to us before first contact with Europeans and held today for us in trust with the United States "shall not be treated as Indian lands."

For Senator Chafee to indicate that our settlement lands are not Indian lands flies in the face of history and shows his disregard for us and the heritage that is ours. Our lands have been the stamping grounds for the Narragansetts since time immemorial. At no time within the memory of man have our lands been anything but Indian lands regardless of how it may have been taken from us or how it is defined in your law books.

More than 300 years ago our ancestors were massacred by colonial militia during the King Philip's War. Their sole crime was that they were Narragansett Indians. They were killed because of suspicion, fear, bigotry and ignorance. Our ancestors were killed with bullets. Today we are wounded with pen and paper and convenient changes of your laws. Both are a form of genocide.

We cannot help but wonder if these same unjustified courses were driving the Chafee Rider. The simple truth is that Senator Chafee uses political power and privilege to stop us from opening a bingo hall on our trust lands after we had established our right in a court of law to conduct gaming on our tribal lands under the Indian Gaming Regulatory Act.

A bingo hall, Mr. Chairman, not a Las Vegas, Atlantic City or Foxwood-style casino as Senator Chafee and Governor Almond and others keep repeating, but a plain bingo hall. But our anger and dismay over this Chafee Rider is not so much about gaming. Even more profoundly, it is about a disrespect for a sovereign Indian tribe, disregard for the government-to-government relationship that we have had with the United States, and for the responsibilities with the United States assumed, as a trustee, to protect Indian tribes.

It is about discrimination against Native Americans by a Member of Congress. It is about fairness and responsibility, and the obligation of this Congress to treat all people, including Native Americans, with dignity and respect. We Narragansetts were not treated with dignity and respect by the 104th Congress. We were not treated fairly.

In 1983 the Narragansett Tribe was acknowledged by the United States as a federally recognized Indian tribe, possessed with all the privileges and immunities of other federally recognized tribes. Unfortunately, Federal recognition brings with it many new problems that tribes must deal with to protect our sovereign rights. The Narragansetts are no exception.

Every project that we have attempted on our reservation was met with opposition from either local, State or on occasion Federal officials. Some examples would include the tribe's elderly housing project, our Indian health clinic, our Four Winds Community Center, and of course our gaming project. Senator Chafee's Rider, though a blatant attack on our sovereignty sets a terrible precedent by which other Members of Congress could follow, does target and impact our gaming rights, rights under the IGRA that were affirmed by the Federal District Court of Rhode Island and the First Circuit Court of Appeals.

Your court decisions held that the Narragansett Tribe had the right to bring gaming to our reservation under Federal law. That, however, mattered little to Senator Chafee. Unemployment among our members is nearly 39 percent, six times the rate of Rhode Island's. According to the 1990 Census, Indians in Rhode Island have a per capita income of about $9,000, which is 44 percent less than the average in Washington County, Rhode Island where the tribe's reservation is located.

25 percent of the State's Indian population live at or below the poverty level, compared to 6.8 percent for Washington County, Rhode Island. Roughly 30 percent of the tribe's potential labor force earn an income of less than $7,000. Under the IGRA, the tribe's gaming facility would have provided the mechanism by which we could better provide government services and jobs to our members.

Gaming, by the way, is pervasive in Rhode Island and this government benefits as ours would under the IGRA. Our written testimony will show you that. I spoke earlier about our bingo plans. What I did not mention was that despite what has been said or will be said today by the other side the good citizens of Rhode Island endorsed our bingo plans by Charlestown Council Resolution, a copy of which is submitted. Hardly opposition, is it?

The fact is the tribe met every challenge raised regarding our bingo plans, including environmental concerns. An expert is available to testify if the Committee desires. Incidentally, the courts have decided the issue of sovereignty and gaming in the State of Rhode Island and the Narragansett Tribe and we won. We won in District Court, we won in the appellate court.

The Constitution of the United States gives Congress plenary power over the field of Indian affairs, wherein the United States has taken a trust responsibility, a responsibility which the United States and this Congress cannot disregard whenever it is politically expedient to do so. There exists a unique government-to-government relationship between the United States and all federally recognized Indian tribes which should not be trampled upon simply because one powerful Member of Congress wishes to do so.

We are distressed that this Congress, by enacting the Chafee Rider, could act so contrary to these principles, principles which form the foundation of Federal Indian law as we know it today and the obligation of the United States to protect and preserve tribal sovereignty.

The Chafee Rider, and the manner in which it was passed, was ill-conceived legislation and it is a throw back to the dark chapter of this nation's history in the treatment of Native Americans. Our interests were not considered and only the interests of the governing elite and their friends and cohorts mattered. Is this how the U.S. Congress wants to act toward Native American people?

We fought for many years to establish our legal right to exercise our sovereign rights on our lands, lands wrongly taken from us many years ago. The State of Rhode Island, its Governor, attorney general, and Senator Chafee were given every opportunity to make their case to the Federal courts. We prevailed, fairness prevailed, decency prevailed.

The nation made a policy decision more than a generation ago to encourage tribal self-determination and self-sufficiency to end the cycle of Federal dependence. Congress recognized it when it passed the IGRA that the revenues from gaming often means the difference between an adequate governmental program and the skeletal program that is totally dependent on Federal funding.

One last point about Senator Chafee to once again show why we feel justified in how we feel we were discriminated against. In September 1996 just before his prejudicial rider was passed, he very briefly met with tribal representatives. During the meeting Senator Chafee looked directly at me and stated, and I quote, "I will do whatever I have to do to keep you people from gaming."

He certainly did not care about our rights or was he concerned as he has argued about the rights of Rhode Islanders. When you consider these issues now explained to you for the first time you can only conclude that the Chafee Rider goes too far, that it reflects poorly on the honor of the United States and this Congress, that it should never have been passed, and that it should be repealed as soon as possible.

Do not permit this dark stain of this nation's treatment of Native Americans to remain. Rather, treat us with the same dignity and respect you would afford any other American. Thank you.

[The prepared statement of Mr. Noka may be found at end of hearing.]

Mr. KENNEDY. [presiding] Thank you. I first would like to ask Mr. Hayes representing counsel from the Department of Interior what your feeling is on the discriminatory nature of this rider with respect to singling out one tribe from all the others and thereby violating the Equal Protection Clause of the Constitution. Mr. Hayes.

Mr. HAYES. I guess, Mr. Chairman, I would like to answer the question by going back to IGRA and the concept of IGRA which was to establish some ground rules that would be applied across the board for Indian gaming issues. The legislation was a compromise and reflects a balancing of the sovereignty of Indian nations and the legitimate interest of States. The Department of Interior is concerned whenever IGRA is not applied equally across the board.

Mr. KENNEDY. So this is not—this rider circumvents IGRA because it does not apply IGRA across the board, it singles out the Narragansetts for an exception?

Mr. HAYES. That is correct. That is our position.

Mr. KENNEDY. Thank you very, very much. Mr. Noka—and I would also like anyone else and maybe perhaps Medicine Man Lloyd Wilcox to speak on the justice of this issue. Mr. Wilcox.

Mr. WILCOX. Yes, I would like to speak on that but I would first like to say that what we are doing here today, we are talking about gaming pretty much, but actually the real issue is control. Within one generation of the strangers coming to our shores they made a determination to dispossess the Narragansetts of their lands and of their rights and hopefully to deprive them of their existence as a people.

And the history is replete with this. And this has continued right on up to this date. This is about control in the sense that there is a necessity somehow in the power structure of Rhode Island that

the Narragansetts should have no hand in controlling their own destiny. That much I will say.

Now about justice. These issues that any loyal antagonist here, any issue they lay out have been laid out before the District Court and the First Circuit Court of Appeals and the rulings came down from the First Circuit Court of Appeals indicating that full force in effect with IGRA with the Narragansett Tribe and certainly concurrent jurisdiction on the rest of the issues of their land.

Now I can understand Congress having the power if there is a law that exists wherein it allows a court to make an unjust ruling or the law is unjust and I can understand Congress taking the extreme action of either repealing or adding an amendment to that law like the Chafee Rider.

But with a study of the Chafee Rider and we have pondered this for hours and days, I would like Congress to explain to me what ends of justice was served by voting the Chafee Rider into law? It is a question that has not been answered.

Mr. KENNEDY. Thank you. I would like to followup with a question that seems to have hung over a lot of these questions, and that is when the tribe agreed to abide by State law when this land claim was settled there was a deal and it should be enforced. Can I ask the tribe or its counsel to respond to that because that seems to be the issue here with respect to we ought to enforce the deal that was made in 1978. Why should we not be enforcing that? I mean that was the deal that was made, right?

Mr. NOKA. Certainly, and if Lloyd or Charlie want to answer part they certainly have that right but it is important to point out as I did in my testimony that the Settlement Act, the 1978 Settlement Act, was signed on behalf of the tribe by a corporation, by a State-chartered corporation, not the tribe itself and certainly not a federally recognized tribe which we obtained in 1983.

There is a big distinction there and those people who choose to keep referring to the Settlement Act and what it did to the tribe, the tribe did not agree—the tribe was not held to the civil and criminal jurisdiction of Rhode Island in that Settlement Act. A corporation for the benefit of the tribe which again was not federally recognized, they signed that contract.

Mr. WILCOX. It must be understood that the settlement lands were held and managed by a State-chartered land management corporation which obviously was subject to State law but when those lands came into the possession of the Narragansett Indian Tribe the tribe was federally recognized and any attempt to transfer Rhode Island corporate law onto the federally recognized Narragansett Tribe is rather an extension of powers that the State did not have, if you want to know the truth.

Mr. KENNEDY. So what you are saying is the tribe, it is absurd to say that the tribe agreed that its land would be under State jurisdiction once the tribe land was recognized by the Federal Government?

Mr. WILCOX. Well, once the land came into the possession of the tribe—everyone must understand that the laws consistent with jurisdiction of a State, those laws were imposed upon a State-chartered land management corporation that held and managed the land for the benefit of the Narragansett Tribe.

When the tribe owned the land, the tribe was already federally recognized and that agreement, that 1978 agreement required an amendment to reflect our different status. We are dealing with a honest issue if I must bring up gaming which it is really not the issue of gaming, it is gaining of control that the State does not want to yield up to the sovereign Narragansett Tribe.

We have dual citizenship. You are talking about a federally recognized tribe on Federal trust lands and if we yield to the pacifying offers immediately that Chafee or Almond offer then we are giving up the inherent rights of a federally recognized tribe and the powers and the immunities that come with a federally recognized tribe.

Mr. KENNEDY. And the Circuit Court and the Federal courts uphold that?

Mr. WILCOX. Of course they do. The 1978 agreement should have long since been amended to reflect that. And incidentally in the 1988 colloquy I understand the Senate Committee was not informed of our status as a federally recognized tribe so by omission or something some information did not get to them.

And I am also understanding that no Narragansett testified at those hearings, that the congressional delegation from Rhode Island claimed to be testifying on behalf of the Narragansetts.

Mr. KENNEDY. Thank you for making that point because Senator Inouye has since stated that if he had known that it was a federally recognized—in the event of a federally recognized tribe Federal law would have superseded any State agreement that was made by a corporation with the Rhode Island State Indian Settlement Claims Act.

Mr. WILCOX. But of course. But of course. One last thing from me. This is personal now. You cannot hold the Narragansett Tribe responsible. I just want to read a definition of a bigot and it says one obstinately and unreasonably witted to a particular belief or creed, and creed says any statement of principle. Thank you, Mr. Chairman.

Mr. KENNEDY. I would like to follow by asking the Department of Interior, had this bill come through the process, the legislative process, it would have been the position of the Administration and Department of Interior to oppose this rider, if you will, had it come before the Committee's jurisdiction, it never would have gotten the support of the Administration, am I correct in saying that?

Mr. HAYES. That is correct, Congressman. Secretary Babbitt said as much in his September 1996 letter.

Mr. GILCHREST. [presiding] Mr. Kennedy's time has expired. We will rotate. Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman. Mr. Chairman, I must say Representative Kennedy just continues to come back to a point that has been established clearly by the First Circuit Court and I would like to ask the representatives from—and others, you referred yourselves to the First Circuit Court and the language there is very, very clear that the Congress' grant of jurisdiction to the State in the Rhode Island Indian Claims Settlement Act remains valid. And, Mr. Hayes, do you agree with that?

Mr. HAYES. If I can, Senator, that is the first step but the court further clarified that the State's civil jurisdiction is not paramount as to gaming. The court explained that there is concurrent civil ju-

risdiction, which is not unusual as a matter of Indian law. I think the court is clear on that point.

Senator CHAFEE. The point seems to continually be made here—or attempted to be made—that once Federal recognition came to the tribe that the agreement that was entered into in 1978 was just blown away—and that just is not true. The First Circuit Court has so found and, indeed, I submitted for the record here deeds that were entered into in 1988 and signed by, I cannot read the names because they are all in writing, but Mr. Hazard, Mr. Thomas, representing the Narragansett Indian Tribe, a whole series of individuals.

And they signed a document that just before it had written "Pursuant to the delegation from the Assistant Secretary-Indian Affairs to the Eastern Area Director, the undersigned hereby accepts the lands conveyed by this deed. . . . This action does not alter the applicability of State law conferred by the Rhode Island Indian Claims Settlement Act, Public Law 95–395, 25 U.S.C. 1701 et. seq."

So the point I keep coming back to that Representative Kennedy seems to ignore is that the agreement was valid that was entered into and was altered by the IGRA which we all agree to. I would just like to ask you, Mr. Hayes, quickly, if I might, again stressing this point, my amendment was designed to preserve the 1978 grant of jurisdiction which included criminal and civil law jurisdiction.

You say that this is a bad precedent but what about all the other Federal settlement laws? Maine, for example. Why do you say that this is so unique? It is not unique. The settlement laws really apply just to eastern tribes.

Mr. HAYES. The reason it is unique, Senator, is the reason why the First Circuit did not find the 1978 Settlement Act dispositive, i.e., that Congress did not clearly enunciate in IGRA an intention to except this tribe from the sovereign rights and privileges granted to the other tribes under IGRA.

The First Circuit relied heavily on the fact that denying the benefits of IGRA to the tribe would be a major decision, and as the court put it, the 1978 Settlement Act was at the best unclear in terms of whether it should supercede IGRA. The court concluded that the Settlement Act did not because of the concurrent civil jurisdiction concept that is a prevalent concept in Indian law.

It is true that post-IGRA, there have been on a few rare occasions explicit congressional judgments that IGRA will not apply to certain lands. That is not what the First Circuit faced. The First Circuit faced a situation where IGRA was silent on the question, Senator, and the First Circuit concluded that it could not take away IGRA's rights as to the Narragansett and we rely on that decision.

Senator CHAFEE. One quick question to you, Mr. Noka, and that is, you say you want high-stakes bingo. Are you prepared today to commit that you would not seek a casino if granted the high-stakes bingo?

Mr. NOKA. Well, first of all, Senator, we are here today about the sovereign attack that you led against us but we point out in our testimony that according to IGRA and other Federal law and what the State allowed we could have high-stakes bingo before your rider was passed. That is what I mentioned in my testimony.

I am not individually—I do not have the authority to commit to anything on behalf of the Narragansett Tribe without the authorization of the tribe.

Mr. GILCHREST. Thank you, Senator. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. GILCHREST. Was there a further comment on that? Was there something else you wanted to say?

Mr. NOKA. The Medicine Man said if Senator Chafee withdraws his amendment we can deal with that.

Mr. WILCOX. We will talk about it.

Mr. GILCHREST. That is an interesting scenario. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Both as a member of this Committee and as co-chair of the congressional Native American caucus I really want to find a remedy to the treating of the Indians of Rhode Island, the Narragansett Indians, differently than the other tribes in this country. I just think it is unfair to single out one tribe and treat them differently.

I helped write IGRA. I was not sure we needed it. I thought the Cabazon decision gave under your sovereignty rights to you but finally after I consulted with the various Indian leaders throughout the country they felt IGRA would be something that would work well. So at first I just thought let us go with the Cabazon decision.

But at least you should be treated under IGRA as the other nations are treated under IGRA. I really feel very strongly on that. Apparently you are appealing in court that the Chafee Rider—does the Interior Department through the Justice Department take any position on that appeal in the courts?

Mr. HAYES. I do not believe so, Congressman. I do not think we are involved.

Mr. KILDEE. In your trust responsibility you are supposed to uphold the sovereignty of the various tribes including the Narragansett Tribe. It would seem to me that there is a position for the Department of the Interior working through the Department of Justice to join with the Narragansett Tribe to make sure they are not singled out. And I would hope that the Department of Interior would reevaluate its position.

Mr. HAYES. I certainly will, Congressman. I am not sure we have a position but we will look into it. You make an excellent point.

Mr. KILDEE. Your trust responsibility, among the various things you have your trust responsibility, and the trust responsibility resides with the entire U.S. Government. The Interior Department and the BIA has got a point person on that but the entire U.S. Government. But part of that trust responsibility very often has been to protect the Indian sovereign tribes from intrusion by State government, is that not correct?

Mr. HAYES. That is correct, Congressman.

Mr. KILDEE. And I really would hope that you would join and go back and report to those you report to that it would seem to me that it would be really good if the executive branch of government which is part of that trust responsibility would join the tribe in saying, hey, this is unfair, you are singling this tribe out, treating them different than hundreds of other tribes in this country and why?

I think they come up and use—you got a battery of attorneys over there in the Justice Department that might help them out in their case.

Mr. HAYES. We will followup on that, Congressman.

Mr. KILDEE. Thank you very much. Thank you. I yield to Mr. Kennedy.

Mr. KENNEDY. Thank you. I would just like to ask First Councilman Noka to comment about how he feels and felt last year with respect to this issue and not having had an opportunity in the hearing to voice your opinion before this rider, so to speak, was put on the Omnibus Budget Appropriations Bill.

I want to read Senator McCain who said on the Floor of the Senate, "This past January I met with Senators Pell and Chafee at their request to review their concerns and discuss what they could do with regard to the tribe's ability to game under IGRA. At that time I made it clear to them that although I oppose them on the merits, I would not use my position as Chairman of the Committee of jurisdiction to block a bill that they would introduce to amend the Narragansett Land Claims Settlement Act to gain the clarity they sought against the tribe.

"Indeed, I told them I would schedule a hearing and I would allow the bill to move to the Senate Floor for consideration. I was surprised to see that he did not take any such action during this entire session. Had they done so, we would have long ago voted on authorizing legislation with the benefit of a full and fair hearing and record." Would you comment on that, Mr. Noka?

Mr. NOKA. I appreciate the opportunity to more or less ask Senator Chafee the same thing but I will give my opinion on that. I think it is a total obligation of the sovereign rights of the Narragansett Tribe, the total obligation of Indian country and what we are and what we stand for. I think it is a total abrogation of the senatorial process what Senator Chafee did and how he did it last year.

Particularly, it is bad enough what he did to us but how he did it is adding insult to injury. I mentioned briefly in my testimony before and I thank you again for the opportunity to expound more. Senator Chafee, it is my understanding, the tribe's understanding, that he was invited by then Chairman McCain, Senate Indian Affairs Committee Chairman, to address that very issue, the rider issue.

And for whatever reason, and maybe Senator Chafee can enlighten us all at once, for whatever reason he chose not to take the invitation from Senator McCain to heart. He waited till the 11th hour of the 104th Congress and he submitted his legislation despite the fact of having the whole 104th Congress to do this deed, he waited till the last hour to do this deed.

On top of that, he was invited by Senator McCain to come before the Committee. If Senator Chafee was so proud of what he did and felt it was so right then why didn't he do it the right way as far as what senatorial process requires?

Mr. GILCHREST. I thank Mr. Noka and the gentleman's time has expired. I will take the prerogative of the Chair to let the Senator respond.

Senator CHAFEE. Mr. Chairman, I would point out the hearing before the Committee on Indian Affairs, U.S. Senate, 103d Congress, July 19, 1994, who testified? Senator Chafee testified at that hearing. That was a hearing before the Committee on Indian Affairs. That was on July 19. Previous to that on May 17, 1994, before the Committee on Indian Affairs, who testified before there? Senator Chafee.

So this suggestion that I had an opportunity to appear and testify ignores what had taken place before, and I want to get that very clear. I also want to get clear, Congressman Kildee has said several times that Rhode Island was treated differently from other States. But it seems to just skip over the fact that we had a Land Claims Settlement Act and it was not just some Rhode Island law, it was a Federal law. It was a Federal law that had been enacted here in 1978, and so that makes the difference.

And that law inadvertently was overridden by portions of IGRA which none of us—and you have read the colloquy—none of us thought occurred at the time, so it is not about discrimination, which has been thrown around here rather casually, but I think it is important to remember what the situation was. Thank you, Chair.

Mr. GILCHREST. Thank you, Senator. Congressman Weygand.

Mr. WEYGAND. Thank you very much, Mr. Chairman, and I want to thank you for your indulgence in allowing us to sit up here and allowing this testimony to go forward. This has been very gracious of you and I appreciate that.

I have just a couple of questions of David. I think the first question would be as I understood it back in 1996 there were various amendments that were being proposed to the Omnibus bill, the Clinton Administration—and some of them had to do with various gaming proposals. And excuse me if this has already been discussed while I was over voting.

There were very many amendments that were proposed but the Clinton Administration only agreed to one and that was the Chafee Amendment. Yet, your testimony today here indicates that the Secretary disagreed with it, yet my understanding was there was agreement by the Clinton Administration. Can you clarify that?

Mr. HAYES. I can, Congressman. The Secretary stated very clearly in a letter to the Senate that the Department disagreed with this specific rider and explained why, for much the same reasons that I explained today. It was a rider to an omnibus funding bill that had broad significance. The bill was not vetoed by the President. That does not mean that the Administration supported this rider.

Mr. WEYGAND. Well, I understood to the contrary. I thought there was negotiations with the Administration, that in effect there had been agreement on this rider. But the other question has to do with something that my colleague, Congressman Kildee, had mentioned. Clearly, if the Secretary feels this strongly about it why haven't you acted before this point or even have it enacted in the first place?

Mr. HAYES. The rider was just passed in July—at the end of the last session, Congressman.

Mr. WEYGAND. But there has been already court action. Why haven't you done anything this far?

Mr. HAYES. Congressman Kennedy specifically focused this hearing on this issue and it seems appropriate for the Congress to take the lead. As my testimony explains, we are fully supportive of the repeal of the rider.

Mr. WEYGAND. Does that also mean that you will be going to court as a party to the——

Mr. HAYES. We are going to look into that. I apologize for my complete lack of knowledge about the fact that that case had even been filed. I should clarify that, Congressman. That was news to me today. So we are going to look into that, certainly.

Mr. WEYGAND. One other question. There was different testimony given today by a number of people about various agreements that have been made at other States after IGRA that in fact have some sort of restriction or mitigation with regard to IGRA. Are you familiar with those States? Maine was specifically mentioned. And how would you differentiate, legally, I guess, between post-IGRA Indian Settlement Act agreement versus pre-IGRA Indian Settlement Act agreement?

Mr. HAYES. The difference, Congressman, is very simple. In those acts, I believe there are only two, I may be wrong about that, there are explicit provisions by Congress that explicitly override IGRA. I do not think there is any question, Congressman, that Congress has the ability to amend IGRA in any way it sees fit.

In this case, though, the First Circuit determined that there was nothing in the language of IGRA which supported an interpretation that the 1978 Land Settlement Act limited the Tribe's right under IGRA.

On the other hand, the appropriations rider is such a clear statement and we are here today because we object to it.

Mr. WEYGAND. That you object to it. Do you object to the two other Indian Settlement Acts that supersede or circumvent IGRA?

Mr. HAYES. I cannot speak to that personally, Congressman, just because my lack of personal knowledge. I know that the Department takes a very careful view any time that there is any limitation on what would otherwise be rights of tribes, but I cannot speak to the specifics of those land settlement claims.

Mr. WEYGAND. I truly appreciate your testimony here today and I appreciate Congressman Kennedy asking you to come here but if in fact you happen to disagree with this particular Settlement Act versus IGRA why in fact aren't we taking then equal action against those other States that may have in fact the same kind of policy or philosophy behind them?

I am at a loss to say that the Federal Government is doing one thing in Maine and in other States they are doing something separate. Forgive my ignorance, I am new to the Congress, certainly not new to Rhode Island but new to the Congress. I hope that the Secretary himself could provide me with some of that information.

Mr. HAYES. Certainly, Congressman. Process is very important in these issues. It is my understanding that in those acts there was full consideration of the implications of an explicit repeal, if you will, of IGRA and a full airing of it. In that context, it is for the Congress to decide what will and will not apply to Indian lands.

We have a different situation here where as an Administration we feel it necessary to heed the dictates of the First Circuit, a decision that was appealed to the Supreme Court and appeal denied. The ruling of the First Circuit was that IGRA supercedes the Rhode Island Settlement Act as it applies to the issues raised here today. We agree with that ruling, particularly in the absence of an explicit statement in IGRA that it was meant to overturn the 1978 Rhode Island Indian Land Settlement Claims Act.

There is no question though, Congressman, that this body has the right to determine policies on Indian lands. We are concerned, however, that in the absence of clarity which is what the First Circuit determined was the case here, there should not be implied repeals of IGRA.

Mr. GILCHREST. Thank you, Mr. Hayes. Thank you, Mr. Weygand. Ms. Green, any questions?

Ms. GREEN. Thank you, Mr. Chair. I yield my time to my colleague from Rhode Island, Mr. Kennedy.

Mr. KENNEDY. Thank you very much. I would like to just underscore that because it goes right to the issue here. And you stated it really clearly. It does not need to be repeated. But IGRA applies. It is the only tribe, the only tribe to be carved out for an exception under IGRA, the only tribe, so the argument about other land settlement claims and the like has clearly been delineated by you right now just so we clear that air with respect to previous agreements.

I might ask—I know First Councilman Noka had some other comments with respect to a previous question that he never got a chance to answer.

Mr. NOKA. Yes, not that I want to be guilty of abrogating congressional policy that others may have but the question you previously asked me, Congressman Kennedy, how I felt personally anyway and Senator Chafee did answer it in part but let me just say this. I believe the tribe would certainly be more comfortable if his rider was brought the route it should have been brought, the regular process requires.

If it had been brought as legislation instead of a rider through the Omnibus Appropriations Bill, if it had been brought with hearing opportunity and all the rights that are usually given to people that are going to be affected by legislation, if it had been brought that way and it was voted down and we were voted out as far as IGRA goes, then we could have lived with that more comfortably than the insulting way that it was brought.

Mr. KENNEDY. With that Congress, by the way, with the 104th Congress, each Congress is a new Congress. So hearings that happened in the 103d, all fine and well, but you got new people who come in in each Congress. They have the responsibility of voting based upon a new Congress.

That is why we have new Congresses because you have elections in between and when you have elections in between you have new people elected. Many times you change the makeup of the Congress in order to follow the will of the people. So what happened in some hearing in the 103d is not the answer for why there was not any hearing in the 104th.

Mr. NOKA. Well, Congressman Kennedy, I am not sure what Senator Chafee was referring to anyway in those previous Congresses. I know what he did in the 104th Congress and what he did to the Narragansett Tribe and how he did it and I find it insulting and very offensive. And we could have—again, my point is I believe the tribe could have lived with it had we been defeated going the normal route, going the route that is brought with honor and conviction as opposed to back door, 11th hour on the last days of Congress.

Mr. KENNEDY. I would just like to ask you finally, would you comment with respect of if this can be done to the Narragansetts——

Mr. GILCHREST. If I would just—I want to take one exception. Can we confine our testimony to the legal questions at hand and not refer to what are actually legitimate practices here in Congress as back door or insulting maneuvers. They are actually legitimate. And I understand the emotion in this whole entire issue and I have strong feelings about people's sovereignty, independence and justice and those issues but if we can confine our testimony to the legitimate legal questions at hand I would appreciate it. Thank you.

Mr. NOKA. Mr. Chairman, I certainly will but he asked how I felt and that is personally how I felt.

Mr. KENNEDY. I would yield to Senator Chafee.

Senator CHAFEE. Mr. Chairman, I just briefly want to get on the record if I might for Mr. Hayes, Congressman Kennedy constantly stresses that the Rhode Island situation is something very, very unique but am I not correct in that the main Settlement Act is exempt from the IGRA?

Mr. HAYES. Yes, Senator.

Senator CHAFEE. Now is it not—may I finish? Is it not also true that the South Carolina Catawba Indian Settlement Act is exempt from IGRA?

Mr. HAYES. Yes, Senator, and I believe those are the only two and they are explicit overrides of IGRA. In the case of South Carolina, for example, the tribe specifically requested that as part of their agreement with the State.

Senator CHAFEE. And I think, and you will have to check on this, but I think the Micasuki Settlement Act is likewise.

Mr. KENNEDY. Mr. Chairman, I would like to reclaim my time. I would like to reclaim my time. The Rhode Island Indian Settlement Claims Act is different from the two acts you just cited, Senator Chafee, and Mr. Hayes has testified to that already three times in the last 20 minutes. In giving them their sovereign rights there was an explicit exception for IGRA. That was not the case with the Rhode Island Indian Settlement Claims Act.

Mr. GILCHREST. The time of the gentlelady has expired. All time has expired for this panel. Gentlemen, we appreciate your testimony here. It will be taken into very serious consideration and we thank you for coming to Washington to give that testimony. Thank you very much.

Mr. NOKA. Thank you, Mr. Chairman.

Mr. GILCHREST. The next panel is going to change slightly, the Honorable Donald Lally, Ms. Patricia Almeida, Mr. Ron Allen, and Mr. Frank Ducheneaux will all be on this final panel. If you will

all please come forward. Donald Lally, Jr., State of Rhode Island House of Representatives, Ms. Patricia Almeida, Spokesperson, The Alliance to Save South County, Mr. Ron Allen, President, National Congress of American Indians, and Frank Ducheneaux, Attorney at Law. Mr. Lally, you may proceed.

STATEMENT OF HON. DONALD LALLY, JR., STATE OF RHODE ISLAND HOUSE OF REPRESENTATIVES

Mr. LALLY. Thank you, Mr. Chairman, members of the Committee, Representative Kennedy. It is good to see you again. Senator Chafee. I have with me today three separate statements. The first statement is from the Rhode Island House of Representatives signed by 16 different representatives.

As a member of the Rhode Island General Assembly I want to first of all congratulate and commend you for reestablishing the regular legislative procedure regarding the sovereign rights of the Narragansett Indian Tribe of Rhode Island. As you know regrettably, in the final hours of the 104th Congress a legislative rider was included in the 1997 Omnibus Appropriations Act that singled out Rhode Island's only federally recognized tribe for separate treatment from all other Native American tribes.

We regret that this legislative rider sponsored by Senator Chafee was never introduced in the form of legislation in the last Congress. We regret that no public hearing was held on the rider. We regret that no congressional report was ever issued on the rider. We regret that the Narragansett Tribe was never even consulted on the rider despite its impact on the tribe.

So we applaud you for conducting an open oversight hearing concerning this fundamental matter that the Narragansetts lost last year of basic sovereign rights. We respectfully request that our letter be made part of the public record at this May 1, 1997 hearing.

We in Rhode Island pledge to work with you in reestablishing the full government relationship with the Narragansett Tribe that every other tribe enjoys throughout the United States. In that regard, you should note that we support pending legislation in our General Assembly to create a joint Committee whose duties would be as liaison with tribal government, consult and counsel with all State agencies, municipalities and the Federal Government and any other groups or organizations that the Committee deems necessary to fulfill its goal in addressing those social and economic issues which specifically impact the State and its relations with the tribe.

It shall investigate the feasibility of cooperative social and economic undertakings including, but not limited to, tribal small businesses, housing, employment, gaming and educational alternatives. It shall promote negotiation and open channels of communication between the two sovereigns.

I now have a letter from Senator Paul Kelly, Senate Majority Leader that I would like to read into the record. "Dear Congressman. I would like to take this opportunity to express my opinions before the members of the House Resources Committee regarding the sovereign rights of the Narragansett Indian Nation within the State of Rhode Island.

"Native Americans, including the Narragansetts, have long retained the status of a sovereign nation within the United States of America. It is imperative that these people be afforded opportunities to provide mechanisms allowing better health and educational services, as well as continuing to improve their overall quality of life.

"If the Narragansetts are precluded from their entitled due process, as codified under Federal regulations, it will be construed as another example of discriminatory practices that have long befallen this proud nation. The Narragansett's proposals for tribal land usage should be handled in a manner that appropriately embraces the reality of a sovereign nation, and in a manner consistent with the law governing every other recognized tribe in America.

"In closing, the Narragansett people's rich culture and heritage are part of our history. Ensuring an objective process will not only preserve this history, but is the fundamental right of the Narragansett Indian Nation. I trust the Committee will view these matters in a fair and impartial nature."

I have a short statement of my own. I am here today to testify on behalf of the Narragansett Indian Tribe. The Washington Delegation and the Governor are speaking for themselves and only a small, vocal minority. The recent polls and earlier polls show that the Narragansetts have the overwhelming support of the majority of Rhode Islanders. Presently there are two bills pending in the Rhode Island General Assembly. I have included copies of these bills with my testimony.

The bill to establish a permanent Joint Committee on Indian Affairs would set up a Committee to act as a liaison with tribal government, consult and counsel with all State agencies, municipalities and the Federal Government. It would investigate the feasibility of cooperative social and economic undertakings including, but not limited to, what I stated before, the tribal small business, housing, employment, gaming and educational alternatives.

To date, the State of Rhode Island and the Narragansett Indian Tribe have primarily communicated through the Federal court system. Many of us in the Rhode Island House of Representatives feel that the time has come to openly communicate. This permanent Committee will go a long way to opening those lines of communication.

The 1994 referendum for a gaming facility for the tribe is not an accurate reflection of the opinion of Rhode Islanders. The Referendum questions relating to the tribe did not identify the tribe as owners of the facility, but rather only identified the location of the facility. As the facility was not on tribal land or tribal property, voters did not identify the Referendum question with the tribe. Further, the Referendum question was one of six similar questions which further confused voters and created the perception of a small State overrun with gaming facilities.

The issue before you today is one of sovereignty. Indian tribes, including the Narragansetts, have retained the attributes of a sovereign, or independent nation. These rights pre-date the birth of this republic and essentially place the Narragansett Indian Tribe in a government-to-government relationship with the United States of America and the State of Rhode Island.

It is also an issue of discrimination. Rhode Islanders overwhelmingly believe that the tribe has been discriminated against in the past and continues to be discriminated against today.

Mr. GILCHREST. Mr. Lally, are you nearly done?

Mr. LALLY. Yes. I have one paragraph to go. Certain Rhode Island leaders have chosen to ignore the issue of fundamental fairness. Rhode Island has two casinos and derives enormous revenue from its State-run lottery system. Governor Almond and Senator Chafee believe that the State can use gaming as economic development but the tribe cannot.

I do not want to reduce this hearing to one on gaming. I felt that I should deal with that issue because it was being discussed by the opponents. What I want to do today is hopefully convince you to restore the sovereign rights of the Narragansett Indians and help end the discrimination that the Narragansetts have suffered for centuries. Thank you.

[The prepared statement of Mr. Lally may be found at end of hearing.]

Mr. GILCHREST. Thank you, Mr. Lally. Ms. Almeida.

STATEMENT OF PATRICIA ALMEIDA, SPOKESPERSON, THE ALLIANCE TO SAVE SOUTH COUNTY

Ms. ALMEIDA. Good morning, Mr. Chairman, and members of the Resources Committee. It is an honor and a privilege to testify here today and I would like to thank Senator John Chafee and Jack Reed as well as Representative Robert Weygand for their invaluable testimony in defense of the civil rights of the people of Rhode Island.

Thanks also to Governor Lincoln Almond who steadfastly has opposed casino gambling in Rhode Island. My name is Patricia Almeida and I am here to represent the majority voice of the people of Rhode Island who in November 1994 resoundingly rejected five separate casino gambling proposals which appeared on the ballot. Everyone was well informed that the referendum question to which Mr. Lally just spoke did belong to the Narragansetts. It was all over the State.

I speak on behalf of The Alliance To Save South County, a grassroots organization established in 1991 in opposition to unregulated development like the proposed Narragansett Indian casino. The Alliance is dedicated to protecting the natural historic, scenic, coastal and cultural character of our community. Quality of life is why people live in South County.

The Alliance is also a member of the Rhode Island Coalition Against Casino Gambling which battles the expansion of gambling in Rhode Island as well as around the nation. Five years ago almost to the day the Narragansett Tribe announced its intention to build a casino on tribal land at Charlestown. Previous witnesses have explained the chronology of events which bring us here today.

I want to make a few key points. The basis of our 1978 agreement was a document called the Joint Memorandum of Understanding which all parties voluntarily signed and I would like to submit to you for the record. This is basically the scratch paper that was used to create the Settlement Act. It is very clear in here what everyone's intent was signed by all the parties.

No one is impeding the Narragansetts' right to self-government. The people of Rhode Island are just saying that casino gambling is not the way to finance it. Casino gambling is illegal in Rhode Island. I would like to explain to you what concerns the people of Rhode Island and especially the town of Charlestown have about the Narragansetts' position.

When the tribe announced its intention to build a casino in Charlestown my personal reaction was one of dread. What was the type of development going to do to the rural character of our community. This could turn our town into another Atlantic City. The Magatucket Pequats were already opening one in Connecticut less than 20 minutes away. What about the water supply, what about the traffic, what about this effect on our children. The roads would never bear all the traffic.

Would our volunteer fire department be adequate? The proposed facility is surrounded by Rhode Island's most important conservation areas, private and Federal wildlife preserves. The Gray Swamp and Carolina Management areas, the Burlingame State Park, natural salt ponds, barrier beaches, freshwater beaches, and the North-South Hiking Trail. It also lies atop a sole source aquifer. Charlestown, like most Rhode Island coastal communities, relies heavily on tourism for economic base. Tourism is the second largest industry in the State.

Our natural resources are our source of income. We need to protect our environment. Westerly, a slightly larger community to our west, has already experienced the negative effects of surviving in the shadows of casino development. The Magatucket Pequats Foxwood Casino and the Mohican Sun Casino have devoured many small businesses in the area. Just over the border in Connecticut a small mill village of 18th century origin has had the traffic count more than triple since the opening of these casinos.

The winding roads see so much traffic that the residents fear for their safety. Fixtures on the walls of the homes rattle as traffic flies by. Help preserve our village, cries Carol Collett. I emphasize having resided in a historic mill village for 21 years my village would be a corridor from Route 95 to the proposed Narragansett facility.

When I recently asked citizens of South County if you would testify in Washington what would you say to the Resources Committee? The following thoughts were expressed, just a few. Charlotte Brofy is concerned about the town's rural character being destroyed. Martha Rice and Richard Holliday have been relying upon the application of local and State zoning laws to tribal lands to protect their home investments from uncontrolled development.

Leona Kelby said that we are not big enough for any kind of a casino. It would ruin the life of us. As early as 1994 attempts were made by the Alliance to Save South County to reach Representative Patrick Kennedy regarding his position on the Narragansett casino proposal. Individuals requested meetings or the courtesy of a return phone call. Promises by his staff to send position papers if requested by residents.

We are still waiting. Another resident after several unsuccessful attempts to contact the representative was told that there was no time available for people outside his district. The first we saw Pat-

rick Kennedy's face was in the Narragansett Indian News. I have included some copies.

Mr. GILCHREST. Ms. Almeida, are you nearly done?

Ms. ALMEIDA. Yes, I am. After several unsuccessful attempts—I have done that, sorry. Failing to get an appointment with him, we were forced to rely on newspaper articles quoting his stance on the casino issue. He publicly repudiated the validity of the Rhode Island Land Claims Settlement Act. The language in the Settlement Act seems as clear as any provision ever included in a Federal law.

Senator Chafee's reputation has been viciously maligned by Representative Kennedy. The Senator was simply representing the majority of Rhode Islanders when he fought to uphold the Rhode Island Settlement Act. When Patrick Kennedy criticizes Senator Chafee, I find it curious that he does not also criticize former Senator Pell and then Congressman Reed who also felt that the 1996 amendment clarifying the original intent was necessary.

The tribe's own Washington attorneys agreed with the senators in their own legal analysis of high-stakes bingo on Narragansett tribal land dated June 1991, which I will submit. They state the tribe should seek an amendment of the 1978 Settlement Act to add words to the effect except with respect to activities under IGRA. The lawyers were concerned that the senators would move to close an unintended loophole in the Gaming Act.

The Narragansett Indian Tribal Resolution Number TA91–427 dated April 27, 1991, states that the tribal legal advisors informed the tribe of the need of amending Federal legislation intended to restore tribal jurisdiction over economic development affairs, notably Class II high-stakes gaming.

Mr. GILCHREST. Ms. Almeida, would you——

Ms. ALMEIDA. Just two more sentences?

Mr. GILCHREST. Two more sentences.

Ms. ALMEIDA. Everyone agreed that a clarifying amendment was necessary. Thank you again for affording me this opportunity to appear before you and voice for the people of Rhode Island. Thank you.

Mr. GILCHREST. Yes, ma'am.

Mr. GILCHREST. Mr. Allen.

STATEMENT OF W. RON ALLEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. ALLEN. Thank you, Mr. Chairman. I am also honored and privileged to be here before you and the Committee to talk about this very important item. I am the president of the National Congress of American Indians. I am also the Chairman for the Charlestown S'Klallam Tribe, a small tribe located in western Washington and I am here to provide you some views of our organization that represents over 200 tribes across the Nation, with regard to this concern over how the Congress handled this issue with the Narragansett Tribe.

Our organization has been fighting suppression and termination efforts for the last 50 years and it goes way beyond that but we organized in order for the tribes across the Nation to deal with the Congress. We were here with you not too awful long ago to talk

about the ICWA Act and talking about the concerns we have over undermining of the tribe's sovereignty rights with regard to child welfare issues.

Today we are talking about the elimination of the sovereign authority of a tribe, the Narragansett Tribe, to be able to move forward with advancement of its self-sufficiency goals. When we think about the self-sufficiency and self-determination and self-government initiatives and policies of this Congress and the Administration since the Nixon Administration they have been quite a challenge.

And as has been noted earlier in the dialog here it is an ongoing dialog with the congressional leadership with regard to what America's responsibilities are to the American Indian tribes in our communities. We have a great challenge. It is very frustrating for us when we listen to dialog that talks about support for the tribes' self-governance and self-determination and right to pursue self-sufficiency but then put up all these obstacles for us to achieve that.

Now gaming happens to be an opportunity that is used by some tribes. There are 557 tribes. There are only about 184 tribes that are actually engaged in gaming. Many of the other tribes are not going to ever be able to pursue this opportunity but the ones that can pursue it, it is a very viable option.

What we want to reference is the fact that historically the Federal Government and the State governments have not lived up to the needs of the Indian communities to advance our progress economically, socially, culturally. They have not done that. So when they asked us to pursue other ventures, other options, they do not step forward and provide us meaningful, useful assistance.

And there is no track record anywhere in the United States where that has occurred. So we are really concerned about where the Congress is going with this technique. We think it is wrong. We absolutely objected to the use of a rider to modify existing commitments to Indian nations and to modify our sovereignty. We saw a number of them last year.

We were pleased that the Administration absolutely objected to it. We were disappointed that there was such adamancy by the Congress that the Administration had to agree to this one. Now they recognize that we need to fix it and we are very pleased that that has taken place. We are very delightful that the Chairman, Don Young, and Congressman Kennedy are helping to advance this issue. We think we can right this wrong and we think it is very important.

We think America understands that there is a very unique relationship between the tribes and the United States and the States and it is a co-existent, a co-jurisdictional relationship that can work if they have the will and the willingness and the attitude to make that happen.

The Supreme Court has made it very clear that the Congress when it is legislating its plenary authority must take into consideration the tribe's unique independent sovereign rights and we urge you to recognize that and we urge you in resolving problems and conflicts within the States and within the communities in America that you need to also be very respectful of the tribes and also conscious of our conditions and our problems.

There is no one out there who is going to solve our problems but us. Now when you talk about gaming issues it seems to have taken on a real high profile and that is very disappointing to us. There are people who like gaming and there are people who do not like gaming. That is a fact of life. There are people who like abortion. There are people who do not like abortion. That is a fact of life and we have to work out our differences here.

The Indian gaming industry began way before IGRA, IGRA was enacted in 1988, Indians had gaming long before 1988. In 1988 there was an agreement, a reluctant agreement, with the tribes and the Federal Government regarding how they are going to manage this co-jurisdictional issue and that created an opportunity for the States to be involved in working with the tribes.

Now the issue here is the Narragansett tribe is being eliminated from that opportunity and they should not be eliminated from that opportunity. We have problems and we will resolve our problems if the U.S. Government will give us the right to pursue these opportunities and diversify our economy using whatever resources are available to us and gaming happens to be one of them.

We do not have a tax base, so we have to generate businesses to make it work. So I would like to make it real clear that the tribes want to work with the Federal Government, they want to work with the State government, they want to work with their communities. The issues that I have heard in the previous panels and in this panel we have resolved and we can resolve.

And so what we are saying to you is that as was mentioned earlier this morning, this Congress would never pass a rider that would eliminate a State's right to pursue gaming for its purposes whether it is education or whatever they use their moneys for. Tribal governments are governments and you must treat us as governments with the same respect. That is a bottom line fundamental principle and we think it is imperative.

So we ask you in good conscience and moral obligation to the tribes and the Narragansetts, we must repeal this rider and we must look for a better more appropriate resolution to this issue. Thank you.

[The prepared statement of Mr. Allen may be found at end of hearing.]

Mr. GILCHREST. Thank you, Mr. Allen. Mr. Ducheneaux.

STATEMENT OF FRANK DUCHENEAUX, ATTORNEY AT LAW

Mr. DUCHENEAUX. Thank you, Mr. Chairman. My name is Franklin Ducheneaux. I am a partner in the consulting firm of Ducheneaux, Taylor & Associates. I would like to correct the record. While I am an attorney, I am not an attorney at law and our firm does not practice law. I would ask that my written statement be accepted for the record and I will summarize.

I have been asked to testify today because of my prior service on the staff of this Committee during the consideration of legislation enacted as the 1978 Rhode Island Indian Claims Settlement Act and the 1988 Indian Gaming Regulatory Act. I served as Counsel on Indian Affairs to this Committee, when it was the Interior and Insular Affairs Committee, from 1973 through 1990.

The last 14 years of that service was directly under former Chairman Morris K. Udall when the Indian affairs jurisdiction was

held in the Full Committee. My brief statement today will relate to the relevant history of the enactment of IGRA.

Gaming by tribes became a hot political issue as early as 1983, and by the time of the convening of the 100th Congress, the issue had become extremely controversial in the Congress, with a growing polarization of the interests. On February 25, 1987, the Supreme Court handed down its decision in the case of *California* v. *Cabazon Band,* which fully upheld the right of Indian tribes, under certain circumstances, to engage in or regulate gaming on their lands free of State regulations.

This decision for the tribes shocked both sides, and created an atmosphere in the Congress for eventual legislative agreement. Legislative efforts proceeded in both Houses throughout the first session of the 100th Congress without much success. There were strong forces operating in both Houses supporting legislation to ban gaming by Indian tribes and there are still those forces.

Chairman Udall's position, however, was strong, continuing and unequivocal. Mo made clear that he was strongly opposed to gambling, and, in particular, he opposed government gambling such as State lotteries. However, he was equally strong in his support for tribal sovereignty and the right of tribal self-government. He fully agreed with the Cabazon decision.

Early in the second session of the 100th Congress, Mo advised me that, while he felt he could still control the issue in the Committee, he probably could not control matters on the Floor if his bill, H.R. 2507, was reported from the Committee. As a consequence, an informal agreement of the parties was reached which contemplated negotiations on a Senate bill.

If the parties could agree on a bill passed by the Senate, Mo agreed that he would hold it at the desk and pass it under suspension of the rules. If not, he would insist upon referral to the Committee in the normal course under the rules of the House.

Negotiations went on for the first part of 1988. Parties included various House and Senate staff, representatives of Indian tribes, the State, the Administration, non-gaming industry officials and others. Chairman Udall authorized me, subject to his general direction, to represent him in those discussions.

On May 13, the Senate Committee marked up S. 555 and ordered it reported. Chairman Udall did not find the bill, as marked up, acceptable. Further negotiations went on and by late July we had arrived at language which with few exceptions was acceptable to Mr. Udall. The Senate Committee filed its report on this compromise bill on August 3. Despite Chairman Udall's explicit objection, this bill in the Senate report contained Section 23 which was unfavorable to the Narragansett.

On September 15, the Senate passed the bill with amendments, including one striking out Section 23. With these amendments, the bill was acceptable to Mr. Udall. Pursuant to the general agreement, Mr. Udall had the bill held at the desk without referral while interested House Members reviewed the Senate-passed bill. On September 26, S. 555 passed the House under suspension of the rules, and was signed into law on October 17, 1988.

Mr. Chairman, I would close my testimony with a quote from Chairman Udall's Floor statement at the time of House passage. I

quote, "S. 555 is the culmination of nearly 6 years of congressional consideration of this issue. The basic problem which has prevented earlier action by Congress has been the conflict between the right of tribal self-government and the desire for State jurisdiction over gaming activity on Indian lands.

"On July 6, I inserted a statement in the Record which set out my position on this bill. I stated that I could not support the unilateral imposition of State jurisdiction over Indian tribal governments. I did state, however, that I remained open to reasonable compromises on the issue.

"S. 555 is such a compromise, hammered out in the Senate after considerable debate and negotiations. It is a solution which is minimally acceptable to me and I support its enactment. While the Interior Committee did not consider and did not report S. 555, certain members and Committee staff did participate very actively in negotiations in the Senate which gave rise to the compromise of S. 555."

Mr. Chairman, this concludes my statement and I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Ducheneaux may be found at end of hearing.]

Mr. GILCHREST. Thank you, Mr. Ducheneaux. We will start the questioning with Mr. Kennedy.

Mr. KENNEDY. Thank you, Mr. Chairman. I just want to make an observation here because I do agree, we have been back and forth arguing the merits of the legal positions and I think that we have made that case clear but I just want to step back for a second because I think one of this country's greatest disgraces and shames is the way it has treated its Native Americans.

I mean the fact that in America today there is 93,000 homeless American Indians, that Indians have the highest rate of diabetes, tuberculosis, fetal alcohol syndrome of any other group. The suicide rate for teenagers is four times what it is for everyone else. Unemployment in the case of the Narragansetts is 40 percent.

OK, we came over here, we took all their land, and what do we give them in return? Some idea of sovereignty. We said we take all your land, what are we going to give you? Some idea of sovereignty, OK? So there is some notion we got to give them economic empowerment. Gaming was one of the things. States are gaming, Rhode Island is gaming, and now we are saying we are going to take back that.

I mean albeit but I—I mean when the State is gaming like it is and I can have pro or con, whatever you would like, the fact is there would not be this issue if the Narragansetts still had this land. They would be providing for their people through a myriad of other economic sources that the State and Federal Government took away from them.

They would be providing for their people. Their people would not be in the economic situation they are in today. But for us taking away that, we ought to be having a hearing on us taking—the U.S. Government taking away all their economic means of sufficiency. OK, so now we give them gaming and now we are going to say, well, you know, I guess we do not like that, you know, even though under IGRA, and I just finally want to say, there are provisions for it.

And as Ms. Almeida said, you know what, the State of Rhode Island, they do not support gaming, two-thirds of the people voted against it, OK. Under IGRA you have to vote—you have to have voter approval, you have to compact with the Governor. OK, there are provisions because if this was a case where the State—the Narragansetts could get that casino gaming as everyone, Senator Chafee, Ms. Almeida, everyone else has asserted they would, then why spend 6 years on IGRA if that was such an accepted notion.

Well, they will have gaming anyway so who knows after big Class II and big bingo hall, that is fast track to casino gambling. Well, guess what, if it was such a fast track to casino gambling why would you ever have IGRA to begin with? If it was such a fast track to Indian gaming, why are you having so many court decisions all across this country about that?

The reason you have so many court decisions is guess what, it is not a fast track for gaming because now the States have authority and there are a number of safeguard provisions put in there to keep the brakes on it but it is put within a legal framework that can be hashed out. And now we are going to circumvent the framework that was hashed out where, you know, people would come to a meeting of the minds on this.

We are going to scrap that because we want to have it our way and no way. This is a one-way street is what this is about. We do not like gaming so we will do it but we will prevent you from doing it. Circumvent the whole thing. And we acknowledge tribes separate from individuals as Narragansetts still have citizenship. We acknowledge their sovereign status as a tribe because we know that this country has some price to pay for the shameful way that it has treated Native Americans in this country.

That is why you have a sovereignty. Now if you want to start redefining sovereignty then you destroy the whole notion of sovereignty. Let me say I will allow you government but let me tell you what I will allow you to govern. I mean am I missing something here? I mean there is no sovereignty if you have to, you know, keep saying, well, you have sovereignty under IGRA but wait a second, that does not include this.

I mean we passed a law. It was clear. It was straightforward. And because some people would rather have—politically it is more advantageous to be against gaming, let us be honest about it, in the State of Rhode Island. Because of that you are going to circumvent the civil and sovereign rights of the Narragansett Indians. I think it is wrong and I think that as, Mr. Ducheneaux, you pointed out, you would have never—this bill never would have passed if you had had Section 23 in the law, am I right?

Mr. DUCHENEAUX. Congressman, obviously I could not say what would have happened, but as I said in my written and oral statement, Mr. Udall's position at that time—and it was perfectly clear to all those who were involved in the negotiations—was that unless the bill from the Senate was acceptable to him he would request that it be referred back to this Committee where given the time, September, it probably would have died here because he would have been opposed to it.

In addition, it was made perfectly clear by myself to the Democratic and Republican staff of the Indian Affairs Committee over in

the Senate that Mr. Udall was opposed to the provision, and that it would not be acceptable if it came to the House. I have reason to believe that Mr. Udall's position was made very clear to Senator Pell's office and my understanding at that time was that Senator Pell, through his staff, approached the Senate Committee staff and asked them to accept an amendment on the Floor deleting the language. This resulted in the colloquy.

It is my understanding that the amendment was dropped from the Senate bill on the Senate Floor by an amendment because of the clear understanding that Mr. Udall would not accept it in the House. Now what might have happened had the Senate passed it with Section 23 in it, I really could not say, but my recommendation to Mr. Udall had been not to accept it and he had indicated to me that he would not.

Mr. GILCHREST. Thank you, Mr. Kennedy. Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman. Ms. Carol Lytle, who is a member of the town council of the town of Charlestown where all this activity is taking place is with us and she has a statement and, Mr. Chairman, I would ask permission to put that statement into the record.

Mr. GILCHREST. Without exception, so ordered.

[Letter from Ms. Lytle may be found at end of hearing.]

Senator CHAFEE. And I wanted to thank her very much for taking the trouble in coming down and paying her own way from Rhode Island today. Mr. Chairman, as you can see, we have got a fundamental difference here and while it is a Rhode Island issue, there is no question about it, but Representative Kennedy, under the guise of reducing unemployment, bad health, and all the problems we are concerned with in the Indian tribes, and in connection especially with Narragansetts, is just dead set to ensure that the Narragansetts have high-stakes bingo, the second tier gambling in the State of Rhode Island and circumventing a Rhode Island law that provides that any extension or new gambling enterprise has to be approved by the people of this State.

Now that is where we are and we believe very strongly that they should be subject to the laws of the State and that this is not something that can be just brushed aside by saying, "Oh, IGRA is going to take care of everything." It is not. It is certainly not going to permit people of the State of Rhode Island to determine whether or not we have high-stakes bingo. That would not be the case under those provisions. Thank you.

Mr. GILCHREST. Thank you, Senator. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. First, if it is not already in the record, I would like to submit a statement of Senator Daniel Inouye in the record.

Mr. GILCHREST. So ordered.

[The prepared statement of Senator Inouye follows:]

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM HAWAII; VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS, BEFORE THE OVERSIGHT HEARING OF THE COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES, ON THE PROVISION IN THE 1997 OMNIBUS APPROPRIATIONS ACT RELATING TO THE NARRAGANSETT TRIBE OF RHODE ISLAND

Mr. Chairman, and members of the House Committee on Resources, I regret that I cannot be with you today to present my testimony in person, but as Chairman

of the Franklin Delano Roosevelt Memorial Commission, I have had long-standing commitments associated with the events surrounding this week's formal dedication of the memorial.

I have been asked to address section 330 of the Omnibus Appropriations Act for Fiscal Year 1997, which amends the Rhode Island Indian Claims Settlement Act to preclude the Narragansett Indian Tribe of Rhode Island from conducting gaming on tribal lands under the authority of the Indian Gaming Regulatory Act.

Mr. Chairman, contained in the general provisions of the bill relating to appropriations for the programs Administered by the Department of the Interior and the narrative which accompanies section 330, is a colloquy that I engaged in with Senators Pell and Chafee on September 15, 1988.

Mr. Chairman, should the inclusion of this colloquy in the measure be perceived today or in years to come as an indication of my support for this provision, I feel that I must set the record straight.

Mr. Chairman, I believe that the record should show that at the time of our colloquy, there was an underlying premise upon which our discussion was based, which I have since learned, was erroneous.

That underlying premise was that there had been no intervening events of legal significance that would warrant any change in the provisions of the Rhode Island Indian Claims Settlement Act.

At the time that the Rhode Island Indian Claims Settlement was agreed to in 1978, the Narragansett people were organized as a state-chartered corporation. Given that status, it is perhaps understandable that the settlement act provided for the extension of state criminal, civil and regulatory laws to the settlement lands.

But in 1983, the Narragansett Indian tribe achieved federally recognized status, and in 1988, a few days before the September 15, 1988 colloquy, the tribe's settlement lands were taken into trust by to United States.

These two intervening events are important because federally recognized status generally confers upon tribes exclusive jurisdiction over their lands, and when their lands are taken into trust, the protections of Federal law are extended to the lands, and the combination of Federal ad tribal law and jurisdiction over the lands acts to pre-empt the application of state laws to such lands.

Indeed, the legal significance of these intervening events was of such import, that in 1994, the First Circuit Court of Appeals concluded that the provisions of the Rhode Island Indian Claims Settlement Act were affected by the two events, and that the state no longer has exclusive jurisdiction over the settlement lands. The First Circuit held, instead, that the state's jurisdiction was concurrent with that of the Narragansett Tribe.

Mr. Chairman, I believe that we should be clear about what section 330 of the Omnibus Appropriations measure has as its objective—it effects a return to the state of the law as it was in 1978, notwithstanding the fact that the tribe is now federally recognized and would otherwise enjoy the status of other federally recognized tribes, and notwithstanding the fact that the tribe's settlement lands are now held by the United States in trust for the tribe and would otherwise not be subject to the exclusive jurisdiction of the State of Rhode Island.

Some might question why this extraordinary action was taken—why this provision was so important that the jurisdiction of the authorizing committees was circumvented and this amendment to substantive law, which by the way, had absolutely nothing to do with the appropriation of funds in Fiscal Year 1997—was included in the Fiscal Year 1997 spending bill. The answer, as I understand it, is to prevent the tribe from operating a bingo hall on tribal lands.

Mr. Chairman, in my eighteen years of service on to Senate Committee on Indian Affairs, in my 8 years of service as the Committee's Chairman, and for the last two and a half years, as the Committee's Vice-Chairman, I have, for the most part, been proud of the manner in which the United States has dealt with the Indian Nations on a government-to-government basis.

We have attempted to reverse or at a minimum address the effects of some of the darker chapters of our history as a Nation when it comes to our treatment of indigenous people of this land. We have resolved to consult with them on any law or policy which will affect their lives or their governments, and indeed, Federal law requires that we do so.

But near the conclusion of the last session of the Congress, Mr. Chairman, over the strenuous and adamant objections of this tribe, there was enacted into law a provision that holds the potential to forever change their lives, without the benefit of hearings, in the absence of any record that would serve to justify the action taken by the Congress, and without any consultation with the affected tribe.

At that time, Mr. Chairman, I advised my colleagues from Rhode Island that I could not support this provision. I also so advised the President of the United

States, the minority leader of the Senate, and the Members of this House and Senate Appropriations Committees. And so, Mr. Chairman, I believe that it came as no surprise to my colleagues, when I stated my intention, as I did last October, to call for hearings early in the 105th Session of the Congress on this matter—and it is for that reason that I commend my colleagues in the House for holding this hearing today.

It is my hope, Mr. Chairman, that as long as I continue to serve in the U.S. Senate, section 330 of the Omnibus Appropriations Act for Fiscal Year 1997, will not serve as a precedent for similar action affecting other tribes, nor will it define the manner in which the U.S. Congress deals with the Indian people.

As you well know, Mr. Chairman, our Constitution establishes a distinctively different framework for our relations with the Indian Tribes, and 200 years of Federal law and policy have been built upon that foundation. We are a Nation which prides ourselves on our honor and integrity in our dealings with all people. We owe no less to this Nation's first Americans.

Mr. KILDEE. Also, I would like to just talk in general——

Mr. KENNEDY. If I can interrupt you just for a minute——

Mr. KILDEE. Just for a minute, OK.

Mr. KENNEDY. I just want to point out I am not for—I am for respecting the fact that we have tribal trust. We have a federally recognized tribe. There are certain responsibilities we as Federal officials have. If every tribe was subject to every State law you would not have a special tribal trust, Federal trust relationship with tribes. So I just want to correct Senator Chafee's position that I am—the reason why you have tribal sovereignty, it is granted by the Federal Government, it is not granted but it is recognized by the Federal Government, is because you want to acknowledge there is a different sovereignty here, governing authority.

If it were simply the case where everything would recede back to the States then we would not be here right now. I grant you that, Senator Chafee. If this was simply a matter of them complying with State laws if they are like every other citizen I grant you that, Senator Chafee. But that is not the issue here.

Narragansetts, aside from being citizens of the State of Rhode Island, they are also members of a federally recognized tribe and have certain rights and privileges as a sovereign tribe recognized by the Federal Government. I just want to—yield back.

Mr. KILDEE. This chipping away at Indian sovereignty really concerns me. The 104th Congress had a terrible record in chipping away at Indian sovereignty, a pathetic, pitiful record. First of all, out of the Ways and Means Committee came the attempt to tax the gaming, 35 percent, Indian gaming. They never would have thought of putting a bill out to tax Michigan's gaming. Michigan has a lottery because Michigan is a sovereign State.

Some of those people do not really understand that sovereignty is something that the Indian people had before my ancestors ever landed here and they retained that sovereignty. Read John Marshall's decision. Andrew Jackson did not follow them but read John Marshall's decision. That is an inherent sovereignty and the attack in the 104th Congress was despicable.

First of all, the attempt to tax your gaming, the attempt to weaken your Indian Child Welfare Act. The nation has a right to have some concern and care for its children and yet the House passed the bill to weaken Indian Child Welfare Act. Despicable act. I voted against it. It passed but thank God the Senate in that instance showed some wisdom and the bill died over at the Senate.

Now the Chafee Rider too, I think, is three of the—I think really attacks on sovereignty and that is really what it comes down to. You know, you do not have to like gaming. You do not have to like gambling. But I think we are sworn to uphold the Constitution of the United States and that recognizes the sovereignty of the Indian tribes.

This Constitution and all treaties entered into are the supreme law of the land. And I took an oath to uphold that Constitution and I as long as I am a Member of Congress am going to uphold the sovereignty of the Indian nations in this country. I do not have to be for gaming or against gaming. That is secondary. It is the sovereignty that is very important.

I am glad that Mr. Allen is here today because I think you recognize that when the sovereignty of one Indian nation is under attack that the sovereignty of all Indian nations are under attack and you have to really pull together and I am very happy to see that the National Congress of American Indians is deeply involved in this because you cannot stand alone. The sovereignty was under attack in the 104th Congress and could be under attack for many Congresses and standing together will help protect that sovereignty. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Kildee. Mr. Weygand.

Mr. WEYGAND. Thank you again, Mr. Chairman. I just have a couple clarifications I think of my dear friend, Representative Donald Lally. I noticed in his statement, unfortunately I did not catch all of his statement but in a letter to the Committee, Mr. Chairman, he has indicated a couple things that are very much wrong.

He said that recent polls and earlier polls showed that the Narragansetts have overwhelming support of the majority of Rhode Islanders. Well, Donald, as you and I know polls taken today change tomorrow and change the next day. Most of the polls that were taken about me would have said I would never have been elected lieutenant Governor or never elected to the U.S. Congress.

The only real poll is the one that is taken on election day. In 1994 the people of Rhode Island clearly and emphatically voted for a referendum that said they wanted to restrict gambling. They wanted to be sure that if there was going to be expansion of gambling it would be placed before referendum, that the voters of the town and the State would approve.

I would not want the Committee, Mr. Chairman, to be led to believe that in fact there is overwhelming support for this issue within the State of Rhode Island at this point in time. While I am sure that there have been polls taken, I know there are, as you and I both know, it depends upon how it is worded, what is said, and what is within the question.

So I would say the only thing that we can only stand upon is the vote of the people of Rhode Island on election day. The second thing I would say is that with regard to Donald's comments on the referendum questions of 1994, he is correct. On the questions they never identified, unfortunately I think it would have been more appropriate for them to identify the Narragansett Indian Tribe referendum question. I think that would have been fair.

I think that would have been a fair and honest way for people to evaluate what was before them. There was a lot of advertising so that people of Rhode Island knew what was going on but I think that the Secretary of State should have identified it in a different way. That did not come about. But in 1994 clearly the people also voted in a separate referendum to change our State constitution, to change it to in fact restrict gambling and in fact make it so difficult that they had to become before all of the people.

I think that it is unfortunate that we are actually at this point because clearly there is a difference amongst us. This is a question of balance and fairness versus one of contract and the contract is really the crux of the problem that is before us today.

There is a contract that is legal and binding upon the Narragansett Indians in the State of Rhode Island. They are OK in the other States, they say, but not here in Rhode Island. Well, I think that has to truly be questioned in court.

I want to thank all of the panelists and all the people from Rhode Island who have come here today. On either side of the issue I think it shows tremendous political and public involvement and whether we agree or disagree, this is what should be happening before the Congress and this is what America was built upon, being able to voice your concerns and getting out and argue about them even if we have to disagree on the issue.

Let me end, Mr. Chairman, by only suggesting to my dear friend from Narragansett that with regard to the legislation that has been submitted before the State General Assembly, you should probably send it back to the counsel. They have misspelled the words sovereign nation. I hope they would change that for you. Thank you, Mr. Chairman.

Mr. GILCHREST. Is there anyone on the panel that would want to respond to the Congressman's words?

Mr. LALLY. I would just like to respond briefly. As far as the 1978 contract I think that IGRA overruled that with respect to gambling so that any expansion in Rhode Island I do not think would pertain to the Narragansett Indian Tribe because they are a separate sovereign nation. I also found it interesting to hear the Governor say today that he is relying on gaming to rebuild the Rhode Island economy but the sovereign nation of the Narragansett Indian Tribe cannot use the same type of gaming to rebuild their economy for its people. Thank you.

Ms. ALMEIDA. Mr. Chairman.

Mr. GILCHREST. Ms. Almeida.

Ms. ALMEIDA. Thank you. I would like to make one point. It has been said here today that the Narragansetts entered into a form of a treaty and that was the Settlement Act and because the Federal Government and the people that moved into this country did not hold up the end of their treaties, then they do not really feel they have to hold up theirs.

I would like to make a point in a Joint Memorandum of Understanding which I have submitted if you will turn to page four you will see that when the Narragansetts signed this Joint Memorandum of Understanding in order to acquire the land that met one of the criteria to receive Federal recognition in the first place it

was the Narrangansett Tribe of Indians. It does not say incorporated.

I do not see how they were a corporation when they received the land and when they made the deal. I just wanted to make that point. And I also would like to address the fact that it seems that you feel that we are kind of crazy that we think that high-stakes bingo might lead to casinos but we see it right across the border in Connecticut. That is what happened there.

It is not odd that the Narragansetts might be considering casino gambling when the NGIC sent letters responding to the fact that they had a two-phase program, phase one and phases two, and that phase one of the high-stakes bingo hall was the first phase. So, you know, to think that to make it sound like we are kind of silly because we think that casinos might be next is really not there.

Mr. GILCHREST. Thank you very much, Ms. Almeida. I would like to close today's hearing by thanking—I am about an hour late from my previous engagement and I think just about everything that was said although I would leave the record open for any additional testimony. We certainly, I am sure without a doubt, revisit this issue before there will be any vote taken.

And I want to thank the members for their interest in this issue. I want to thank all those people who have traveled great distances to be here to express their heartfelt feelings and opinions. I would like to say that, Mr. Kennedy, his statement about past practices understanding the history of this country's dealing with Native Americans and many other peoples to a large extent has been sad and has caused great despair and great distrust.

We have passed through many generations of peoples who have fought very courageously so that their children could have a better future and we are the recipients of the courage of our ancestors and we should not forget that because it is now our responsibility not to so consider the devastation of the past. We cannot forget that.

But it is our clear responsibility to do what we can at this time while it is in our hands to make sure the future children, our children, our neighbor's children, this nation's children, have a positive outlook, have an optimistic outlook. We cannot pass up an opportunity to solve a problem for self-centered purposes whether you are for gambling or whether you are against gambling, whether you have a difference of opinion about sovereignty versus State's rights versus Memorandums of Understanding.

It is important for us as adults to look to the future, remember the past but we cannot use the past as an excuse for what we are doing right now. We are in 1997 in the United States in a global marketplace. One hundred years is not a very long period of time. We are creating the future for our children through our dialog and our understanding and our relationship with other people.

The principles of democracy is an exchange of information with a sense of tolerance for someone else's opinion. I think if we have that and we keep our children's future in mind we will find some resolution to this problem. Thank you all very much for coming. The hearing is adjourned.

[Whereupon, at 2:20 p.m., the Committee was adjourned; and the following was submitted for the record:]

CORRESPONDENCE RECEIVED

Due to the high cost of printing and the large number of letters received it was not possible to reproduce them here, but the names of those submitting material follows:

Anderson, Curtis F., Jr., Robinson Rancheria Citizens Council
Anderson, Marge, The Mille Lacs Band of Ojibwe Indians
Andrew, Tommy J., Native Village of Kwigillingok
Bear, Nancy, Kickapoo Tribe
Bearskin, Leaford, Wyandotte Tribe of Oklahoma
Bennett, Phillip, Hung-A-Lel-Ti Woodfords Washoe Community Council
Burdette, Vivian, Tonto Apache Tribe
Butler, Raymond, Otoe-Missouria Tribe
Darden, Ralph C., Chitimacha Tribe of Louisiana
Dasheno, Walter, Santa Clara Indian Pueblo
Diamond, Margaret, Lac Courte Oreilles Tribal Governing Board
Doyle, Richard M., Pleasant Point Reservation
George, Lyle Emerson, The Suquamish Tribe
Gonzales, Raymond E., Sr., Elko Band Council
Gurnoe, Rose M., Red Cliff Band of Lake Superior Chippewa
Hess, Mervin E., Bishop Paiute Tribe
Hess, Vineca, Bridgeport Indian Reservation
Hodshon, William & Margaret
Hunter, Vernon, Caddo Indian Tribe of Oklahoma
Jim, Gelford, Te-Moak Tribe of Western Shoshone
Katchatag, Stanton, Native Village of Unalakleet
Kelly, Paul S., Senate Majority Whip, State of Rhode Island
Levi, Nathan, Chemehuevi Indian Tribe
Lopez, Carl, Soboba Band of Mission Indians
McGeshick, John C., Sr., Lac Vieux Desert Bnd of Lake Superior Chippewa Tribal Government
Mike, Rodney, Duckwater Shoshone Tribe
Miller, Leslie A., Scotts Valley Band of Pomo Indians
Miller, William, Dot Lake Village Council
Moyle, Alvin, Fallon Paiute-Shoshone Tribe
Muktoyuk, Gabriel L., King Island Native Community
Nenema, Glen, Kalispel Tribe of Indians
Padilla, Nicolas J., Susanville Indian Rancheria
Pete, David, Confederated Tribes of the Goshute Reservation
Pico, Anthony R., Viejas Indian Reservation
Pinto, Tony J., Ewiiaapaayp Band of Kumeyaay Indians
Ramirez, Peter R., Mechoopda Indian Tribe
Ruby Tribal Council
Sampson, Donald G., Confederated Tribes of the Umatilla Indian Reservation
Shields, Caleb, Fort Peck Tribes, Assiniboine & Sioux
Shipley, Priscilla A., Stillaguamish Indian Tribe
Smagge, Rita, Kenaaitze Indian Tribe I.R.A.
Stansgar, Ernie, Coeur D'Alene Tribe
Stephan, Lee, Native Village of Eklukna
Sterud, Bill, Puyallup Tribe of Indians
Stockbridge-Munsee Band of Mohicans (Virgil Murphy)
Stone, Wanda, Kaw Nation
Tallchief, George E., Osage Nation

Torres, Elmer C., Pueblo De San Ildefonso
Wallace, A. Brian, Washoe Tribe of Nevada and California
Whitefeather. Bobby, Red Lake Band of Chippewa Indians
Willams, Leona L., Pinoleville Indian Reservation
Wynne, Bruce, Spokane Tribe of Indians

SAMPLE PETITION

PETITION SUPPORTING THE SOVEREIGN RIGHTS OF THE NARRAGANSETT INDIANS

We, the undersigned, support the Narragansett Indians in their efforts to fully restore the tribe's sovereign rights. The Narragansett, Rhode Island's only federally recognized Indian tribe, have been discriminated against for years by state and Federal legislation that severely restricts the tribe's political authority to enforce Indian laws on Indian land. Among the approximately 550 federally recognized tribes in the United States, no other tribe in the country suffers the same unfair restrictions of its sovereignty. In America, the land of the free, we believe that the Narragansetts' sovereign rights should be reinstated in order to preserve the tribe's Native American culture and storied heritage. We advocate the tribe's freedom to pursue economic development on its lands to ensure the health, education, safety and welfare of the tribe's 2,500 men, women and children.

[The petitions were signed by over 2,750 residents and 700 non-residents.]

Calendar No. 862

100TH CONGRESS 2d Session | SENATE | REPORT 100-446

INDIAN GAMING REGULATORY ACT

AUGUST 3 (legislative day, AUGUST 1), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 555]

The Select Committee on Indian Affairs, to which was referred the bill (S. 555) to regulate gaming on Indian lands, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

S. 555 provides for a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming. The bill establishes a National Indian Gaming Commission as an independent agency within the Department of the Interior. The Commission will have a regulatory role for class II gaming and an oversight role with respect to class III.

BACKGROUND

S. 555 is the outgrowth of several years of discussions and negotiations between gaming tribes, States, the gaming industry, the administration, and the Congress, in an attempt to formulate a system for regulating gaming on Indian lands. In developing the legislation, the issue has been how best to preserve the right of

29-109

other 45 States, some forms of bingo are permitted and tribes with Indian lands in those States are free to operate bingo on Indian lands, subject to the regulatory scheme set forth in the bill. The card games regulated as class II gaming are permitted by far fewer States and are subject to requirements set forth in section 4(8). The phrase "for any purpose by any person, organization or entity" makes no distinction between State laws that allow class II gaming for charitable, commercial, or governmental purposes, or the nature of the entity conducting the gaming. If such gaming is not criminally prohibited by the State in which tribes are located, then tribes, as governments, are free to engage in such gaming.

The phrase "not otherwise prohibited by Federal Law" refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto. It is the Committee's intent that with the passage of this act, no other Federal statute, such as those listed below, will preclude the use of otherwise legal devices used solely in aid of or in conjuction with bingo or lotto or other such gaming on or off Indian lands. The Committee specifically notes the following sections in connection with this paragraph: 18 U.S.C. section 13, 371, 1084, 1303–1307, 1952–1955 and 1961–1968; 39 U.S.C. 3005; and except as noted above,m 15 U.S.C. 1171–1178. However, it is the intention of the Committee that nothing in the provision of this section or in this act will supersede any specific restriction or specific grant of Federal authority or jurisdiction to a State which may be encompassed in another Federal statute, including the Rhode Island Claims Settlement Act (Act of September 30, 1978, 92 Stat. 813; P.L. 95–395) and the Marine Indian Claim Settlement Act (Act of October 10, 1980; 94 Stat. 1785; P.L. 96–420).

Individually owned class II games.—Section 11(b)(4)(A) and (B) deal with the issue of individually owned and operated class II bingo and card games. It is the Committee's intent that all gaming, other than tribally owned gaming, on Indian lands be operated under State law. The Committee views tribal gaming as governmental gaming, the purpose of which is to raise tribal revenues for member services. In contrast, while income may accrue to a tribe through taxation or other assessments on an individually owned bingo or card game, the purpose of an individually-owned enterprise is profit to the individual owner(s) of Indian trust lands. While a tribe should license such enterprises as part of its governmental function, the Committee has determind that State law (such as purpose, entity, pot limits, hours or operation, etc.) should apply to such enterprises. These games are not to be confused with units of a tribe or tribal social or charitable organizations that operate gaming to support their charitable purposes; such games are not covered by this paragraph but rather will come under tribal gaming. Those individual games operated prior to September 1, 1986, may continue to operate under tribal ordinance and without regard to State purpose or hour and pot limits if such games provide 60 percent of net revenues to the tribe and the owner pays as assessment to the Commission under 18(a)(1). The date of September 1, 1986, was incorporated in the final Senate version of H.R. 1920 in the 99th Congress and all individuals were thus on notice

THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 12 1996

The Honorable John H. Chafee
United States Senate
Washington, DC 20510

Dear Senator Chafee:

I understand that you intend to offer an amendment to the FY 1997 Interior Appropriations bill which would severely interfere with the Department of the Interior's ability to administer important provisions of the Indian Gaming Regulatory Act (IGRA). In particular, the amendment would prohibit approval of any new Tribal - State compacts for Class III gaming in FY 1997. The amendment would also prohibit development of any regulation or procedure providing for the review or approval of Tribal - State compacts or the establishment of Class III gaming on Indian lands in the absence of a Tribal - State compact. It would also unfairly single out an individual tribe (The Narragansett Tribe of Rhode Island) by permanently denying them the ability to engage in any gaming on their reservation.

The Department strongly objects to the proposed amendment for several reasons. Since 1988, Indian gaming, regulated under IGRA, has provided substantial benefits to over 120 tribes and to their surrounding communities in over 20 states. As required by law, revenues have been directed to programs and facilities to improve the health, safety, educational opportunities and quality of life for Indian people. This amendment, an effective moratorium on new compacts, would deny similar economic opportunities for additional tribes and communities.

In addition, the sweeping nature of the proposed moratorium on Departmental approval of voluntary Tribal - State compacts would undermine both State and Tribal sovereignty by curtailing their ability to enter into good faith negotiations to reach agreement on compacts which are mutually beneficial.

We have consistently supported efforts to build a consensus between tribes and states for amendments to IGRA that would improve the compacting process and increase regulatory capacity. To ensure proper consultation with Indian tribes and other stakeholders, amendments such as this should be considered by the appropriate authorizing committees and not through a floor amendment to the Interior Appropriations bill.

Finally, the amendment's proposed moratorium on development of Secretarial procedures would short-circuit an on-going rulemaking process that currently benefits from extensive input from tribes, States, Governors, State Attorneys General and other public officials. Widespread participation in this orderly process should be allowed to continue.

I respectfully request that you reconsider introducing your proposed amendment to the Interior Appropriations bill. If this proposed amendment does appear in the final Interior Appropriations bill, I will recommend to the President that he veto the bill.

Sincerely,

State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02908-1196
401-277-2080

LINCOLN ALMOND
GOVERNOR

Testimony to the Committee on Resources
United States House of Representatives

By His Excellency the Governor of Rhode Island
Lincoln Almond

Supporting the Chafee Amendment and the Integrity of the Rhode Island Indian Claims Settlement Act, P.L. 95-395

May 1, 1997

Mr. Chairman, as the Governor of Rhode Island I appreciate the opportunity to appear before this committee to testify on behalf of the people of our State in favor of preserving the Rhode Island Indian Claims Settlement Act and the Chafee Amendment to that Act passed as part of the 1997 Omnibus Appropriations Act.

Our position that the Indian Gaming Regulatory Act should not and must not apply to Settlement Lands of the Narragansett Indian Tribe is based on ensuring the integrity of the deal struck between the State and the Narragansetts with respect to State jurisdiction over that land. It is also based upon the strong and steadfast public opposition to the establishment of a casino by *any group* within the borders of Rhode Island. It is not based upon any animosity toward or prejudice against the Tribe.

In 1978, the Narragansett Indian Tribe expressly agreed to be bound by the civil and criminal laws of the State of Rhode Island, with no exception for laws governing gambling. Subjecting the Tribe's Settlement Lands to the same laws which apply to all other Rhode Islanders is not only just and fair, it is precisely what the Tribe agreed to in exchange for 1,800 acres of disputed land. The Rhode Island Constitution does not allow any expansion in the type or location of gambling in Rhode Island unless and until the voters approve. Thus, with the Chafee Amendment, the Tribe -- like all other

Rhode Island interests -- may only introduce new types or locations for gambling if the people of Rhode Island vote to allow it. The Tribe obtained the Settlement Lands agreeing to be bound by Rhode Island law. The Chafee Amendment was thus necessary to ensure that the good faith agreement among the Tribe, the State and the Town in which the Settlement Lands are located was not wrongly breached by IGRA.

I. The Background of the Settlement Act

Much of the history of the relationship between the Tribe, the Town of Charlestown, and the State of Rhode Island has been chronicled in a series of cases in the United States District Court for the District of Rhode Island ("District Court") and the First Circuit Court of Appeals ("First Circuit"). An understanding of the process by which the Tribe acquired their land is vital to appreciate the unique status of the Settlement Lands. Unlike most Indian Land in other states, Rhode Island retained civil and criminal jurisdiction over the Settlement Lands, with only three exceptions -- the Settlement Lands are expressly exempt from State taxation, the regulation of hunting and the regulation of fishing. Except in these limited areas, which do not include gambling, the Tribe does *not* have sovereign power over the Settlement Lands.

In 1975, the Narragansett Indian Tribe asserted title claims to certain lands in Charlestown, Rhode Island. In order to resolve these claims, in 1978, the Tribe, then Rhode Island Governor J. Joseph Garrahy, the Charlestown Town Council, and certain landowners (among others) signed a Joint Memorandum of Understanding ("JMOU") which settled all of the Tribe's claims. The implementing legislation required from the United States Congress and the Rhode Island General Assembly was subsequently enacted as follows:

(a) On September 30, 1978, the United States Congress enacted the Rhode Island Indian Land Claims Settlement Act, 25 U.S.C. §§ 1701, *et seq.* (the "Settlement Act"). Pursuant to that Act, the Tribe received approximately 1,800 acres of land ("Settlement Lands") within the Town of Charlestown, Rhode Island, with approximately one-half granted by the State of Rhode Island, and one-half granted by private landowners. The Settlement Lands were deeded to a corporation formed to hold title for the Tribe's benefit.

(b) On May 4, 1979, the Rhode Island General Assembly implemented the JMOU through passage of the Narragansett Indian Land Management Corporation Act, Pub. L. 1979, ch. 116 (codified as R.I. Gen. Laws §§ 37-

> 18-1 *et seq.*), which, among other things, formed the corporation to hold title to the Settlement Lands for the Tribe.

See Town of Charlestown v. United States, 696 F. Supp. 800, 802-03 (D.R.I. 1988), *aff'd without opinion*, 873 F.2d 1433; *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 689 (1st Cir. 1994), *cert. denied*, 115 S. Ct. 298 (1994). This settlement caused all of the pending lawsuits by the Tribe to be dismissed with prejudice, and caused the federal government to extinguish all of the Tribe's claims for land within Rhode Island. The JMOU and the resulting implementing legislation were the product of lengthy and tortuous negotiations which struck a delicate balance between the objectives of the Tribe on the one hand, and the objectives of the State of Rhode Island, the individual landowners, and the Town of Charlestown on the other.

A central part of the JMOU and the Settlement Act was the provision that subjected the Settlement Lands to all laws of the State of Rhode Island (JMOU, ¶ 13), and the civil and criminal laws and jurisdiction of the State of Rhode Island (18 U.S.C. § 1708 of the Settlement Act). As held by the First Circuit in *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 696 (1st Cir. 1994), ". . . we conclude that the Settlement Act granted civil regulatory jurisdiction as well as civil adjudicatory jurisdiction, to the State." This was perhaps the single most important concession given by the Tribe to the State of Rhode Island and to the Town of Charlestown in exchange for the Settlement Lands. Its effect with respect to gambling is clear. The JMOU and the Settlement Act prohibited gambling on Settlement Lands to the extent it was illegal under Rhode Island law. As stated by the District Court in *State of Rhode Island v. Narragansett Tribe of Indians*, 816 F. Supp. 796, 799 (D.R.I. 1993):

> Rather, Congress [by virtue of the Settlement Act] sought to ensure that the Settlement Lands in Charlestown remain subject to all criminal, civil, and civil regulatory laws of Rhode Island, *including laws regulating gambling*. (Emphasis added).

In 1983, the Department of Interior issued a final determination, recognizing the Narragansetts as an Indian Tribe. 48 Fed. Reg. 6177-78 (February 2, 1983). Thereafter, in 1985, the Rhode Island General Assembly amended R.I. Gen. Laws §§ 37-18-1, *et seq.*, to permit title to the Settlement Lands to be transferred from the holding company to the Tribe, and in September, 1988, the Tribe deeded the Settlement Lands to the Bureau of Indian Affairs as Trustee.

Although the Tribe has advanced various arguments before the federal courts as to why the jurisdiction it ceded to the State in the Settlement Act no longer applies, a binding decision of the United States Court of Appeals for the First Circuit disagreed

and enforced the deal struck by the Tribe in exchange for its Settlement lands. *See State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 695, 694-96 (1st Cir. 1994). The First Circuit specifically ruled that federal recognition of the Tribe in no way affects the jurisdictional grant by the Tribe to the State as set forth in the JMOU and the Settlement Act. *Id.* at 694. The First Circuit ruled that tribal sovereignty/jurisdiction may be neither augmented nor diminished except through Congressional enactment. *Id.* at 695. The Court further stated that the conveyance of jurisdiction also survived the subsequent alienation (to the BIA in trust) of the Settlement Lands. The Court also concluded that "the Tribe, the state, and the town came to an agreement, spelled out in [writing], to ask Congress, among other things, to grant jurisdiction to the state . . . We conclude, therefore, that the grant of jurisdiction [to the State] contained in section 1708 of the Settlement Act was valid when made, and was undiluted at the time Congress passed the Gaming Act." *Id.* at 695.

Thus, the First Circuit opinion ended, as a matter of law, any argument that federal recognition erased the promise of State jurisdiction contained in the Settlement Agreement. In sum, the law is that federal recognition of the Tribe changed nothing with regard to the enforceability of the Tribe's obligation to abide by state law under the JMOU and the Settlement Act.

In sum, except for fishing, hunting and taxation, the Narragansett Indian Tribe long ago agreed to be bound by the same Rhode Island laws affecting each and every other Rhode Islander. In exchange, the Tribe received 1,800 acres of disputed land.

II. IGRA's Unintended Effect on the Settlement Act

In October of 1988, the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA"), was signed into law. IGRA regulates three "classes" of gambling (or more euphemistically referred to as "gaming") activity on Indian lands. Class I gaming consists essentially of Indian ritual gambling, which always can be conducted on Indian lands. Class II gaming, which encompasses bingo, can be conducted as of right on Indian lands in any state that does not generally proscribe activities of that type. Class III gaming is a residual category that includes what is commonly thought of as "casino gambling." Class III gaming is permitted only by compact, and IGRA sets forth the circumstances under which compacts can be negotiated between tribes and states. *See generally State of Rhode Island v. Narragansett Indian Tribe, supra*, 19 F.3d at 689-90.

The First Circuit in *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994), considered the issue of the impact of IGRA on the Settlement Act, and set forth the legislative history of IGRA vis-a-vis the Settlement Act. *Id.* at 697-

700. A preliminary version of IGRA contained a provision ("former Section 23") which specifically safeguarded the Settlement Act from implied repeal by IGRA. In the original bill, former Section 23 read as follows:

> Nothing in this Act may be construed as permitting gaming activities, except to the extent permitted under the laws of the State of Rhode Island, on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act or on any lands held by, or on behalf of, such Tribe.

134 Cong. Rec. S12,649 (daily ed. September 15, 1988). Senators Chafee and Pell were instrumental in seeking the assurance that this language would have provided. Senator Pell, in fact, was also crucial to the passage of the Settlement Act itself in 1978. In a floor statement on October 6, 1978, Senator Pell stated that "as a principal architect of the precedent-setting Rhode Island Indian Claims Settlement Act, I know that the intent of this settlement law was to preserve the full jurisdiction of the State of Rhode Island. We should make certain that this remains the case." Senator Pell also reported that he and then-Interior Secretary Hodel were contacted by Tribal leaders and urged to ensure that high stakes gambling remained illegal on the Settlement Lands. This apparently is no longer the position of Tribal leaders.

Before IGRA passed, Section 23 was deleted from the bill, but only after express assurances from Senator Inouye, the sponsor and floor manager of IGRA to Senators Pell and Chafee in a floor colloquy:

> MR. PELL. Mr. President, I would like to thank the managers of S.555, the Indian Gaming Regulatory Act, and particularly the chairman of the Select Committee on Indian Affairs [Mr. Inouye], for their hard work and patience in achieving a consensus on this important measure. In the interests of clarity, I have asked that language specifically citing the protections of the Rhode Island Claims Settlement Act (Public Law 95-395) be stricken from S.555. I understand that these protections clearly will remain in effect.
>
> MR. INOUYE. I thank my colleague, the senior Senator from Rhode Island [Mr. Pell], and assure him that the protections of the Rhode Island Claims Settlement Act (P.L. 95-395), will remain in effect and that the Narragansett Indian Tribe clearly will remain subject to the civil, criminal, and regulatory laws of the State of Rhode Island.
>
> MR. CHAFEE. Mr. President, I too would like to thank the chairman [Mr. Inouye] and members of the Select Committee on Indian Affairs for their cooperation and assistance. The chairman's statement makes it

> clear that any high stakes gaming, including bingo, in Rhode Island will remain subject to the civil, criminal and regulatory laws of our State.

134 Cong. Rec. S12,650 (daily ed. Sept. 15, 1988).

This commitment in place, IGRA was enacted without former Section 23.

III. The Illegal Compact

Nearly four years later, in July, 1992, the Tribe, by letter to then-Governor Bruce Sundlun, requested negotiations with the State of Rhode Island for the purpose of entering into a tribal-state compact under IGRA in order that the Tribe could conduct Class III gambling activities upon the Settlement Lands in Charlestown. In response, the State of Rhode Island declined to negotiate, and filed suit in the District Court asking the court to declare that IGRA did not apply to the Settlement Lands under the agreement struck in the Settlement Act. The Tribe counterclaimed seeking a declaration that the State's civil regulatory laws did not apply to the Settlement Lands and a declaration that the Tribe was entitled to operate a Class III gaming casino on those lands in conformance with IGRA. *See generally State of Rhode Island v. Narragansett Indian Tribe, supra*, 19 F.3d at 690-91.

The District Court, on cross motions for summary judgment, assumed that the State had been granted jurisdiction over the Settlement Lands by virtue of the Settlement Act. Proceeding on that assumption, the District Court concluded that any such grant was "preempted" by IGRA and consequently had no force or effect. *Rhode Island v. Narragansett Tribe of Indians*, 816 F. Supp. 796, 799-800 (D.R.I. 1993). Based on those findings, the District Court ordered the State of Rhode Island to enter into good faith negotiations to formulate a tribal state compact with the Tribe. *Id.* at 806. That decision was appealed to the First Circuit and resulted in the opinion by Judge Selya cited above (19 F.3d 685), which was rendered on March 23, 1994.

With respect to IGRA, the First Circuit, in a 2-1 decision, concluded that IGRA left undisturbed the grant of jurisdiction to the State of Rhode Island over the Settlement Lands. With respect to Class III gaming, however, IGRA ". . . channels the state's jurisdiction through the tribal-state compact process" and to that extent, overrules the Settlement Act. (19 F.3d at 704). Although the intent of IGRA and in particular its sponsor and floor manager and the Rhode Island Senate delegation were to the contrary, two members of the Court did not enforce this understanding as a matter of statutory construction. As a result, the First Circuit affirmed the District Court's issuance of a mandatory injunction compelling Rhode Island to commence good faith negotiation of a tribal state compact with the Narragansett Indian Tribe.

Following that opinion, the State of Rhode Island petitioned for Certiorari to the United States Supreme Court. While the Plaintiffs' Petition for Certiorari was pending before the United States Supreme Court (*cert. denied* 115 S. Ct. 298, 130 L.Ed.2d 211 (1994)), the Tribe and the former Governor met, negotiated, and executed a document entitled "Tribal-State Compact Between the Narragansett Indian Tribe and the State of Rhode Island" dated August 29, 1994 ("the Compact").

That Compact, among other things, provided that the Tribe could conduct certain types of Class III gaming, or casino gaming, under certain circumstances. It provided that, subject to approval of both a statewide voter referendum and a voter referendum in the Town of West Greenwich, the Narragansett Indian Tribe could construct and operate a Class III gaming facility in West Greenwich, Rhode Island (for many reasons, the Tribe believed the West Greenwich location to be better than its Settlement Lands). In the event that such a facility could not be constructed in West Greenwich because the referenda were not approved by the voters, or for any other reason, the Compact provided that the gaming facility would be located on the Settlement Lands in Charlestown.

On November 8, 1994, the voters of the State of Rhode Island *and* the voters of West Greenwich voted decisively against the referenda for casino gambling in West Greenwich and in all four other locations proposed for non-Indian casinos. The voters also approved a new Rhode Island constitutional provision (Article VI, Section 22) which prohibited forever more expansion in the type or location of gambling without dual referenda (see below). In such event, the Compact purported to provide that a facility could be built on the Settlement Lands in the Town of Charlestown, and following its defeat at the polls, the Tribe indicated its intent to construct and operate a Class III gambling facility upon its Settlement Lands in Charlestown.

Subsequently, lawsuits were instituted to determine whether the former-Governor possessed authority to enter into a binding compact. The Tribe countersued seeking a declaration that the Compact was valid.

During the time within which these actions were filed and consolidated, the Compact had been sent by the Tribe to the Secretary of the Interior ("Secretary") for his approval, as required by IGRA. Letters from me as Governor-elect and the Attorney General, sent in November, 1994, informed the Secretary that the validity of the Compact was being challenged under State law. The Secretary (and of course the Tribe) was made fully aware of the State's challenge and the pending lawsuits, and the state law concerns outlined above. The Tribe moved onward. In response to these letters, the Secretary, through his Solicitor, replied on December 5, 1994, stating that given the strict time requirements imposed on his Department by IGRA, it was inconceivable that the Secretary could be expected to decide issues of state law when

considering whether to approve a tribal-state compact. Given these constraints, the Secretary had no choice but to approve the Compact so long as it appeared to comply with IGRA. The Secretary did state, however, that the Compact was only valid if entered into by the appropriate state officials, and that any decision to approve the Compact would not unduly prejudice the parties who had challenged former Governor Sundlun's authority. Given these understandings, along with the fact that conditional approval is not permitted under IGRA, the Secretary approved the Compact effective December 16, 1994, and published notice of such approval in the Federal Register on December 16, 1994.

On April 7, 1995, the District Court certified to the Rhode Island Supreme Court the question of "[w]hether, under Rhode Island law, the Governor had authority to act on behalf of and to bind the 'State' by executing the Tribal-State Compact dated August 29, 1994, between the State of Rhode Island and the Narragansett Indian Tribe."

On November 30, 1995, the Rhode Island Supreme Court responded in the negative, ruling that the former Governor, absent specific authorization from the Rhode Island General Assembly, had no express or implied constitutional right or statutory authority to bind the state to the Compact. After the District Court received the decision of the Rhode Island Supreme Court on the state law issue of former Governor Sundlun's authority, it rendered its decision in its Memorandum and Order dated February 13, 1996, declaring the Compact void.

The Tribe appealed that decision, then withdrew its appeal after passage of the Chafee Amendment.

IV. Gambling in Rhode Island

Rhode Islanders have spoken loudly and clearly about their opposition to casino or high stakes gambling in Rhode Island and any expansion in the types and locations of gambling which presently exist -- whether proposed by the Tribe or private interests.

Rhode Islanders have never been subjected to a casino within our borders. Traditional lotteries were established in the early 1970s. Subsequent to that time scratch cards and keno were approved by the legislature. In 1992, the General Assembly instituted video lottery machines ("VLT"s) at two Rhode Island locations with pari-mutuel betting facilities. In so doing, the General Assembly chose to bypass a statute which required a vote of people in the municipalities in which the machines would be located. As a result, anti-gambling foes sought to place the referendum requirement in the Rhode Island Constitution so that it could not be cast aside again by the legislature.

On November 8, 1994, the day I was elected to office the referendum requirement passed as Article VI, Section 22 of the Rhode Island Constitution. It states:

> Section 22. Restriction of Gambling. -- No act expanding the types of gambling which are permitted within the state or within any city or town therein or expanding the municipalities in which a particular form of gambling is authorized shall take effect until it has been approved by the majority of those electors voting in a statewide referendum and by the majority of those electors voting in a referendum in the municipality in which the proposed gambling would be allowed.

The same day, casino proposals for five separate municipalities were placed on the ballot. All five were emphatically rejected by the people of each municipality and likewise failed statewide, all by large margins.

Despite the new constitutional provision, last year our lottery commission attempted to introduce a new type of gambling called "Bingo Power," which was to be a televised bingo game with numbers drawn on a 90-minute cable television show. The Bingo Power game would have been the first of its kind in the country, would have simultaneously reached 210,000 Rhode Island households through cable television, and would have utilized an exclusive technology patent granted to operate the new game. I went to court citing the Constitution and halted the proposal in its tracks. My Administration has successfully opposed any expansion in the type or location of gambling since I took office.

It is difficult to turn back the clock on the gambling that is presently legal in Rhode Island, but my Administration will continue to fight against new types of gambling or new locations proposed by any group. We simply ask the Tribe to keep their agreement to be bound by the same rules as all others proposing such expansion.

V. The Chafee Amendment Rights the Wrong

In September of 1996, Congress approved and the President signed into law the 1997 Omnibus Appropriations Act, Pub. Law 104-208 containing the Chafee Amendment, which by its terms, removed the Settlement Lands from the application of IGRA.

The Chafee Amendment effectively carried out the intent of the Settlement Agreement, mandating that the Settlement Lands would be subject to the same laws as

other lands within the State of Rhode Island with respect to gambling. It did so consistent with the floor comments of Senators Pell, Chafee, and Inouye, the text of the Settlement Act and the understanding of all (including Tribal leaders at the time) involved in the drafting of the Settlement Act. The Chafee Amendment has the simple effect of reinstating former Section 23 of IGRA, or put in another way, preserves the integrity of the JMOU and the Settlement Act.

As pointed out in the dissent of Senior Circuit Judge Coffin in *State of Rhode Island v. Narragansett Indian Tribe, supra*, 19 F.3d at 706, the legislative history surrounding the enactment of IGRA demonstrates the affirmative intent that the provisions of the Settlement Act dealing with jurisdiction over gambling remain intact with regard to the Settlement Lands. *Id.* at 707. Judge Coffin stated that "[a]n examination of the history reveals an express explanation, a deliberate, pre-planned colloquy with the floor manager of the legislation (the chairman of the Select Committee on Indian Affairs) as the very first exchange with interested Senators following his introductory presentation." *Id.* It is clear from that colloquy, cited earlier herein, that Congress intended that the State's jurisdiction remain in place with regard to gambling on the Settlement Lands.

The Tribe's Settlement Lands were created as a result of a negotiated and specifically tailored settlement agreement (the JMOU) involving the Tribe, the State of Rhode Island, and the Town of Charlestown, and various others. It is the JMOU as implemented by the Settlement Act which created the present-day reservation of the Tribe.

The Narragansetts are not the only Tribe in the United States to possess settlement land which is beyond the reach of IGRA -- and instead is subject to state jurisdiction. For example, in *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784 (1st Cir. 1996) the First Circuit held that the State of Maine retained jurisdiction over the settlement land of the Passamaquoddy Tribe under the terms of its settlement act, notwithstanding IGRA. The Court's conclusion in that case is equally applicable to the present situation:

> [T]he Tribe and the State negotiated the accord that is now memorialized in the Settlement Act as a covenant to govern their future relations. Maine received valuable consideration for the accord, including the protection afforded by section 16(b) [preserving state jurisdiction]. The Tribe also received valuable consideration, including land, money, and recognition. Having reaped the benefits, the Tribe cannot expect the corollary burdens imposed under the Settlement Act to disappear merely because they have become inconvenient.

Id. at 794.

Likewise, the Court in *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325, 1335 (5th Cir. 1994) bound the Ysleta del Sur Pueblo Tribe to the terms of the Texas Restoration Act. Like the Narragansett Indian Tribe, the Texas tribe warned that upholding an agreement mandating that state law apply to settlement lands would "constitute a substantial threat to tribal sovereignty." The Fifth Circuit, however, concluded that:

> any threat to tribal sovereignty is of the Tribe's own making. The Tribe noted in its resolution that it viewed § 107(a) of the Restoration Act [granting state jurisdiction over gambling] as "a substantial infringement upon the Tribes' [sic] power of self government" but nonetheless concluded that relinquishment of that power was necessary to secure passage of the Act.

Id. at 1335.

It is impossible to overstate the importance of the enforcement of all of the terms of the JMOU and the Settlement Act. The settlement involved a myriad of interests and claims. The Chafee Amendment preserves the integrity of the original JMOU and the Settlement Act. It preserves the balance achieved by the settling parties after years of litigation and negotiation. The Tribe received 1,800 acres of land and many other concessions in exchange for a number of concessions on its part, a very important one of which involved subjecting the Settlement Lands to the civil and criminal laws and jurisdiction of the State, including those pertaining to gambling. Like the Passamaquoddy and Ysleta del Sur Pueblo Tribes, the Narragansett Indian Tribe received valuable land and other consideration in exchange for agreed to restrictions of Tribal sovereignty on that land. In all three cases, it was understood and agreed that state law would govern gambling on settlement lands.

The effect of the Chafee Amendment is to reinstate the basic premise of the JMOU and the Settlement Act (and former Section 23 of IGRA), putting the Tribe on the same level playing field as everyone else in Rhode Island. This is just plain fair.

It was the fact that the Narragansett Indian Tribe is situated differently than most other tribes, together with the colloquy of Senators Chafee, Pell and Inouye in 1988, that caused Congress to decide to reinstate the full extent of the JMOU and the Settlement Act by the Chafee Amendment, and to give full effect to the promises, agreements, obligations, and duties of the Tribe, the Town of Charlestown and the State of Rhode Island as set forth in the JMOU and the Settlement Act.

VI. Conclusion

My Administration has always been prepared to discuss with the Tribe alternatives to casino gambling that would improve the Tribe's economic opportunities. Early in my Administration I did meet with the Tribe. After passage of the Chafee Amendment, I sent correspondence on October 7, 1996 and January 6, 1997 to Tribal leaders offering to work with the Tribe on economic development and issues of mutual concern outside of gambling. Unfortunately, to date there has been no response. My offer to meet, however, still stands.

The Chafee Amendment was necessary to preserve the deal agreed to by the Tribe in 1978 and sanctioned by Congress. Without it, a terrible wrong would have been inflicted on the people of Rhode Island. Although Rhode Island entered into a good faith agreement mandating that the Settlement Lands be governed by Rhode Island law, without the Chafee Amendment, IGRA would have unintentionally subverted the Settlement Act's grant of jurisdiction to the State -- directly contrary to the intent of all involved in the process.

The Chafee Amendment represents sound, fair and necessary public policy. If the Tribe wishes to institute high stakes gambling, it can seek approval of the people in the same way as all other interests are required to under Rhode Island law. Insisting that the Tribe follows the rules applicable to everyone else is not prejudice. It is fairness. It is not anti-Tribe. It is anti-casino gambling. We should help the Narragansetts achieve economic self-sufficiency, but not through the siren song of gambling. The Chafee Amendment, like the Settlement Act itself, must remain undisturbed.

STATEMENT OF DAVID J. HAYES, COUNSELOR TO THE SECRETARY
DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE RESOURCES COMMITTEE
CONCERNING AN AMENDMENT TO SECTION 9
OF THE RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT
IN THE 1997 OMNIBUS APPROPRIATIONS ACT

May 1, 1997

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on Section 330 of Public Law 104-208, the 1997 Omnibus Appropriations Act. Section 330 amended Section 9 of the Rhode Island Indian Claims Settlement Act by adding the following section:

> "(b) TREATMENT OF SETTLEMENT LANDS UNDER THE INDIAN GAMING REGULATORY ACT. - For purpose of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.), settlement lands shall not be treated as Indian lands."

This provision amended a key provision of the Rhode Island Indian Claims Settlement Act to permanently prohibit the Narragansett Indian Tribe from engaging in Class II or Class III gaming on their settlement lands by exempting these lands from the definition of Indian lands under the Indian Gaming Regulatory Act (IGRA). The Departments of the Interior and Justice advised Senator Chaffee by letter that they opposed this provision because it unfairly singled out one specific tribe for discriminatory treatment under IGRA.

The Department remains opposed to this provision. It denies to the Narragansett Indian Tribe much needed economic opportunities envisioned and authorized by the IGRA. In addition, it amended the operation of IGRA through the appropriations process. The Administration believes that, in the future, substantive changes to such an important statute should follow the

authorizing committee process, where the implications may be more fully considered. Further, such discrimination as to the scope of tribal rights is a dangerous precedent in Indian law, a danger that Congress recognized in 25 U.S.C. § 476(f), (g). Although section 476 applies only to federal agencies, the same dangers arise when Congress discriminates between tribes.

The IGRA was enacted in 1988 to provide a statutory basis for Indian gaming, and a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. The income, employment, and educational attainment of the one million American Indians living on or near Indian reservations fall well below those of the general population. Since the IGRA was passed in 1988, Indian gaming revenues have begun to provide an economic development tool for many tribes previously unsuccessful in attracting business to Indian reservations. As required by the IGRA, Indian tribes are using gaming revenues to improve the basic health, safety, educational opportunities, and quality of life of Indian people.

The right of the Narragansett Indian Tribe to enjoy the benefits of the IGRA was finally established in 1994 when the U.S. First Circuit Court of Appeals, after years of litigation, resolved the matter in favor of the Tribe by holding that lands held in trust by the United States for the Narragansett Indian Tribe pursuant to the Rhode Island Indian Claims Settlement Act of 1978 qualify as Indian lands under the IGRA. The Circuit Court ordered the State of Rhode Island to enter into good faith negotiations to draft a tribal-state compact under which gaming operations can begin, and stated:

> "[W]e hold that the provisions of the Indian Gaming Regulatory Act apply with full force to the lands in Rhode Island now held in trust by the United States for the Narragansett Indian Tribe."

The State of Rhode Island appealed the decision of the First Circuit to the United States Supreme Court, and a stay of the court's order to negotiate a compact was continued. On October 3, 1994, the United States Supreme Court denied the petition for certiorari, and the stay was dissolved.

After termination of the stay, the State mounted an effort in Congress to single out the Narragansett Indian Tribe for exclusion from IGRA's benefits. This effort reached its goal with the passage of the amendment to Section 9 of the Rhode Island Indian Claims Settlement Act incorporated in the 1997 Omnibus Appropriations Act. For all the reasons set forth above, the Administration supports a repeal of this provision.

STATEMENT OF RANDY R. NOKA,
FIRST COUNCILMAN
NARRAGANSETT INDIAN TRIBE
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

May 1, 1997

Good morning, Mr. Chairman, members of the House Resources Committee, ladies and gentlemen. My name is Randy Noka. I am the First Councilman of the federally recognized Narragansett Indian Tribe of Rhode Island. I am testifying on behalf of our tribal government, the Tribal Council, and the more than 2,000 men, woman and children who are today's Narragansett Tribe. I am joined here by Tribal Medicine Man Lloyd G. Wilcox and tribal attorney Charlie Hobbs of Hobbs, Straus, Dean & Walker.

I want to thank Chairman Young for holding today's hearing on the Chafee Rider to the 1997 Omnibus Appropriations Act, passed last Se[illegible]er. This non-germane amendment took away a vital aspect of our tribal sovereignty. We are grateful for the opportunity to present our side of the story, a story which has been terribly distorted by those who oppose tribal sovereignty and our struggle for economic self-sufficiency.

I also want to again thank Congressman Patrick Kennedy for his courage and determination in making today's hearing a reality. Had he <u>not</u> spoken out on our behalf and called attention to the injustice perpetrated against us by our own Senator, we would not be here today. We know that Patrick Kennedy doesn't support gambling in Rhode Island, but he has shown to us that he recognizes and

supports the inherent sovereign rights of the tribe. One of the basic rights established under sovereignty is the use and enjoyment of the lands, including all manner of economic development. It is up to the Tribe, not the State, to decide what position the Tribe will take on gaming. It's a tribal sovereignty issue, not just a gaming issue.

The Chafee Rider holds that our settlement lands -- aboriginal lands belonging to us before first contact with Europeans and held today for us in trust by the United States quote "shall not be treated as Indian lands". More than 300 years ago, our ancestors were massacred by colonial militia during the King Philip's War. Their sole crime was that they were Narragansett Indians. They were killed because of suspicion, fear, bigotry, and ignorance. We cannot help but wonder if these same unjustified causes were driving the Chafee Rider. This Congress cannot redress the ancient past and we are not asking for that. But you can repeal the Chafee Rider, an act which sets a terrible precedent for *all* tribes, not just our tribe. We cannot understand how Senator Chafee, a person generally respected in this Congress and Rhode Island, could act in such a discriminatory and prejudicial manner against us.

We hope that we will ultimately prevail in bettering the future of our members. We hope that from today's hearing, legislation will be introduced <u>and enacted into law</u> which will restore our right, as existed before the Chafee rider, to earn revenues for the benefit of our community as we see best, not as others would dictate to us. That is what tribal sovereignty means. The freedom to govern your own affairs is a basic right of all free people, every American citizen, including the aboriginal people of this Nation.

The simple truth is that Senator Chafee used his political power and privilege to stop us from opening a bingo hall on our trust lands after we had established our right in a court of law to conduct gaming on our tribal lands under the Indian Gaming Regulatory Act (IGRA). A bingo hall, Mr. Chairman, not a Las Vegas, Atlantic City or Foxwood-style casino as Senator Chafee and others keep repeating, but a plain bingo hall. IGRA prevents our tribe and other tribes from operating games criminally prohibited in the State. The federal court held in 1994 that IGRA applied with "full force" to our settlement lands, despite Senator Chafee's claims that in 1978 we gave up our governmental rights. The court found that upon federal recognition in 1983 we retained our inherent sovereign authority, exercised governmental powers over our lands, and that we are recognized as eligible for the programs and services provided to tribes -- thus satisfying the requirements of IGRA.

But our anger and dismay over the Chafee Rider is <u>not</u> so much about gaming. Even more profoundly, it is about disrespect for a sovereign Indian tribe, disregard for the government-to-government relationship that we have with the United States, and for the responsibilities which the United States assumed, as a trustee, to protect Indian tribes. It is about discrimination against Native Americans by a member of Congress. It is about fairness and responsibility, and the obligation of <u>this Congress</u> to treat all people, including Native Americans, with dignity and respect. We Narragansett were not treated with dignity and respect by the 104th Congress. We were not treated fairly.

It took this Nation nearly 200 years to recognize that its treatment of Native Americans was wrong. In the last 25 years, many good pieces of legislation have

been enacted to improve the lives of Native Americans. Laws such as the Indian Self-Determination and Education Assistance Act, the Indian Health Care Improvement Act, the Indian Tribal Justice Act, and yes, even the Indian Gaming Regulatory Act, recognize the trust responsibility which this Nation has assumed toward Indian tribes to protect tribal sovereignty, encourage the government-to-government relationship between the United States and every Indian tribe, and acknowledge the inherent right of tribal self-government retained by tribes.

In 1983 the Narragansett Tribe was acknowledged by the United States as a federally recognized Indian tribe, possessed with all of the "privileges and immunities" of other federally recognized Indian tribes. We determine membership in our tribe. We can tax our people and land (but we have no enterprise to tax). We regulate our land use. We retain tribal sovereign immunity from suit. All of these are examples of tribal sovereignty.

By now you must have heard, and I hope seen through, Senator Chafee's disingenuous statements that he means no disrespect against us, but that he only wants us to be treated like any other entity in Rhode Island which seeks to establish a gaming facility. He views us as little more than a social club or a for-profit corporation. By those very remarks, Senator Chafee reveals that he disregards our sovereign status as a federally recognized tribe, which is the direct descendant of the people who once occupied this land until they were illegally dispossessed. He disregards the obligation we have as a government to provide essential services to our members such as health care for our children and the tribal elders we revere, safe and healthy housing where our families can pass down our tribal traditions to

our young, and jobs for our members who seek the opportunity to provide for their families and remain in southern Rhode Island, close to the reservation and family.

When we sought a compact under IGRA, the State sued us.

When we won in the federal courts, the State repealed Las Vegas nights, making casino-style games illegal in the State.

When we negotiated a compact with the former governor, Governor Almond repudiated it.

When we sued the State for bad faith under IGRA, Governor Almond raised the State's immunity from suit, despite his earlier claims to abide by the provisions of IGRA.

When we announced our plans to build a bingo hall, which requires no compact under IGRA, Senator Chafee, without ever speaking to us, demanded of EPA, the NIGC, and the President's Council on Environmental Quality that we perform more stringent environmental studies than the law required, solely to block our progress.

When we satisfied those agencies that we were in full compliance with the law, Senator Chafee and Governor Almond got the law changed at the eleventh hour, without a hearing or public debate.

Would men of integrity resort to such immoral and unethical acts?

It is logical for you to ask: "Why are you Narragansett any different than other minorities who struggle for a better life." I respond to that statement as follows: We Narragansett, and all Native Americans, are different, because Congress, through treaties, statutes, and the general course of dealing with Indian tribes, and recognizing the historical injustices perpetrated upon us by the dominant society, assumed a trust responsibility and fiduciary obligation to protect and preserve Indian tribes and the Indian people. The Constitution of the United States gives the Congress plenary power over the field of Indian affairs, wherein the United States has undertaken a trust responsibility, a responsibility which the United States *and this Congress* cannot disregard whenever it is politically expedient to do so. There exists a unique government-to-government relationship between the United States and all Federally-recognized Indian tribes which should not be trampled upon simply because one powerful member of the Congress wishes to.

We are distressed that this Congress, by enacting the Chafee Rider, could act so contrary to these principles, principles which form the foundation of Federal Indian law as we know it today and the obligation of the United States to protect and preserve tribal sovereignty.

The Chafee Rider, and the manner in which this ill-conceived legislation became law, is a throwback to dark chapter in this Nation's history of its treatment of Native Americans -- when our interests were never considered and only the interests of the governing elite and theirs friends and cohorts mattered. No bill was introduced in the 104th Congress by Senator Chafee. No bill was referred to this Committee or the Senate Committee on Indian Affairs. No hearing was held,

despite Chairman McCain's open invitation to Senator Chafee in January 1996 to hold a hearing and abide by the legislative process. There was no public debate. We were not consulted. Chairman McCain and Vice-Chairman Inouye opposed Senator Chafee's rider in the Senate, but to no avail.

Is this how the United States Congress should act toward Native Americans?

Unemployment among our members is nearly 39%, six times the rate of Rhode Island's (6.6%). According to the 1990 U.S. Census, Indians in Rhode Island have a per capita income of about $9,000, which is 44% less than the average in Washington County, Rhode Island where the Tribe's reservation is located. 25% of the State's Indian population live at or below the poverty level, compared to 6.8% for Washington County, Rhode Island. Roughly 30% of the Tribe's potential labor force earn an income of less than $7,000 per year.

No one in this room, no one in this Congress should be proud of the Chafee Rider.

We fought for many years to establish our legal right to exercise our sovereign rights on our own lands, lands wrongfully taken from us years ago. The State of Rhode Island, its governor, attorney general, and even Senator Chafee, were given every opportunity to make their case to the Federal courts. We prevailed. Fairness prevailed. Decency prevailed.

But when the State of Rhode Island and Senator Chafee were rebuked by the First Circuit in March, 1994, they simply bided their time and while we borrowed

and spent several million dollars complying with the law and moving forward with our plans for a gaming facility, they waited. Senator Chafee had the entire 104th Congress to introduce a bill, hold a hearing, publicly debate the issue. Chairman McCain extended an open invitation in January, 1996, to hold a hearing on Senator Chafee's Narragansett issue. Senator Chafee declined. Why? Was it because he knew that he could not achieve his ends through open, public debate?

Only Senator Chafee knows the real reasons for his actions. But I can tell you about the hypocrisy of gaming in Rhode Island. Rhode Island permits a wide array of games of chance, including thousands of video slot machines at Lincoln Park and Newport Jai Alai Fronton, pari-mutuel wagering, simulcast, dog racing, jai alai and the many forms of the State lottery (powerball, instant tickets, numbers, Rhody cash). It does not permit coin-drop slot machines and the traditional table games usually associated with the term "casino" and for that reason, under IGRA, we could not have planned a casino as Senator Chafee and Governor Almond claim. But with the ample gaming allowed by the State, the Rhode Island Lottery announced that for the year ending June 30, 1996, the State Lottery grossed more than $455 million dollars, with nearly $90 million dollars going to the State for its governmental needs. Perhaps Senator Chafee and Governor Almond decided that there is no room in Rhode Island for Indian gaming.

For more than four years, despite a Congressional law intended to benefit Indian tribes and a court decision saying that the law applies with "full force" to our lands, we have been denied the opportunity afforded by IGRA to construct and operate a bingo hall and bring revenues to improve the lives of our members. Senator Chafee and Governor Almond have now permanently prevented us from

doing the exact same thing the State does for its government, in a state that obtains revenues from gaming the same as we seek. That is a double standard, Mr. Chairman.

This Nation made a policy decision more than a generation ago to encourage tribal self-determination and self-sufficiency to end the cycle of federal dependence. All debate aside, IGRA is one of the most important pieces of federal Indian legislation passed by Congress because it makes possible for so many tribes, for the first time in modern history, to have the ability to become and remain self-sufficient. Congress recognized when it passed the IGRA that the revenues from gaming "often means the difference between an adequate governmental program and a skeletal program that is totally dependent on Federal funding."

When you consider these issues, now explained to you for the first time, you can only conclude that the Chafee Rider goes too far; that it reflects poorly on the honor of the United States and this Congress; that it should never have been passed; that it should be repealed as soon as possible. Do not permit this dark stain on this Nation's treatment of Native Americans to remain. Blot it out and treat us with the same dignity and respect you would afford any other American.

Thank you.

MEMORANDUM

April 29, 1997

RE: Narragansett Tribe's Response to Senator Chafee's Public Statements September 1996 to April 1997

1. Chafee Assertion: **Congress intended to exclude the Narragansetts when it passed IGRA in 1988.**

Answer: Absolutely false. In 1997, Sen. Inouye said there would have been no bill if the Narragansett exclusion had remained in the bill. In 1988, Mo Udall, Chairman of the House Interior Committee, said the bill would not get through his committee if the Narragansett exclusion remained. Of course, Sens. Chafee and Pell intended to exclude the Narragansetts, but there is no evidence that any other Senator did or anyone in the House. In fact, the Senate voted to delete the Narragansett exclusion clause. It is nonsense to say that "Congress" intended to exclude the Narragansetts.

The Tribe is confident the Chafee rider would not be approved by Congress today, if it were the subject of a hearing and the usual procedures a bill goes through. It reflects prejudice, is contrary to the Equal Protection clause in the U.S. constitution, is contrary to the federal trust relationship with Indian tribes, and the Tribe cannot believe that a fully-informed Congress would ever approve it.

2. Chafee Assertion: **The Narragansett will build a Las Vegas style casino if they win. They will operate games not allowed under State law.**

Answer: Absolutely false. IGRA limits the Narragansetts to operate only the games allowed by R. I. law. If R. I. wants to stop the Narragansetts from offering any particular game, all the State has to do is make the game illegal. In Rhode Island, casinos are illegal, unless approved by referendum. Therefore, under IGRA, the Tribe cannot operate a casino without a referendum.

However, since the State allows dog and horse racing, jai alai, many types of gaming machines, and other games, the Tribe under IGRA can operate these games under a compact with the State (which, thus far, the State, although obliged by federal law to negotiate in good faith, refuses to do).

3. Chafee Assertion: **The 1978 Settlement Act supersedes the 1988 IGRA.**

Answer: False. The Federal Court of Appeals held that it was the other way around. The usual rule is that the newer Act supersedes inconsistencies in the older Act, and the court held this rule applied. The U.S. Supreme Court refused to overturn this ruling. In other words, the Federal Court of Appeals ruled the Tribe is entitled to do gaming under IGRA. It is this ruling that Sen. Chafee is trying to evade.

4. Chafee Assertion: **The Tribe agreed to abide by State law when its land claim was settled. There was a deal, and it should be enforced.**

Answer: False. The Narragansetts agreed to no such thing. They did agree that the settlement land would be deeded to a State agency to hold in trust for the Tribe, and that the land would be subject to State laws while in that status. The Narragansett Tribe was not federally recognized at that time, and its land was not in federal trust status. Therefore, for the land to be subject to State law was entirely appropriate and non-controversial. The Tribe freely agreed to that.

But the Tribe was federalized in the 1980s. Its governmental sovereignty was recognized in 1983, and in 1988 the State agency deeded the Tribe's land to the United States in trust for the Tribe. This was a profound change from State to Federal status which made it highly inappropriate and contrary to long-standing federal policy for the State to claim continuing authority over a federal tribe's affairs.

Regardless of what the legal jurisdiction situation may prove to be, it is absurd to say the Tribe agreed that its land would be under State jurisdiction once the Tribe and its land were federalized. There was no such "deal."

Whatever the Narragansetts agreed to, the federal courts said it did not change the fact that they are now under IGRA. In effect, the court found to be true a fact that Sen. Chafee denies is true.

Sen. Chafee says his rider only restores the status quo. This is not so; the federal court said the "status quo" Sen. Chafee has in mind never existed. His rider would change the status quo confirmed by the Appeals Court.

5. Chafee Assertion: **The federal courts were wrong when they said that the Tribe was entitled to do gaming under IGRA.**

Answer: False. Every party who loses a case complains that the court was wrong. In this case, Sen. Chafee had inserted a clause in the gaming bill that would have excluded the Narragansetts from the Gaming Act. Had Congress passed this clause, it would have been law. Probably unconstitutional law but nevertheless law until struck down by a court.

Some members of Congress could not stomach singling out an Indian tribe in this unfair manner, and since they could have killed the entire bill, Sen. Chafee agreed to delete his clause and the Senate voted unanimously to delete the clause!

Sen. Chafee wrote up some pre-planned speeches (called a "colloquy") for himself, Sen. Pell and Sen. Inouye to deliver on the Senate floor, the gist of which was that even without the deleted clause, the Gaming Act still did not apply to the Narragansetts. The colloquy of course is not any part of a law, so the court said it did not take the place of the deleted clause. To say the court was wrong here requires a great deal of brass.

Furthermore, Sen. Chafee did not bother to tell Sen. Inouye at the time of the colloquy that the Tribe had become federally recognized, and that its land was now in federal trust. When Sen. Inouye found out about this much later, he issued a statement saying the "underlying premise" on which his key role in the colloquy was based, "I have since learned, was erroneous." He agreed that federalization of the Tribe and its land generally means the U. S. and the Tribe have jurisdiction, and not the State. Cong. Rec. S-11894, Sep. 30, 1996.

6. Chafee Assertion: **The Narragansetts have the same right to pursue··· gaming as Rhode Island citizens do.**

Answer: This is an assertion that sounds fair but isn't because it disregards the fundamental right of a sovereign Indian tribe to decide for itself what it will do on its own federal trust land, subject to compliance with the federal constitution and federal statutes.

If the Narragansetts could only operate the same games and stakes as Rhode Island citizens, it could do no gaming at all except penny ante bingo games. In Rhode Island, only the State itself (and two state-favored operators) can do the big-time gaming of lotteries and slot machines. Instead of the substantial revenues that Congress intended tribes to have from gaming, the Narragansetts would have nothing.

7. Chafee Assertion: **The people of Rhode Island have the final say as to what gaming is allowed in Rhode Island.**

Answer: That is fine for ordinary Rhode Island citizens, who are sovereign over their own communities. But tribes, not state citizens, are sovereign over federalized tribal communities (subject to compliance with all federal laws). Sen. Chafee is arguing for denial of tribal sovereignty that virtually all other tribes have.

[Exhibits were placed in hearing record files of Committee.]

EXHIBITS TO STATEMENT OF

RANDY NOKA, NARRAGANSETT TRIBE

MAY 1, 1997

A. Chafee Rider, Sec. 330 (passed Sep. 30, 1996)

B. Conference Committee Report (Sep. 30, 1996)

C. Statement of Senator Inouye (Sep. 30, 1996)

D. Statement of Senator McCain (Sep. 30, 1996)

E. Statement of Rep. Patrick Kennedy (Sep. 30, 1996)

F. Synopsis of Narragansett Time Line

G. Memorandum, Narragansett Tribe's Response to Sen. Chafee's Public Statements

H. Memorandum on Tribal Sovereignty

I. [Reserved]

J. Gaming in Rhode Island

K. Affidavit of William Graham, Environmental Engineer

L. Narragansett Ad. re R.I. Poll, April 29, 1997

M. Chart Showing Evolution of State and Tribal Jurisdiction

N. Four Winds Community Center and Narragansett Indian Health Center

O. Narragansett Wetuomuck Housing Village

P. Sen. Inouye Transcript, WJAR-TV Program April 17, 1997

Q. Charlestown Resolution, November 12, 1991

R. Statement of William Graham, May 1, 1997

S. Letter Carol Miller to Sen. Chafee, April 5, 1997

T. Letter Carol Miller to Rep. Kennedy, April 5, 1997

PAGE 2

EXHIBITS TO STATEMENT OF

RANDY NOKA, NARRAGANSETT TRIBE

MAY 1, 1997

U. Petition with 3,000 Signatures

V. Providence Journal, December 31, 1995, Great Swamp Massacre

W. Dept. of the Interior Report on Narragansett History

State of Rhode Island and Providence Plantations

REPRESENTATIVE
DONALD J. LALLY, JR.
19 Oak Street
Wakefield, Rhode Island 02879

Room 21, State House
Providence, Rhode Island 02903

Secretary,
Committee on Judiciary

House of Representatives
May 1, 1997

The Honorable Don Young
Chairman, House Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

The Honorable George Miller
Ranking Minority Member, Resources Committee
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Young, Honorable George Miller and
Members of the U.S. House of Representatives Resources Committee:

I am here today to testify on behalf of the Narragansett Indian Tribe. The Washington Delegation and the Governor are speaking for themselves and only a small, vocal minority. The recent polls and earlier polls show that the Narragansetts have the overwhelming support of the majority of Rhode Islanders. Presently there are two bills pending in the Rhode Island General Assembly. (Copies of these bills have been attached to my testimony.)

The bill to establish a permanent Joint Committee on Indian Affairs would set up a committee to act as a liaison with tribal government, consult and counsel with all state agencies, municipalities and the federal government. It would investigate the feasibility of cooperative social and economic undertakings including, but not limited to, tribal small business, housing,

employment, gaming and educational alternatives. It would also promote negotiation and open channels of communication between the two sovereigns.

To date, the State of Rhode Island and the Narragansett Indian Tribe have primarily communicated through the federal court system. Many of us in the Rhode Island House of Representatives feel that the time has come to openly communicate. This permanent committee will go a long way to opening those lines of communication.

The 1994 referendum for a gaming facility for the Tribe is not an accurate reflection of the opinion of Rhode Islanders. The Referendum Questions relating to the Tribe did not identify the Tribe as owners of the facility, but rather only identified the location of the facility. As the facility was not on tribal property, voters did not identify the Referendum Question with the Tribe. Further, the Referendum Question was one of six similar questions which further confused voters and created the perception of a small state overrun with gaming facilities.

The issue before you today is one of sovereignty. Indian tribes, including the Narragansetts, have retained the attributes of a sovereign, or independent nation. These rights pre-date the birth of this republic and essentially place the Narragansett Indian Tribe in a government-to-government relationship with the United States of America and the State of Rhode Island.

It is also an issue of discrimination. Rhode Islanders believe overwhelmingly that the Tribe has been discriminated against in the past and continues to be discriminated against today. Certain Rhode Island leaders have chosen to ignore the issue of fundamental fairness. Rhode Island has two casinos and derives enormous revenue from its state-run lottery system. Governor Almond and Senator Chafee believe that the State can use gaming as economic development but the Tribe cannot.

I do not want to reduce this hearing to one on gaming. However, I felt that I should deal with a side issue that will be discussed by opponents to restoring the sovereign rights of the Narragansett Indians. Please restore the sovereign rights and help end the discrimination that the Narragansetts have suffered for centuries.

Sincerely,

Representative Donald J. Lally Jr.

Representative Donald J. Lally, Jr.

DJL/db

State of Rhode Island and Providence Plantations

REPRESENTATIVE
DONALD J. LALLY, JR.
19 Oak Street
Wakefield, Rhode Island 02879

Room 21, State House
Providence, Rhode Island 02903

Secretary,
Committee on Judiciary

House of Representatives
April 22, 1997

The Honorable Don Young
Chairman, House Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

The Honorable George Miller
Ranking Minority Member, Resources Committee
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Gentlemen:

As members of the Rhode Island General Assembly, we want to first of all congratulate and commend you for re-establishing the regular legislative procedure regarding the sovereign rights of the Narragansett Indian Tribe of Rhode Island. As you know, regrettably, in the final hours of the 104th Congress, a legislative rider was included in the 1997 Omnibus Appropriations Act, that singled out Rhode Island's only Federally-recognized tribe for separate treatment from all other Native American Tribes.

We regret that this legislative rider, sponsored by Senator Chafee, was never introduced in the form of legislation in the last Congress. We regret that no public hearing was held on the rider. We regret that no Congressional report was ever issued on the rider. We regret that the Narragansett Tribe was never even consulted on the rider despite its impact on the tribe.

So we applaud you for conducting an open, oversight hearing concerning this fundamental matter of the Narragansett's loss last year of basic sovereign rights. We respectfully request that our letter be made part of the public record for this May 1, 1997 hearing.

We in Rhode Island pledge to work with you in re-establishing the full government-to-government relationship for the Narragansett Tribe that every other tribe enjoys throughout the United States. In that regard, you should know that we support pending legislation in our General Assembly to create a Joint Committee whose duties would be "to liaison with Tribal government, consult and counsel with all state agencies, municipalities and the federal government and any other groups or organizations that the committee deems necessary to fulfill its goals and in addressing those social and economic issues which specifically impact the State in its relations with the Tribe. It shall investigate the feasibility of cooperative social and economic undertakings including but not limited to tribal small businesses, housing, employment, gaming and educational alternatives and it shall promote negotiation and open channels of communication between the two sovereigns."

Sincerely,

9 7 -- H 5543

DT138

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1997

AN ACT

RELATING TO THE GENERAL ASSEMBLY -- TEMPORARY JOINT COMMITTEE ON INDIAN AFFAIRS

Introduced By: Representatives Lally, Kelso, Carter, Garvey and Benson
Date Introduced: January 23, 1997
Referred To: House Committee on Finance

It is enacted by the General Assembly as follows

SECTION 1. Title 22 of the General Laws entitled "General Assembly" is hereby amended by adding thereto the following chapter:

{ADD CHAPTER 7.9 **ADD}**

{ADD PERMANENT JOINT COMMITTEE ON INDIAN AFFAIRS **ADD}**

{ADD 22-7.9-1. Legislative findings. -- ADD} {ADD The general assembly hereby finds and declares as follows:

(a) The Narragansett Tribe of Indians (hereinafter referenced as the "Tribe") is formally recognized by the United States of America and exercises certain sovereign powers over those lands deeded pursuant to the Rhode Island Indian Claims Settlement Act, 25 U.S.C. Section 27-1 et seq.

(b) Such sovereign authority encompasses law enforcement, social programs and economic development all of which have an impact on neighboring municipalities and the State of Rhode Island.

(c) The general assembly, in the interest of public health, safety, morals, good order, and the general welfare of the citizens of the state of RHode Island, hereby exercises is authority to approach these issues in the spirit of cooperation and in a manner that will enhance investment, economic development , employment and tourism in the State of Rhode Island. **ADD}**

{ADD 22-7.9-2. Permanent committee. -- Composition. -- ADD} {ADD There is hereby created permanent joint committee of the general assembly on Indian affairs that shall consist of seven (7) members of the general assembly, four (4) of whom shall be form the house of representatives to be

INDIAN AFFAIRS

* * *

This act would create a permanent joint committee on Indian Affairs.

The act would take effect upon passage.

appointed by the speaker, not more than three (3) of whom shall be form the same political party. Three (3) of whom shall be from the senate to be appointed by the senate majority, not more than two (2) of whom shall be from the same political party. Vacancies shall be filled in like manner as the original appointments. The members of the joint committee on Indian affairs shall serve so long as they remain members of the house from which they were appointed until their successors are duly appointed and qualified. **ADD}**

{ADD 22-7.9-3. Selection of officers. -- ADD} **{ADD** Upon organization of the joint committee, by majority vote, one (1) of their members shall be chosen as chairperson, another of their members shall be chosen vice-chairperson; and another of their members shall be chosen as secretary. **ADD}**

{ADD 22-7.9-4. Duties. -- ADD} **{ADD** (a) It shall be the duty of the joint committee to liaison with Tribal government, consult and counsel with all state agencies, municipalities and the federal government and any other groups or organizations that the committee deems necessary to fulfill its goals and in addressing those social and economic issues which specifically impact the state in its relations with the Tribe. It shall investigate the feasibility of cooperative social and economic undertakings including but not limited to tribal small businesses, housing, employment, gaming and educational alternatives and it shall promote negotiation and open channels of communication between the two (2) sovereigns.

(b) The joint committee on Indian affairs shall from time to time and at least once during this session of the general assembly, report to the general assembly on its findings and conclusions and the results of its studies, to make such recommendations to the general assembly, and to propose such legislation as it shall deem advisable to assure social and economic development and mutual cooperation between the two (2) sovereigns.

(c) Technical assistance. The joint committee shall, attempt to obtain the proper assistance from available state and federal sources.

(d) References to committee. Each branch of the general assembly shall refer to the joint committee on Indian affairs all bills and resolutions dealing with or effecting Indian affairs within the state of Rhode Island.

(e) Meeting/Quorum. The joint committee on legislative services shall provide adequate space in the State House for the use of the joint committee on Indian affairs, provided, however, that the joint committee on Indian affairs may conduct hearings and hold meetings elsewhere when doing so better serves its purposes. A simple majority of the members of the joint committee on Indian affairs shall be necessary to constitute quorum for the transaction of business. **ADD}**

SECTION 2. This act shall take effect upon passage.

DT138

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO THE GENERAL ASSEMBLY -- TEMPORARY JOINT COMMITTEE ON

9 7 -- H 6023 AS AMENDED

ES588

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1997

AN ACT

RELATING TO PUBLIC PROPERTY AND WORKS -- NARRAGANSETT INDIAN FEDERAL TRIBAL

Introduced By: Representatives Lally, Williamson and Carter
Date Introduced: February 4, 1997
Referred To: House Committee on Judiciary

It is enacted by the General Assembly as follows

SECTION 1. Title 37 of the General Laws entitled "Public Property and Works" is hereby amended by adding thereto the following chapter:

{ADD CHAPTER 18.1

NARRAGANSETT INDIAN FEDERAL TRIBAL RECOGNITION**ADD}**

{ADD 37-18.1-1. Recognition of federal status. -- ADD} **{ADD** The general assembly and the state of Rhode Island hereby acknowledged that the Narragansett Indians have been formally acknowledges as a federally recognized native american tribe on April 11, 1983 by the government of the United States of America. **ADD}**

{ADD 37-18.2-1. Soverign immunity. -- ADD} **{ADD** As a result of the Narragansett Indians' status as a federally recognized tribe, certain rights attach and flow to the tribe as an soverign nation. **ADD}**

SECTION 2. This act shall take effect upon passage.

ES588

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO PUBLIC PROPERTY AND WORKS -- NARRAGANSETT INDIAN

FEDERAL TRIBAL

* * *

This act would acknowledge the Narragansett Indians as a federally recognized native american tribe and further would recognize certain rights as an independent soverign.

This act would take effect upon passage.

HOBBS, STRAUS, DEAN & WILBER
LAW OFFICES
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PORTLAND OFFICE:

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Submitted by Patricia Almeida (Witness)

May 2, 1991

LEGAL ANALYSIS OF HIGH STAKES BINGO ON LANDS OF THE NARRAGANSETT INDIAN TRIBE

Almost all tribes in the United States are entitled to operate high stakes bingo under the Indian Gaming Regulatory Act of 1988 (the "Indian Gaming Act"), 25 U.S.C. §§ 2701 et seq., provided, that the State in which the tribe is located allows low stakes bingo, as Rhode Island does. However, when the Rhode Island Indian Claims Settlement Act of 1978 ("the Settlement Act"), 25 U.S.C. §§ 1701 et seq., was passed, the only legal status which the Narragansett Indian Tribe had in the State of Rhode Island was that of a state chartered corporation. As such, that entity was subject to state criminal and civil jurisdiction, which, strictly applied, would limit the Tribe to low stakes bingo. In 1983 the Narragansett Indian Tribe was recognized by the United States to be a sovereign Indian tribe. The Narragansett Settlement Act, however, was never amended to remove State jurisdiction after the Tribe received federal recognition.

Five years later, in 1988, when the Indian Gaming Act was going through Congress to authorize high stakes bingo for tribes, Senator Pell introduced an amendment that would have made it clear that the Narragansett Tribe would not have the freedom to operate high stakes bingo that other tribes would have. However, he later withdrew that amendment on advice that it was redundant, and that the Settlement Act already prohibited the Tribe from operating high stakes bingo. In fact, as explained below, the prohibition was not redundant, because the Indian Gaming Act had general language giving the tribes freedom to operate high stakes bingo that would take precedence over a non-specific act such as the Narragansett Settlement Act.

The Indian Gaming Act passed, and despite Senator Pell's understanding, it seems that the Narragansett Indian Tribe is now free to operate high stakes Indian bingo on tribal trust lands. But, if the Tribe were to do that without consultation with State and local interests, those interests might well ask Congress to pass a

technical amendment that would clearly accomplish what Senator Pell had intended. However, in view of the Tribe's support for gaming and changed policies and economic circumstances of the past few years, it is possible that the Rhode Island delegation (Senators Pell, Chafee and Congressman Reed), will support the Tribe's wish to operate high stakes bingo under the Gaming Act. Our analysis follows.

S. 555: A Bill to Regulate Gaming on Indian Lands

On August 3, 1988, after several years of consideration of the subject, the Senate Select Committee on Indian Affairs favorably reported S. 555, a bill to regulate gaming on Indian lands. As stated by the Committee:

> "S. 555 provides for a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming." S. Rep. No. 446, 100th Cong., 2d Sess. 1 (1988).

The Indian Gaming Act defines Class II Gaming as:

> "the game of chance commonly known as bingo ... including ... pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and ... card games that ... are explicitly authorized by the laws of the State, or ... are not explicitly prohibited by the laws of the State and are played at any location in the State, ... [and, except as provided otherwise,] ... does not include ... any banking card games, including baccarat, chemin de fer, or blackjack (21), or ... electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." 25 U.S.C. § 2703(7)(A) and (B).

Under section 11 of the Indian Gaming Act, an Indian Tribe may license, regulate or engage in class II gaming on Indian lands within its jurisdiction, if:

> "such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and ... the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman." 25 U.S.C. § 2710(b), emphasis added.

As for gaming on Indian lands located in the State of Rhode Island, a specific federal prohibition was found in section 23 of S. 555 itself, as reported out of the Senate Select Committee in August, 1988. Section 23 read:

> "Nothing in this Act may be construed as permitting gaming activities, except to the extent permitted under the laws of the State of Rhode Island, on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claim [sic] Settlement Act or on any lands held by, or on behalf of, such Tribe." Section 23 of S. 555, *reprinted in* 134 Cong. Rec. S12649 (daily ed., September 15, 1988).

This intent was reinforced in the Senate Report which accompanied the version of S. 555 reported out of the Senate Select Committee in August, 1988. Elaborating on the restrictions of section 11 of the gaming bill, the Senate Select Committee stated:

> "The phrase 'not otherwise prohibited by Federal law' refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto. ... However, it is the intention of the Committee that nothing in the provision of this section or in this act will supersede any specific restriction or specific grant of Federal authority or jurisdiction to a State which may be encompassed in another Federal statute, including the Rhode Island Claims Settlement Act (Act of September 30, 1978, 92 Stat. 813; P.L. 95-395) and the Marine [sic; read Maine] Indian Claim Settlement Act (Act of October 10, 1980; 94 Stat. 1785; P.L. 96-420)." S. Rep. No. 446, 100th Cong., 2d Sess. 12 (1988), emphasis added.

While the gaming prohibition of section 23 of S. 555 noted above constituted a specific prohibition against gaming on Indian lands under federal law, which would satisfy the requirements of section 11 of S. 555, the relevant provision of the 1978 Settlement Act referred to above did not satisfy this requirement, notwithstanding the Committee's belief that it did. The Settlement Act does not contain a specific federal prohibition against gaming on Indian lands. Section 9 of the Settlement Act merely reads:

> "Except as otherwise provided in this subchapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." 25 U.S.C. § 1708.

Senator Pell's Understanding

As originally introduced in 1987, S. 555 contained no prohibition against gaming specific to the Narragansett Tribe. When the Senate Select Committee held hearings on S. 555 in June, 1987, Senator Claiborne Pell testified before the Committee seeking to amend the gaming bill to prevent the Tribe from conducting gaming operations contrary to State law. Senator Pell explained that:

"I want to make sure that the provisions of these bills do not abrogate the terms of the Rhode Island Indian Claims Settlement Act (P.L. 95-395) and that they reaffirm that the Government of the State of Rhode Island will continue to regulate all legalized gaming activities within Rhode Island."

Hearing before the Select Committee on Indian Affairs on S. 555 to Regulate Gaming on Indian Lands and S. 1303 to Establish Federal Standards and Regulations for the Conduct of Gaming Activities on Indian Reservations and Lands, and for Other Purposes, 99th Cong., 1st Sess. 472-476 (1987) (statement of Sen. Claiborne Pell). 100th Cong.

Senator Pell testified in 1987 that under the framework of the 1978 Settlement Act, it was the intent of that law to "preserve the full jurisdiction of the State of Rhode Island." Senator Pell said that the Governor, community leaders as well as tribal leaders urged the Rhode Island congressional delegation to prohibit gaming activities by the Tribe. (It is significant that the Tribe supported this prohibition at that time.)

According to Senator Pell, an amendment to the proposed gaming legislation was necessary to specify that Rhode Island State civil, criminal and regulatory jurisdiction was to continue after passage of the Indian Gaming Act. As stated by Senator Inouye: "[U]nless a tribe affirmatively elects to have State laws ... and State jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow State jurisdiction on Indian lands for the regulation of Indian gaming activities." 134 Cong. Rec. S12649 (daily ed., September 15, 1988). It was therefore necessary to specify that even after passage of the gaming bill State law would continue to be exercised over the tribal lands in accordance with section 9 of the 1978 Settlement Act.

Senator Pell testified before the Senate Select Committee in 1987 that, along with Senator Chafee and Representative Claudine Schneider, he wrote Interior Secretary Hodel informing him that the Tribe was seeking federal trust status for the land and as a result, Charlestown officials, who objected to high stakes gambling, were concerned that the town's ability to regulate gaming could be jeopardized under the terms of a federal trust agreement. Senator Pell said that in response to this letter he was informed that the Settlement Act would prevent the Tribe from operating gaming activities contrary to State law. This response, however, was made prior to the enactment of the Indian Gaming Act's provision (§ 11) requiring that there be a specific federal prohibition against gaming on Indian lands.

At the request of Senator Pell, Section 23 noted above was added to S. 555 to make sure that the federal jurisdiction over gaming that the gaming bill contemplated would not be in place of Rhode Island State jurisdiction over gaming activities on the Tribe's land.

Deletion of Section 23 of S. 555

However, when S. 555 was considered by the full Senate on September 15, 1988, section 23 was withdrawn by Senator Pell. In a colloquy with Senators Daniel Inouye and John Chafee, Senator Pell stated that:

> "In the interests of clarity, I have asked that language specifically citing the protections of the Rhode Island Indian Claim [sic] Settlement Act (Public Law 95-395) be stricken from S. 555. I understand that these protections clearly will remain in effect.
>
> "Mr. Inouye. I thank my colleague, the senior Senator from Rhode Island [Mr. PELL], and assure him that the protections of the Rhode Island Indian Claims Settlement Act (P.L. 95-395), will remain in effect and that the Narragansett Indian Tribe clearly will remain subject to the civil, criminal, and regulatory laws of the State of Rhode Island.
>
> "Mr. Chafee. ... The Chairman's statement makes it clear that any high stakes gaming, including bingo, in Rhode Island will remain subject to the civil, criminal, and regulatory laws of our State." 134 Cong. Rec. S12650 (daily ed. September 15, 1988) (statements of Senators Pell, Inouye and Chafee).

It was therefore the understanding of Senators Pell, Chafee and Inouye that S. 555, which generally contemplated federal regulation of Indian gaming, would not preempt the provision in the 1978 Settlement Act which applied State civil and criminal jurisdiction to the lands of the Tribe. That understanding, however, was mistaken, given the requirements of section 11 of S. 555 that there must be a specific federal prohibition against gaming on Indian lands. With the deletion of section 23 from the proposed legislation, there was no longer a federal law specifically prohibiting gaming on Indian lands located in the State of Rhode Island. Section 9 of the Settlement Act does not constitute the specific Federal statutory prohibition against gaming on Indian lands as contemplated by section 11(b)(1)(A) of the Indian Gaming Act. Senators Pell, Chafee and Inouye were simply misinformed in their belief that the general grant of jurisdiction to the State of Rhode Island, contained in the 1978 Settlement Act, survived the later and more specific requirements of section 11 of S. 555 for federal jurisdiction.

Grandfather Rights

S. 555, as amended, was passed by the Senate on September 15, 1988, and the House on September 27, 1988. The bill was signed into law on October 17, 1988, as Pub. L. 100-497. While Congress was aware that the Tribe received Federal recognition back in 1983, it appears that Congress was unaware of the fact that only three days prior to passage of S. 555 in the Senate on September 15, 1988, the Eastern

Area Director, Bureau of Indian Affairs accepted on behalf of the United States, pursuant to 25 U.S.C. § 465, approximately 1,800 acres of lands in trust for the benefit of the Tribe.

As a result of the Bureau's action, taking the lands into trust, the 1,800 acres became "Indian lands" as defined in section 4 of the Indian Gaming Act (25 U.S.C. §2703(4)).[1] As "Indian lands," they fall within the provisions of section 11(b)(1) of the Indian Gaming Act (25 U.S.C. § 2710(b)(1)) which permits class II gaming "on Indian lands," provided that the gaming is located in a State which permits gaming "for any purpose by any person, organization or entity." Rhode Island is a state which permits class II gaming. R.I. Gen. Laws § 11-19-1, as amended.[2]

The Tribe had its lands taken in trust by the United States on September 12, 1988, and, as a result, obtained the grandfather rights to operate bingo in accordance with the Indian Gaming Act. Only a special disclaimer contained in a federal statute, such as the former section 23, would have cancelled its grandfather rights. When section 23 was withdrawn by Senator Pell, there was nothing left in the Indian Gaming Act nor any other law cancelling the Tribe's grandfather rights, and so the Tribe retained those rights notwithstanding the provisions of the 1978 Settlement Act.[3]

We note that for the Narragansett Indian Tribe to be under federal regulation for gaming is consistent with the situation in Public Law 280 states. In those states, the State has special jurisdiction on Indian reservations, but the Indian Gaming Act specifies exclusive federal jurisdiction with respect to gaming matters.

---

[1] The Indian Gaming Act defines "Indian lands" as: "all lands within the limits of any Indian reservation; and ... any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4).

[2] Had the settlement lands been taken into trust after, rather than prior to, passage of the Indian Gaming Act, the Tribe would have been subject to the requirements of section 20 of the Indian Gaming Act (25 U.S.C. § 2719), which places restrictions on gaming conducted on lands acquired by the Secretary of the Interior in trust after enactment of the Indian Gaming Act. Even if the lands were taken into trust by the United States after passage of the Indian Gaming Act, the Tribe still could fall within one, and perhaps two, of the exceptions to the prohibition of section 20 (exception for lands taken in trust as part of a settlement of a land claim, or exception for lands constituting the initial reservation of an Indian tribe under the Federal acknowledgement process) (25 U.S.C. § 2719(b)(1)(B)(i) and (ii)).

[3] When the Eastern Area Director, BIA, took the Tribe's lands into trust, on behalf of the Secretary of the Interior, he did so with the proviso that his action did not alter the effect of the applicability of the Settlement Act. As noted above, the Narragansett Settlement Act does not contain the prohibition against gaming required by section 11 of the Indian Gaming Act. As a result, the Eastern Area Director's proviso does not alter the applicability of the Indian Gaming Act to the tribal lands.

Need for New Legislation

As a result of the withdrawal of Section 23, the Tribe has a strong argument that it is free to operate high stakes bingo on its land in Rhode Island under the Indian Gaming Act, just like any other tribe. The Tribe might well be justified in starting such an operation. However, it also seems clear that this is contrary to what some key Senators intended in 1988, and therefore if the Tribe proceeded now to operate high stakes bingo, those same Senators might justifiably feel the Tribe was taking advantage of an unintended loophole in the Gaming Act, and arrange to close the loophole. It would seem wise for the Tribe to seek to persuade those Senators that the Tribe should be allowed to operate high stakes bingo, because (1) the Tribe needs the revenue, and (2) there is no sound reason why the Narragansett Tribe should be barred from a source of revenue that in the past few years almost every other tribe in the country has come to enjoy under the Indian Gaming Act.

If those Senators are persuaded then to remove any doubt that the Tribe would be free to operate high stakes bingo, the Tribe should seek an amendment of the 1978 Settlement Act to add, after section 1708, words to the effect "except with respect to activities under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq."

ORIGINAL

Narragansett Indian Tribal Resolution

No. TA 91-427

PURPOSE: To exercise and establish a Class II Indian High Stakes gaming operation upon tribal lands as a economic development project promoting financial self-suffiency for the Narragansett people

WHEREAS: the Narragansett Indian Tribe is a Federally Recognized and Acknowledged Tribe; and

WHEREAS: the Chief Sachem and Tribal Council are the Governing Body of the Tribe; and

WHEREAS: the Tribal Government has been suffiently provided with formal reports and information by it's Tribal Legal advisors specific to the need of amending federal legislation intended to restore tribal jurisdiction over it's economic development affairs - notably - ClassII Indian High Stakes Gaming; and

WHEREAS: the Tribe has mandated the Tribal Government to pursue economic development joint ventures for the purposes achieveing tribal financial self-suffiency; and

WHEREAS: the Chief Sachem and Tribal Council have exerciesed due care and dilligience in seeking economic development ventures per the Tribe's mandate; and

WHEREAS: the Tribal Government has unanimously concluded Class II Indian High Stakes Gaming has provided Indian tribe's with the highest rate of return on the tribal investment dollars; and

NOW THEREFORE BE IT REOLVED that the Narragansett Indian Tribe fully exercise it's intent to establish and operate a Class II Indian High Stakes Gaming facility for the purpose of providing the Tribe with self generated income separate and apart from federal funding.

(seal)

CERTIFICATION

I, Shelia A. Christy, Tribal Secretary, hereby certify that the aforegoing is a true and accurate account of the transactions at the regularly scheduled Monthly Meeting of the Narragansett Indian Tribe on 27th day of April, 1991.

Attest:

Shelia A. Christy
Tribal Secretary

George H. Hopkins
Chief-Sachem/First Councilman

JOHN F. KILLOY, JR.
Attorney at Law

404 MAIN STREET
WAKEFIELD, RHODE ISLAND 02879

Law Office of
H. Jefferson Melish

(401)783-6840
FAX: (401)782-2490

A Happy & Joyous Holiday Season to our friends in the Narragansett Indian Tribe

Representative Patrick Kennedy

IN MEMORY OF CHIEF SACHEM
we extend our most sincere
sympathy to the
Narragansett Indian Tribe

CAPITAL GAMING INTERNATIONAL

Bayport One, Suite 250
8025 Black Horse Pike
W. Atlantic City, NJ 08232
609-383-3333
Fax 609-383-3313

ɾrta Eddleman was e first female Native nerican journalist

Note: This is the fourth in a series tive American journalists. It is ı "Pictures of our Nobler Selves" N. Trahant, a member of the -Bannock Tribe of Idaho, now ı news editor of the Salt Lake The history was supported by The ʔorum First Amendment Center.

the first Native American woman mainstream newspaper was Myrta , a Cherokee. efore the turn century, the family moved ɔgee, Indian , from near Texas. The family (and a purchased hares of the Daily Times uary 1897. he newspaper y in debt and s upon bills as clockwork." mily venture; father David was the

> *"There's nothing like a newspaper newsroom to give you a well-rounded education."*
>
> ***— Ora Eddleman***

with the Associated Press (the first paper in the Indian Territory to do so) and "news of the Spanish-American war kept reader interest high." The family business listed more than 1,000 paid subscribers by 1898. One historian said: "*The Times* grew and prospered under the guidance of this clever family."

Ora Eddleman grew up in that newsroom. She added the job of wire editor to her already busy routine, which included school. She once said: "There's nothing like a newspaper newsroom to give you a well-rounded education."

That schooling included magazines, beginning in 1898, Sister Myrta, now married to former printer Walter Sams, founded the magazine, *The Twin Territories*. Ora, then 18, was hired as editor and a frequent contributor.

Congressman Patrick Kennedy
Offers Congratulations and Best Wishes to the New Members of the Narragansett Indian Tribal Council

Paid for by Friends of Patrick Kennedy

Congratulations to the newly elected Narragansett Tribal Council

JOHN F. KILLOY, JR.
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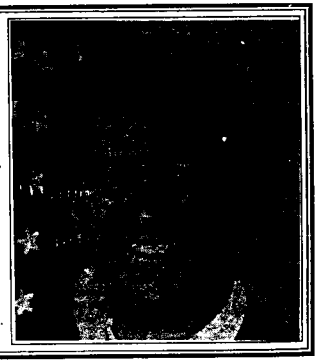
Congratulations to the Narragansett Indian Tribe on the Completion of the New Health Center

Representative Patrick Kennedy



EXECUTION COPY 2/28/78

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

All parties to Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al, C.A. No. 75-0006 (USDC, DRI) and Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (USDC, DRI) (together called "the Lawsuits") and the other undersigned persons interested in the settlement of Indian land claims within the State of Rhode Island hereby agree to the following principles and provisions of settlement which are, except for the provisions of Section 18 below, to be considered as inseparable, dependant requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America:

1. That a state chartered corporation (the "State Corporation") will be created with an irrevocable charter for the purpose of acquiring, managing and permanently holding the lands defined in Sections 2 and 3 below (the "Settlement lands"); the State Corporation will be controlled by a board of directors, the majority whose members will be chosen by a Rhode Island corporation known as "The Narragansett Tribe of Indians" (the "Indian Corporation") or its successor and the remaining members chosen by the State of Rhode Island.

2. That the State of Rhode Island will contribute the Indian Cedar Swamp, the Indian Burial Hill, the land around Deep Pond, and an easement from Kings Factory Road to Watchaug Pond to the State Corporation. These public portions of the Settlement Lands total approximately 900 acres. Contribution of the State land around Deep Pond is subject to the restrictions set forth below in Section 17.

3. That the Settlement Lands will also include approximately 900 acres of land located within the area outlined in red on the map attached hereto marked Exhibit A. The Settlement Lands shall specifically include those lands held by the defendants named in the Lawsuits which are enumerated on the schedule attached hereto as Exhibit B. These privately held portions of the Settlement Lands shall be acquired at fair market value established without regard to the pendency of the Lawsuits. No private landowner shall be required to convey any land hereunder without his or her consent, which shall be deemed to have been given upon

execution of a mutually acceptable option agreement (the "Option"). Any landowner executing an Option shall be paid a nonrefundable option fee by the federal government equal to 5% of the purchase price for a 2-year option. The optionee shall have the right to renew the option for one additional year for a renewal fee paid by the federal government of 2.5% of the purchase price.

4. That the parties to the Lawsuits will support efforts to obtain deferral of both state and federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands.

5. That the federal government will provide the funds, in an amount not in excess of 3.5 million dollars, to acquire the privately held portions of the Settlement Lands.

6. That Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island, and effectively clears the titles of landowners in Rhode Island of any such claim. This Federal legislation shall be in form and substance as set forth in the proposed statutory language attached hereto as Exhibit C, unless otherwise agreed by counsel for the private Defendants in the Lawsuit. This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island.

7. That the Settlement Lands shall be subject to a special federal restriction against alienation, provided that nothing in the federal restriction or in any other aspect of this memorandum shall affect the ability of the State Corporation to grant or otherwise convey (whether voluntary or involuntary, including any eminent domain or condemnation proceedings) easements for public or private purposes.

8. That the Settlement Lands will be held in trust by the State Corporation for the benefit of the descendants of the 1880 Rhode Island Narragansett Roll.

9. That the Settlement Lands will not be subject to local property taxation.

10. That the federal government will reimburse the private defendants in the lawsuits for costs incurred or paid for legal services and disbursements in connection with the lawsuits with respect to any lands involved in the Lawsuits which are not specified in Exhibit B and for which an Option is not executed.

11. That the State Corporation will have the right (after consultation with appropriate state officials) to establish its own regulations concerning hunting and fishing on the Settlement Lands without being subject to state regulations, but shall impose minimum standards for safety of persons and protection of wildlife and fish stock.

12. All the Settlement Lands contributed by the State will be permanently held for conservation purposes by the State Corporation.

13. That, except as otherwise specified in this Memorandum, all laws of the State of Rhode Island shall be in full force and effect on the Settlement Lands, including but not limited to state and local building, fire and safety codes.

14. That all settlement lands will be subject to a professionally prepared land use plan (the "Land Use Plan") mutually acceptable to the State Corporation and the Town Council. Acceptance of the Land Use Plan shall not be unreasonably withheld by the Town Council. At least seventy-five percent of the Settlement Lands not already committed to conservation purposes by Section 12 above will be permanently subjected to conservation uses by the Land Use Plan. Town Council acceptance of the Land Use Plan shall be a condition precedent to the acquisition of the Settlement Lands by the State Corporation. The Town Council, after its acceptance of the Land Use Plan, shall amend the zoning ordinance of the Town of Charlestown in a manner consistent with the Land Use Plan as it applies to the Settlement Lands. Thereafter, the zoning ordinance, as amended to conform with the Land Use Plan, shall control the use of the Settlement Lands and shall not be further amended in a manner inconsistent with the Land Use Plan without the consent of the State Corporation.

15. That the plaintiff in the Lawsuits will not receive Federal recognition for purposes of eligibility for Department of the Interior services as a result of Congressional implementation of the provisions of this Memorandum, but will have the same right to petition for such recognition and services as other groups.

16. That the Town of Charlestown will be reimbursed for future services provided in connection with the Settlement Lands with funds provided by the Indian corporation.

17. That contribution by the State of the land around Deep Pond is conditioned upon required and appropriate Federal approval of any conveyance of said land in such manner so as not to affect, in any adverse manner, any

benefits received by the State under the Pittman-Robertson Act (16 U.S.C. §669-669i) and the Dingell-Johnson Act (16 U.S.C. §777-777k), and further conditioned upon the retention of permanent State control of and public access to an adequate fishing area within said land.

18. That implementation of all provisions of this Memorandum, except those of Sections 6, 10 and 19, and the payment of the option fees provided for in Section 3 above shall be contingent upon a prompt determination by the Department of the Interior that the Plaintiff in the Lawsuits have a credible claim to the lands involved in the Lawsuits. Plaintiff shall have an opportunity for judicial review of any adverse determination by the Department of the Interior.

19. The Plaintiffs in the Lawsuits agree to cause the Lawsuits to be dismissed with prejudice at the time the portion of the Federal legislation which eliminates title problems pursuant to Section 6 above becomes effective.

WITNESS the execution hereof under seal as of this twenty-eighth day of February, 1978.

HONORABLE J. JOSEPH GARRAHY,
Governor of State of Rhode Island
and Providence Plantations

J. Joseph Garrahy

TOWN OF CHARLESTOWN, RHODE ISLAND
TOWN COUNCIL

By Robert McLean

PLAINTIFF: NARRAGANSETT TRIBE OF INDIANS,
By their attorneys,
NATIVE AMERICAN RIGHTS FUND

By
Thomas N. Tureen

DEFENDANTS: EDWARD WOOD, RHODE ISLAND DIRECTOR
OF ENVIRONMENTAL MANAGEMENT

By
William Granfield Brody,
Assistant Attorney General,
State of Rhode Island

(David F. Giuliano
(Paul E. Bennett
(Alfred Testa

By GOODWIN, PROCTER & HOAR,
their attorneys,

By _____
Donald P. Quinn

(Robert E. Cherry
(Castle Realty Company
(Glenn F. Godden
(Mildred L. Godden
(John S. Johnson
(Alice Johnson
(Ethel W. Duguid
(Providence Boys Club
(Greater Providence Young Mens
(Christian Association
(Sarah J. Browning
(William F. Arnold
(Ruth Arnold
(Thomas L. Arnold
(William Arnold
(Frank W. Arnold
(Thomas L. Arnold, William
(Arnold, Frank W. Arnold
(and the Washington Trust
(Company as trustees for
(the Estate of Frank Arnold
(Thomas L. Arnold, Laurence
(Whittemore and the
(Washington Trust Company
(as trustees for the
(Thomas L. Arnold Trust
(Hope W. Hallock
(Edna May McKenzie
(Lloyd E. Fitzgerald
(Joyce M. Fitzgerald
(Edward A. Whipple
(Pauline Whipple

By TILLINGHAST, COLLINS & GRAHAM,
their attorneys,

By James A. Jackson

SOUTHERN RHODE ISLAND LAND
DEVELOPMENT CORP.,
By its attorney,

By _____
Archibald B. Kenyon, Jr.

FRANKLIN SHORES, INC.,
by its attorney,

By _____
John P. Toscano, Jr.

EDNA MAE REED, by her attorney,

By _____
Harold B. Soloveitzik

CARL M. RICHARD, by his attorney,

By _____
Francis Castrovillari

OLD STONE BANK, by its attorney,

By _____
Frank Ray

OLD COLONY CO-OPERATIVE BANK,
by its attorney,

By _____
ARCHIBALD B. KENYON, JR.

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Chippewa Cree Tribe

Juneau Area
Edward K. Thomas
Tlingit-Haida Central Council

Minneapolis Area
Marge Anderson
Mille Lacs Band of Ojibwe

Muskogee Area
Rena Duncan
Chickasaw Nation

Northeast Area
Ken Phillips
Oneida Nation of New York

Phoenix Area
Arlan D. Melendez
Reno-Sparks Indian Colony

Portland Area
Bruce Wynne
Spokane Tribe

Sacramento Area
Juana Majel
Pauma Band of San Luiseno

Southeast Area
James Hardin
Lumbee Tribe

Executive Director
JoAnn K. Chase
Mandan, Hidatsa & Arikara

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W. Ron Allen, President
National Congress of American Indians
Prepared Statement on the Removal of the
Narragansett Tribe's Rights by Appropriations Rider
To the United States House of Representatives
Committee on Resources
May 1, 1997

I. Introduction

Greetings Chairman Young and distinguished members of the Committee on Resources. I would like to thank you for holding this oversight hearing regarding a provision contained in the 1997 Omnibus Appropriation Act which removed the Narragansett Tribe's settlement lands from the Indian Gaming Regulatory Act (Section 330 of Pub. L. 104-208). My name is W. Ron Allen. I am the Chairman of the Jamestown S'Klallam Tribe of Washington and President of the National Congress of American Indians (NCAI), the oldest and largest national organization of Indian tribal governments and Alaska Native Villages.

As I speak today, I am reminded of the purpose for which NCAI was founded. The NCAI was organized in 1944 in response to termination and assimilation policies that the United States forced upon native governments in contradiction of their treaty rights and status as sovereigns. Then, as now, NCAI stressed the need for unity and cooperation among native governments for the protection of their treaty and sovereign rights. I am reminded of NCAI's beginnings because the Congressional action reviewed by the Committee today, the removal of the Narragansett Tribes's sovereign rights by a budgetary rider, bears a striking resemblance to the termination actions of the 1940's and 50's. With this sense of history, I find it to be my great honor to bear a message from over 200 member tribes of NCAI. In unity, we resoundingly condemn this unconscionable abrogation of the rights of the Narragansett Tribe and strongly support the efforts to have the budget rider repealed. I have attached a copy of a recent NCAI resolution stating our position on this issue.

II. The Section 330 Rider Offends Tribal Sovereignty

The question before the Committee today is not merely the ability of a tribe to engage in gaming, but a question of the rights of tribes to be self-governing. Native governments have possessed the right to self-government and self-determination and since before the formation of the United States. In the seminal

Supreme Court case of *Worcester v. Georgia*,[1] Supreme Court Justice John Marshall found that "Indian nations had always been considered as distinct independent political communities, retaining their original natural rights, as the undisputed possessors of their soil." The federal government formed solemn agreements with independent native governments and, in return for a tremendous amount of land, the federal government has agreed to protect the tribes' right to self-government. This compact between the federal government and native governments must be zealously guarded from those who would like to extend the laws of state governments onto Indian lands.

In recent years, the Supreme Court has found that tribal governments possess the inherent right to regulate and engage in gaming so long as there is no state criminal law prohibiting gaming.[2] These Supreme Court decisions were codified in the Indian Gaming Regulatory Act.[3] In the waning days of the 104th Congress, Senator Chafee from Rhode Island pushed through an amendment to the 1997 Omnibus Appropriations Act which removed the Narragansett Tribe's settlement lands from the Indian Gaming Regulatory Act, and thus extended state gaming law onto the lands of the Narragansett. This action was a clear violation of the federal government's responsibility to protect tribes' right to self-government and must be reversed. This appropriations rider poses a great threat to tribal government rights. In the past, NCAI has enjoyed a working relationship with Senator Chafee, and we will look forward to working with him again on other issues, but on the matter before us today we disagree sharply with Senator Chafee.

NCAI has defended tribal sovereignty for more than fifty years. We are continually working to enlighten the public toward a better understanding of Indian people, to preserve Indian cultural values and to promote the welfare of all Indian people. With each passing Congress, however, there are fewer members who truly understand what Indian sovereignty and autonomy are all about. There is no better recent example of this threat than the treatment the Narragansett tribe of Rhode Island received in the 104th Congress.

II. Substantive Indian Legislation Should Not Be Determined in Appropriations Riders

This appropriations rider and the process by which it was enacted into law set an unacceptable precedent for Congress' dealings with Indian tribes. The rider singled out a tribe for removal of its sovereign rights, was attached to an appropriations bill late in the process, and became law without any hearings, without any public discourse, with no vetting of the issues to the committees of jurisdiction, and all without any consultation with the Narragansett Tribe. This is an issue that is much broader than a single tribe and its right to engage in gaming.

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[1] 31 U.S. (6 Pet.) 559 (1832).

[2] California v. Cabazon and Morongo Bands, 480 U.S. 202 (1987).

[3] 25 U.S.C. Sec. 2701, (*et. seq.*).

The Supreme Court has held that the exercise of Congressional power over Indian affairs must "be tied rationally to the fulfillment of Congress' unique obligation toward the Indians."[4] The appropriations rider before us today does not meet this test in that it singled out one particular tribe for unfair treatment in a grossly discriminatory fashion. Additionally, it is NCAI's position that the use of appropriations riders for substantive Indian legislation is never appropriate, for these riders defy a rational approach to making decisions about the federal relationship with native governments. Without hearings in the committees of jurisdiction, only one side of the story will be told and only a few Senators and Congressmen will even hear that one side before the vote. In the 104th Congress, tribal governments were forced to fight against at least a dozen appropriations riders that would have abrogated tribal sovereignty, and it appears that we will have to continue this fight into the 105th Congress. I have attached an NCAI resolution stating our opposition to the use of appropriations riders that negatively impact tribal governments.

I am very grateful to the Resources Committee for holding this hearing today because we need to squarely address the notion that Congress may use the budget process to remove any tribe's rights, without a hearing, whenever those rights conflict with the wishes of a powerful minority. Federal lawmakers have enormous power over Indian affairs but most often have little understanding of the impact of their decisions on the lives of Indian and Native people. Because of this, Indian country relies on leadership from the Resources Committee to ensure that the concerns of tribes are properly aired at Congressional hearings and that legislation concerning tribes is thoughtfully considered before becoming law. We are confident that you will provide that same leadership as you have in the past. As always, we appreciate your extraordinary commitment and leadership on Indian and Native issues.

III. Indian Gaming is a Tool for Native Self-Government and Economic Recovery

Like all governments, native governments have a responsibility to care for their citizens and ensure adequate education, health care and housing. As the Resources Committee is well aware, there has historically been a grossly inadequate supply of these services for Indian people. Tribal governments are beginning to step up their effort to meet this need and become self-sustaining, and Indian gaming is the economic development tool that many tribes are using to create tribal revenues and begin the economic recovery of the country's most impoverished communities.

Indian gaming is the most regulated in the industry and is without a doubt the most positive context in which gaming now occurs. The Tribal government programs and infrastructure funded by gaming bring hope and opportunity to some of the most desolate places in America. Crime rates go down, alcoholism and drug abuse go down, and individual initiative goes up. Despite our right to self-determination and self-government, and despite our desperate

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[4] Delaware Tribal Business Comm. V. Weeks, 430 U.S. 73, 85 (1977), *reh'g denied,* 431 U.S. 960.

economic situation, federal policy makers are working hard to set up new stumbling blocks to Indian gaming, and the appropriations rider that prohibits this economic opportunity to the Narragansett Tribe is a prime example.

The media hype about Indian gaming leads the public and Congress to believe that Indian tribes are using Indian gaming to get rich. This viewpoint was evident in a highly inaccurate opinion-editorial that appeared in yesterday's Washington Post. Nothing is further from the truth. After years of failed government programs, Indian reservations have a 31% poverty rate-- the highest poverty rate in America. Indian unemployment is six times the national average; and Indian health, education and income statistics are the worst in the country. The reality is that Indian gaming accounts for only 9% of the gambling activity in the country and it occurs on only one-third of the country's reservations. Only a relatively small number of Tribes have been fortunate enough to have very successful gaming operations; and for the most part, the revenues are just beginning to address these Tribes' needs for essential services and infrastructure needs.

Indian Tribes are governments, and, like state and local governments, the revenues accruing to tribal governments are used as a tax base to fund essential tribal services, such as education, law enforcement, tribal courts, economic development, and infrastructure improvement. In fact, tribal governments are required by the Indian Gaming Regulatory Act to use gaming revenues for these purposes. Much like the revenues from state lotteries, Tribal governments also are using gaming profits to fund social service programs, scholarships, health care clinics, new roads, new sewer and water systems, adequate housing and chemical dependency treatment programs, among others.

Indian gaming holds a tremendous promise for self-sustaining native governments and economically healthy native communities. This promise will never be fulfilled, however, if Congress does not respect tribal self-governance, including the right to engage in the Indian gaming. It is unfathomable that Congress would single out the Narragansett Tribe and remove both the sovereign right and the opportunity to become self-sustaining. Congress should not only allow the Narragansett Tribe the opportunity to raise revenues to meet the needs of its people, Congress should encourage this opportunity.

IV. Conclusion

Section 330 of the Omnibus Appropriations Act of 1997 removed the sovereign rights of the Narragansett Tribe in a clear violation of Congress' responsibility to native governments and in a manner that threatens the sovereignty of all Indian tribes and Alaska Native Villages and offends the jurisdiction of the Committee on Resources. As a matter of conscience and conviction, we ask that the Committee on Resources introduce and mark up legislation that will restore the rights of the Narragansett Tribe and quickly remove this dark stain from the federal relationship with native governments.

National Congress of American Indians

Executive Committee

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Jamestown S'Klallam Tribe

First Vice President
Ernie Stevens, Jr.
Oneida Nation of Wisconsin

Recording Secretary
S. Diane Kelley
Cherokee Nation

Treasurer
Gerald (Gerry) E. Hope
Ketchikan Indian Corporation

Area Vice Presidents

Aberdeen Area
Russell (Bud) Mason
Three Affiliated Tribes

Albuquerque Area
Joe Garcia
San Juan Pueblo

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Resolution PHX-96-027

TITLE: Support for Tribal Sovereignty - Repeal of Chafee Rider (Sec. 330) to Public Law 104-208

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, NCAI recognizes all tribes stand on an equal footing with each other and are entitled to the privileges and immunities available to other federally recognized tribes by virtue of the government-to-government relationship with the United States; and

WHEREAS, the action of the 104th Congress in passing, and the President signing into law, the 1997 Omnibus Appropriations bill (Pub. Law 104-208), which included a non-germane rider by Senator John Chafee of Rhode Island which, in violation of Senate procedures for full, open and public debate, and further violating the government-to-government relationship between the United States and sovereign Indian tribes requiring meaningful consultation, stripped the Narragansett Indian Tribe of their sovereign rights by removing them from the Indian Gaming Regulatory Act (IGRA), requires the strongest condemnation; and

WHEREAS, Indian tribes and their members throughout the country have benefited from the revenues generated by gaming conducted under IGRA to fund tribal government operations, to provide needed health care, housing, education, jobs and a variety of social services to tribal members; and

WHEREAS, the Narragansett Tribe successfully defended, in federal court, its right to conduct gaming on its federal trust lands (settlement lands) near Charlestown, Rhode Island, under IGRA, against challenge by Rhode Island; and

WHEREAS, Senator John Chafee, bypassing the authorizing committee, without a hearing, without floor debate in either the House or Senate, without consultation or input from the Tribe, after failing to attach his rider to the FY 1997 Interior Appropriations bill, attached the non-germane rider to the FY 1997 Omnibus Appropriations bill, which deprived the Tribe of its inherent sovereign rights to govern its lands by stripping the Narrangansett Tribe from IGRA, holding that the Tribe's settlement lands *"shall not be treated as Indian lands"* for purposes of gaming; and

WHEREAS, Section 330 of the FY 1997 Omnibus Appropriations Act (Pub. L. 104-208) violates the sovereign relationship which exists among our nations, and represents a dangerous precedent to the further erosion of the Tribal sovereignty for *all tribes,* which others in Congress may attempt to emulate, and is an attack upon *every* tribes' sovereignty.

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians condemns in the strongest terms possible, the discriminatory action by Senator Chafee, acceded to by Congress, which strips a sovereign tribe of its rights established under federal law and represents a gross violation of the government-to-government relationship between our nations; and

BE IT FURTHER RESOLVED that the National Congress of American Indians directs President Allen to write President Clinton to seek redress and to express NCAI's outrage over this unconstitutional and discriminatory act and convey NCAI's strongest opposition to the violation of the government-to-government relationship which the Clinton Administration desires to honor and respect; and

BE IT FURTHER RESOLVED that the National Congress of American Indians supports the Narragansett Tribe in an effort to repeal the Chafee Rider (Sec. 330) of Public Law 104-208.

CERTIFICATION

The foregoing resolution was adopted at the 1996 Annual Convention of the National Congress of American Indians, held at the Phoenix Civic Plaza in Phoenix, Arizona, on October 20-25,1996 with a quorum present.

W. Ron Allen

W. Ron Allen, President

ATTEST:

S. Diane Kelley, Recording Secretary

Adopted by the General Assembly during the 1996 Annual Convention held at the Phoenix Civic Plaza in Phoenix, Arizona on October 20-25, 1996.

National Congress of American Indians

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Resolution PHX-96-050

TITLE: Opposition to "Riders" which negatively impact American Indian Tribes

WHEREAS, we the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, certain members of the United States Congress have proposed Amendments to the FY 1997 Department of Interior and Related Agencies Appropriations Bill (H.R. 3662), and that such proposed amendments negatively impact American Indian Nations, Tribes, Bands, Indian Villages and Rancheros, and their members across broad substantive areas including the Indian Child Welfare Act, education, economic development, jurisdiction and taxation authority; among others;

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians hereby opposes such amendments in the form of a "rider" to any future Department of the Interior and Related Agencies Appropriation Bills or any other legislation that negatively impacts American Indian Tribes and

BE IT FURTHER RESOLVED that the National Congress of American Indians work closely with Congress to insure that such "riders" be removed to prevent unnecessary incursion upon Tribal Sovereignty, which would denigrate the unique Tribal-Federal government to government relationship and would interfere with the Federal government's Indian trust responsibility; and

BE IT FINALLY RESOLVED that the National Congress of American Indians hereby urges the United States Congress and the President of the United States to reject any such negative "riders" to the Department of the Interior and Related Agencies Appropriation Bill or any other legislation.

CERTIFICATION

The foregoing resolution was adopted at the 1996 Annual Convention of the National Congress of American Indians, held at the Hyatt Regency Hotel in Phoenix, Arizona, on October 20-25, 1996 with a quorum present.

W. Ron Allen

W. Ron Allen, President

ATTEST:

S. Diane Kelley, Recording Secretary

Adopted by the General Assembly at the 1996 Annual Convention held at the Hyatt Regency Hotel in Phoenix, Arizona on October 20-25, 1996.

STATEMENT OF FRANKLIN DUCHENEAUX
BEFORE THE COMMITTEE ON RESOURCES OF THE
HOUSE OF REPRESENTATIVES
May 1, 1997

Mr. Chairman, my name is Franklin Ducheneaux. I am a partner in the consulting firm of Ducheneaux, Taylor & Associates.

I have been asked to testify today on certain laws affecting gaming by the Narragansett Tribe of Rhode Island because of my prior service on the staff of this Committee, then known as the Committee on Interior and Insular Affairs, during the time of the consideration of legislation enacted as the 1978 Rhode Island Indian Claims Settlement Act and the 1988 Indian Gaming Regulatory Act.

I served as Counsel on Indian Affairs to this Committee from 1973 through 1990. The last 14 years of that service was directly under former Chairman Morris K. Udall when the Indian affairs jurisdiction was held in the full Committee. My brief statement today will relate to the relevant history of the enactment of the IGRA.

Gaming by tribes became a hot political issue as early as 1983 when Mr. Udall introduced the first bill on the subject. By the time of the convening of the 100th Congress, the issue had become extremely controversial in the Congress, with a growing polarization of the interests.

Early in the 100th Congress, on February 25, 1987, the Supreme Court handed down its decision in the case of *California v. Cabazon Band of Mission Indians*, which fully upheld the right of Indian tribes, under certain circumstances, to engage in, or regulate, gaming on their lands free of State regulation. This favorable decision for the tribes shocked both sides, and created an atmosphere for eventual legislative agreement.

Legislative efforts proceeded in both Houses throughout the first session of the 100th Congress without much success. There were strong forces operating in both Houses supporting legislation to ban gaming by tribes.

Chairman Udall's position, however, was strong, continuing and unequivocal. Mo made clear that he was strongly opposed to gambling and, in particular, he opposed government gambling. However, he was equally strong in his support for tribal sovereignty and the right of tribal self-government. He strongly agreed with the *Cabazon* decision that, if a State permitted or engaged in gaming, tribes in that state had a right to do so free of state regulation.

Early in the second session, Mo advised me that, while he felt he could still control the issue in the Committee, he probably could not control matters on the floor if his bill, H. R. 2507, was

reported from the Committee. As a consequence, an informal agreement of the parties was reached which contemplated negotiations on a Senate bill. If the parties could agree on a bill for Senate passage, Mo agreed that he would ask that it be held at the desk without Committee referral and passed under suspension of the rules. However, the opposite was also part of his agreement. If the Senate bill was not acceptable, he would insist upon referral to the committee in the normal course.

Negotiations went on for the first part of 1988. Parties involved included House and Senate members, committee and member staff, Administration officials, representatives of State governments, non-Indian gaming industry representatives, and others. Chairman Udall authorized me, subject to his general direction, to represent him in those discussions.

On May 13th, the Senate Committee marked the bill up and ordered it reported. Chairman Udall did not find the bill, as marked up, acceptable. Further negotiation went on and, by late July, we had arrived at language which, with few exception, was acceptable to Mr. Udall. The Senate Committee filed its report on this compromise bill on August 3rd. Despite Chairman Udall's explicit objection, this bill contained section 23 which was unfavorable to the Narragansett.

On September 15th, the Senate passed the bill with an amendment which, among other things, struck out section 23 dealing with the Narragansett. With these amendments, the bill was acceptable to Mr. Udall.

Pursuant to the general agreement, Mr. Udall had the bill held at the desk without referral while interested House members reviewed the Senate-passed bill. On September 26th, S. 555 passed the House under suspension of the rules, and was signed into law on October 17, 1988.

Mr. Chairman, I would close my testimony with a quote from Chairman Udall's floor statement at the time of the passage of S. 555:

> "S. 555 is the culmination of nearly 6 years of congressional consideration of this issue. The basic problem which has prevented earlier action by Congress has been the conflict between the right of tribal self-government and the desire for State jurisdiction over gaming activity on Indian lands.
>
> "On July 6, I inserted a statement in the Record which set out my position on this bill. I stated that I could not support the unilateral imposition of State jurisdiction over Indian tribal governments. I did state, however, that I remained open to reasonable

compromises on the issue.

"S. 555 is such a compromise, hammered out in the Senate after considerable debate and negotiations. It is a solution which is minimally acceptable to me and I support its enactment . . . . While the Interior Committee did not consider and did not report S. 555, certain members and committee staff did participate very actively in negotiations in the Senate which gave rise to the compromise of S. 555."

Mr. Chairman, this concludes my statement and I would be happy to answer any questions the Committee may have.

CHARLESTOWN TOWN COUNCIL

Charles W. Beck, President
ıcy A. Hargraves, Vice President
,ıhn O. Craig, Jr.
Karen L. Lytle
Pamela J. Holley

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April 28, 1997

The Honorable Dan Young, M.C.
Chairman, Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Statement of the Town of Charlestown, Rhode Island for inclusion in the Record of Hearing of the Committee on Resources

Dear Congressman Young:

The Town of Charlestown, Rhode Island, throughout its corporate existence has held an interest in and responded to the concerns of the Narragansett Indian Tribe. Indeed the very Seal of the Town of Charlestown illustrates this heritage. However deep and long the association it would, nevertheless, be inaccurate and euphemistic to portray the course of this historic relationship as one void of contentious events or free of dispute. The truth is often more closely reflected in the resolution of disputes and the conduct of compromise; the results of which have brought us to this juncture. The presumption of absolute right and clarity of position have little to do with the proper conduct of inter-governmental relations when the mutual interest of the futures of two adjacent communities of people are concerned.

The Town of Charlestown recognizes this precept only too well. In 1975, a scant twenty-two years ago in the aged relationship of our communities, the Town of Charlestown was one of many defendants in an action brought in the Federal District Court in Rhode Island by the Narragansett Indian Tribe to assert their land claims in the Town of Charlestown. This action never reached the trial, as the parties wisely, negotiated in good faith to resolve their differences. What came of this negotiation was a new form of resolution bearing on the relationship of native american tribes with the concurrent governments wherein they then found themselves; especially those tribes in the regions of historic colonial states. Theirs was not the post-constitution advent of conquest and treaty, but rather the continuation of colonial, and then state, commissions.

This new form of resolution was first enabled in Rhode Island and derived from a contractual form of resolution of litigation eventually placed into effect by Congressional action. The contractual agreement which was the guide-on for Congress

April 28, 1997
The Honorable Dan Young, M.C.
Chairman, Committee on Resources, p.2.

was called the Joint Memorandum of Understanding (JMU) and was executed by all of the parties to the litigation. The Town of Charlestown was a signatory of this historic agreement.

The intent of the parties, as expressed by the JMU provided the basis for the shortly thereafter enacted, Rhode Island Indian Claims Settlement Act. This "Settlement Act" has served as the model for subsequent similar acts resolving many disputes in other states. The intent of the parties expressed in the JMU was carried forth in its enactment. Indeed, subsequent deeds transferring the Settlement Lands to the Narragansett Indian Tribe upon its federal acknowledgement also express this intent in their texts.

These agreements were thought to be well understood until the disputes over the application of the Indian Gaming Regulatory Act (IGRA) to the Narragansett Indian Tribe arose. While the Congressional Record was believed to be clear on this matter, the failure to express such intentions in the IGRA was found to be a critical oversight by the Federal Courts when the issue was litigated; litigation in which the Town of Charlestown participated in its attempt to confirm its understanding reflected in its agreement in the JMU, and its acceptance of the Settlement Act.

As was expressly noted in the decision in that matter, the clear intent of Congress is most easily discerned in the language of its acts. This is especially the case where the interests and concerns addressed are those of native americans. The amendment to the Settlement Act sponsored by the Senior Senator from Rhode Island, John H. Chafee, restores the original understanding of all of the parties participating in the creation of the Settlement Act, including the leadership of Narragansett Indian Tribe and Town of Charlestown, and is in keeping with the guidance rendered by the Federal Court of Appeals for the First Circuit as it provides the clear and unambiguous language necessary to implement the intent of Congress.

Respectfully submitted for the Town Council,

Karen Lytle

Karen Lytle, Town Councilor
Town of Charlestown Legislative Liaison

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April 28, 1997

The Honorable Dan Young, M.C.
Chairman, Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Annotated Statement of the Town of Charlestown, Rhode Island for inclusion in the Record of Hearing of the Committee on Resources

Dear Congressman Young:

The Town of Charlestown, Rhode Island, through its Legislative Liaison, Councilor Karen Lytle has provided its statement to the Committee on Resources setting forth the concerns and position of the Town of Charlestown in support of the recent amendment of the Rhode Island Indian Land Claims Settlement Act ("Settlement Act") 25 U.S.C. §§ 1701 *et seq.* This amendment was introduced by the Senior Senator from Rhode Island John H. Chafee, to bring the Settlement Act into conformance with the intent of Congress and the formative parties at the time of its passage. The history of the origin of this breakthrough act, the first in the nation passed as a means of settling land claim disputes brought by native american indian tribes, has been recounted numerous times in the context of subsequent litigation between the Narragansett Indian Tribe, the State of Rhode Island, the Town of Charlestown and others. (For instance see *Town of Charlestown, R.I. v U.S.*, 696 F.Supp. 800 (D.R.I. 1988), *aff'd* 873 F.2d 1433 (1st Cir. 1989)).

The original lawsuits brought by the Narragansett Indian Tribe in 1975 asserting their land claims in Rhode Island were brought to a settlement resulting in a contractual and conditioned agreement known (in brief) as the Joint Memorandum of Understanding ("JMU") (a copy of which is attached hereto), and which in turn led to the passage of two acts, one in Rhode Island creating a corporation to hold the Settlement Lands for the benefit of the Narragansett Indian Tribe pending federal recognition (Narragansett Indian Land Management Corporation Act, R.I. Gen Laws §§37-18-1 *et seq.*), and the federal act cited above. The Town of Charlestown was a signatory of this historic agreement.

The litigation leading to the eventual need to amend the Settlement Act, concerns the interpretation by the federal courts of a specific Settlement Act provision (25 U.S.C. § 1708) (See *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994),

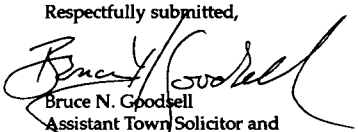
cert. denied) The underlying dispute arose in the context of the legislative history and eventual passage of the Indian Gaming Regulatory Act ("IGRA")(25 U.S.C. §§ 2701*et seq.*).

The intent of the parties, as expressed by paragraph 13 of the JMU provided the basis for section 1708 of the Rhode Island Indian Claims Settlement Act and subsequent deeds transferring the Settlement Lands to the Narragansett Indian Tribe upon its federal acknowledgement also express this intent in their texts.

These agreements were thought to be well understood until the disputes over the application of the Indian Gaming Regulatory Act (IGRA) to the Narragansett Indian Tribe arose. While the Congressional Record was believed to be clear on this matter, the failure to express such intentions in the IGRA was found to be a critical oversight by the Federal Courts when the issue was litigated and appealed; (For a complete discussion of the Court's analysis and its decision regarding the application of the legislative history in the passage of IGRA to the interpretation of the Settlement Act see *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994), *cert. denied*). This was litigation in which the Town of Charlestown participated in its attempt to confirm its understanding reflected in its agreement in the JMU, and its acceptance of the Settlement Act.

As was expressly noted in the decision in that matter, the clear intent of Congress is most easily discerned in the language of its acts. This is especially the case where the interests and concerns addressed are those of native americans. The amendment to the Settlement Act sponsored by the Senator John H. Chafee, a major participant in the creation of both the Settlement Act and the IGRA, has acted appropriately and with the support of the Town of Charlestown and the State of Rhode Island, to restore the original understanding of all of the parties participating in the creation of the Settlement Act, including the leadership of Narragansett Indian Tribe at the time of its passage, and the Town of Charlestown, and is in keeping with the guidance rendered by the Federal Court of Appeals for the First Circuit as it provides the clear and unambiguous language necessary to implement the intent of Congress.

Respectfully submitted,



Bruce N. Goodsell
Assistant Town Solicitor and
Special Counsel for Indian Affairs for the
Town of Charlestown

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
DEPARTMENT OF THE ATTORNEY GENERAL
PROVIDENCE COUNTY COURT HOUSE
PROVIDENCE

JULIUS C. MICHAELSON
ATTORNEY GENERAL

June 1, 1978

The Honorable Robert F. Burns
Secretary of State
State House
Providence, RI 02903

Re: Narragansett Indian Land Claim Settlement Agreement

Dear Mr. Secretary:

Enclosed please find an original, executed "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims."

I am forwarding this document to you with the request that it be duly filed and recorded in the Office of the Secretary of State.

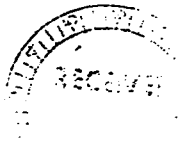
Thank you for your attention to this matter.

Very truly yours,

JULIUS C. MICHAELSON
ATTORNEY GENERAL

JCM:JC

Enclosure



PMS

EXHIBIT
5

EXECUTION COPY 2/28/78

JOINT MEMORANDUM OF UNDERSTANDING
CONCERNING SETTLEMENT OF THE
RHODE ISLAND INDIAN LAND CLAIMS

All parties to Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al, C.A. No. 75-0006 (USDC, DRI) and Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75-0005 (USDC, DRI) (together called "the Lawsuits") and the other undersigned persons interested in the settlement of Indian land claims within the State of Rhode Island hereby agree to the following principles and provisions of settlement which are, except for the provisions of Section 18 below, to be considered as inseparable, dependant requirements and which are all conditioned upon requisite, favorable and timely action by the appropriate executive and legislative branches of the governments of the State of Rhode Island and the United States of America:

1. That a state chartered corporation (the "State Corporation") will be created with an irrevocable charter for the purpose of acquiring, managing and permanently holding the lands defined in Sections 2 and 3 below (the "Settlement lands"); the State Corporation will be controlled by a board of directors, the majority whose members will be chosen by a Rhode Island corporation known as "The Narragansett Tribe of Indians" (the "Indian Corporation") or its successor and the remaining members chosen by the State of Rhode Island.

2. That the State of Rhode Island will contribute the Indian Cedar Swamp, the Indian Burial Hill, the land around Deep Pond, and an easement from Kings Factory Road to Watchaug Pond to the State Corporation. These public portions of the Settlement Lands total approximately 900 acres. Contribution of the State land around Deep Pond is subject to the restrictions set forth below in Section 17.

3. That the Settlement Lands will also include approximately 900 acres of land located within the area outlined in red on the map attached hereto marked Exhibit A. The Settlement Lands shall specifically include those lands held by the defendants named in the Lawsuits which are enumerated on the schedule attached hereto as Exhibit B. These privately held portions of the Settlement Lands shall be acquired at fair market value established without regard to the pendency of the Lawsuits. No private landowner shall be required to convey any land hereunder without his or her consent, which shall be deemed to have been given upon

execution of a mutually acceptable option agreement (the "Option"). Any landowner executing an Option shall be paid a nonrefundable option fee by the federal government equal to 5% of the purchase price for a 2-year option. The optionee shall have the right to renew the option for one additional year for a renewal fee paid by the federal government of 2.5% of the purchase price.

4. That the parties to the Lawsuits will support efforts to obtain deferral of both state and federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands.

5. That the federal government will provide the funds, in an amount not in excess of 3.5 million dollars, to acquire the privately held portions of the Settlement Lands.

6. That Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island, and effectively clears the titles of landowners in Rhode Island of any such claim. This Federal legislation shall be in form and substance as set forth in the proposed statutory language attached hereto as Exhibit C, unless otherwise agreed by counsel for the private Defendants in the Lawsuit. This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island.

7. That the Settlement Lands shall be subject to a special federal restriction against alienation, provided that nothing in the federal restriction or in any other aspect of this memorandum shall affect the ability of the State Corporation to grant or otherwise convey (whether voluntary or involuntary, including any eminent domain or condemnation proceedings) easements for public or private purposes.

8. That the Settlement Lands will be held in trust by the State Corporation for the benefit of the descendants of the 1880 Rhode Island Narragansett Roll.

9. That the Settlement Lands will not be subject to local property taxation.

10. That the federal government will reimburse the private defendants in the lawsuits for costs incurred or paid for legal services and disbursements in connection with the lawsuits with respect to any lands involved in the Lawsuits which are not specified in Exhibit B and for which an Option is not executed.

11. That the State Corporation will have the right (after consultation with appropriate state officials) to establish its own regulations concerning hunting and fishing on the Settlement Lands without being subject to state regulations, but shall impose minimum standards for safety of persons and protection of wildlife and fish stock.

12. All the Settlement Lands contributed by the State will be permanently held for conservation purposes by the State Corporation.

13. That, except as otherwise specified in this Memorandum, all laws of the State of Rhode Island shall be in full force and effect on the Settlement Lands, including but not limited to state and local building, fire and safety codes.

14. That all settlement lands will be subject to a professionally prepared land use plan (the "Land Use Plan") mutually acceptable to the State Corporation and the Town Council. Acceptance of the Land Use Plan shall not be unreasonably withheld by the Town Council. At least seventy-five percent of the Settlement Lands not already committed to conservation purposes by Section 12 above will be permanently subjected to conservation uses by the Land Use Plan. Town Council acceptance of the Land Use Plan shall be a condition precedent to the acquisition of the Settlement Lands by the State Corporation. The Town Council, after its acceptance of the Land Use Plan, shall amend the zoning ordinance of the Town of Charlestown in a manner consistent with the Land Use Plan as it applies to the Settlement Lands. Thereafter, the zoning ordinance, as amended to conform with the Land Use Plan, shall control the use of the Settlement Lands and shall not be further amended in a manner inconsistent with the Land Use Plan without the consent of the State Corporation.

15. That the plaintiff in the Lawsuits will not receive Federal recognition for purposes of eligibility for Department of the Interior services as a result of Congressional implementation of the provisions of this Memorandum, but will have the same right to petition for such recognition and services as other groups.

16. That the Town of Charlestown will be reimbursed for future services provided in connection with the Settlement Lands with funds provided by the Indian corporation.

17. That contribution by the State of the land around Deep Pond is conditioned upon required and appropriate Federal approval of any conveyance of said land in such manner so as not to affect, in any adverse manner, any

benefits received by the State under the Pittman-Robertson Act (16 U.S.C. §669-669i) and the Dingell-Johnson Act (16 U.S.C. §777-777k), and further conditioned upon the retention of permanent State control of and public access to an adequate fishing area within said land.

18. That implementation of all provisions of this Memorandum, except those of Sections 6, 10 and 19, and the payment of the option fees provided for in Section 3 above shall be contingent upon a prompt determination by the Department of the Interior that the Plaintiff in the Lawsuits have a credible claim to the lands involved in the Lawsuits. Plaintiff shall have an opportunity for judicial review of any adverse determination by the Department of the Interior.

19. The Plaintiffs in the Lawsuits agree to cause the Lawsuits to be dismissed with prejudice at the time the portion of the Federal legislation which eliminates title problems pursuant to Section 6 above becomes effective.

WITNESS the execution hereof under seal as of this twenty-eighth day of February, 1978.

HONORABLE J. JOSEPH GARRAHY,
Governor of State of Rhode Island
and Providence Plantations

J. Joseph Garrahy

TOWN OF CHARLESTOWN, RHODE ISLAND
TOWN COUNCIL

By Robert McLean

PLAINTIFF: NARRAGANSETT TRIBE OF INDIANS,
By their attorneys,
NATIVE AMERICAN RIGHTS FUND

By _____
Thomas N. Tureen

DEFENDANTS: EDWARD WOOD, RHODE ISLAND DIRECTOR
OF ENVIRONMENTAL MANAGEMENT

By _____
William Granfield Brody,
Assistant Attorney General,
State of Rhode Island

(David F. Giuliano
(Paul E. Bennett
(Alfred Testa

By GOODWIN, PROCTER & HOAR,
their attorneys,

By _____
Donald P. Quinn

(Robert E. Cherry
(Castle Realty Company
(Glenn F. Godden
(Mildred L. Godden
(John S. Johnson
(Alice Johnson
(Ethel W. Duguid
(Providence Boys Club
(Greater Providence Young Mens
(Christian Association
(Sarah J. Browning
(William F. Arnold
(Ruth Arnold
(Thomas L. Arnold
(William Arnold
(Frank W. Arnold
(Thomas L. Arnold, William
(Arnold, Frank W. Arnold
(and the Washington Trust
(Company as trustees for
(the Estate of Frank Arnold
(Thomas L. Arnold, Laurence
(Whittemore and the
(Washington Trust Company
(as trustees for the
(Thomas L. Arnold Trust
(Hope W. Hallock
(Edna May McKenzie
(Lloyd E. Fitzgerald
(Joyce M. Fitzgerald
(Edward A. Whipple
(Pauline Whipple

By TILLINGHAST, COLLINS & GRAHAM,
their attorneys,

By _____

SOUTHERN RHODE ISLAND LAND
DEVELOPMENT CORP.,
By its attorney,

By _____
Archibald B. Kenyon, Jr.

FRANKLIN SHORES, INC.,
by its attorney,

By _____
John P. Toscano, Jr.

EDNA MAE REED, by her attorney,

By _____
Harold B. Soloveitzik

CARL M. RICHARD, by his attorney,

By _____
Francis Castrovillari

OLD STONE BANK, by its attorney,

By _____
Frank Ray

OLD COLONY CO-OPERATIVE BANK,
by its attorney,

By _____
ARCHIBALD B. KENYON, JR.

EXHIBIT B

Providence Boys' Club (with the exception of approximately 100 acres of land adjoining Schoolhouse Pond and Lot No. 17)

Greater Providence Young Mens' Christian Association

Hope W. Hallock

Edna May McKenzie

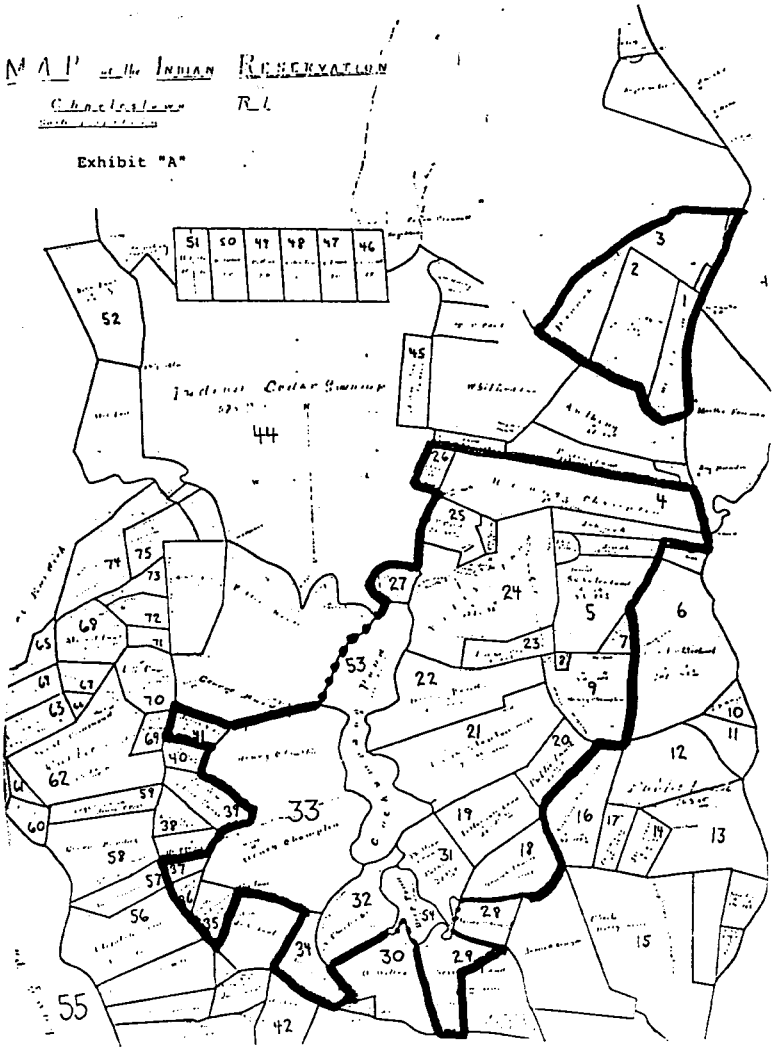
Southern Rhode Island Land Development Corporation

Franklin Shores, Inc.

Edna Mae Reed

Carl M. Richard (including only lots numbered 5, 7, 8 and 9 and provided further that this land shall be held permanently for conservation purposes and neither the State Corporation, Indian Corporation nor any beneficiary thereof shall have standing in any zoning or other administrative or judicial proceeding involving land presently owned by Castle Realty Company)

Approximately 12 acres of land of David F. Giuliano


MAP of the Indian Reservation
Exhibit "A"
Indian Cedar Summer
44
33
55
42

RHODE ISLAND
INDIAN CLAIMS STATUTE

EXHIBIT C

SEC. 1 (a) Any transfer of lands or waters located within the State of Rhode Island from, by or on behalf of any Indian, Indian nation or tribe of Indians, including but not limited to a transfer pursuant to any statute of the State of Rhode Island, was and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or waters from, by or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve and ratify any such transfer effective as of the date of the said transfer.

(b) To the extent that any transfer of lands or waters described in subsection (a) may involve lands or waters to which any Indian, Indian nation or tribe of Indians had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer.

(c) By virtue of the approval and ratification of a transfer of lands or waters effected by subsection (a) or an extinguishment of aboriginal title effected thereby, all claims against the United States, any state or subdivision

thereof, or any other person or entity, by any Indian, Indian nation or tribe of Indians, including but not limited to claims for trespass damages or claims for use and occupancy, arising subsequent to the transfer and that are based upon any interest in or right involving such lands or waters, shall be regarded as extinguished as of the date of the transfer.

(d) As used in this section, the phrase "lands or waters" shall include any interest in or right involving lands or waters, and the term "transfer" shall include but not be limited to any sale, grant, lease, allotment, partition, conveyance, or any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or conveyance, or any event or events that resulted in a change in possession or control of lands or waters.

Rhode Islanders who came from Rhode Island for the hearing

RHODE ISLAND COALITION AGAINST CASINO GAMBLING

Delegation standing with Senator Chafee and Senator Reed, Congressman Weygand and Governor Almond at the

House Resources Committee Hearing
May 1, 1997, 10:00 AM
Longworth House Building, Washington, DC

"Narragansett Indian and Rhode Island Land Settlement Act"

THE RHODE ISLAND STATE COUNCIL OF CHURCHES

The Rev. James C. Miller, Executive Minister, The Rhode Island State Council of Churches (Bristol)

The Rev. Thomas F. Conboy, Jr., Moderator, the Presbytery of Southern New England, Presbyterian Church (U.S.A.) (Cumberland)

Canon John B. Hall, Editor of the Episcopal News, Episcopal Diocese of Rhode Island (Warwick)

The Rev. Dr. H. Daehler Hayes, Conference Minister, Rhode Island Conference of the United Church of Christ (Kingston)

Mr. Hugh Maxwell, former executive of Hasbro, Inc., United Church of Christ and member of Department of Advocacy, Justice and Service, State Council of Churches (Pawtucket)

The Rev. Thadius Platt, Ecumenical Representative, New England Synod, Evangelical Lutheran Church in America (Woonsocket)

Mr. Robin Porter, former State Senator, Episcopal Diocese of Rhode Island and member of Department of Advocacy, Justice and Service, State Council of Churches (Wickford)

The Rev. Gwendolyn Purushotham, District Superintendent, New England Conference, United Methodist Church (Barrington)

The Rev. Dr. Donald R. Rasmussen, Executive Minister, American Baptist Churches of Rhode Island (Cranston)

The Rev. Sandra Smith, President, Pawtucket Clergy Association (Pawtucket)

The Rev. Hyung Kwon Moon, South Korean Presbytery, partnership with the Rhode Island Conference of the United Church of Christ

Mr. Bernie Horn, National Coalition Against Gambling Expansion, Washington, DC

Ms. Lisa Wright, National Council of Churches, Washington Office

The Rev. Mark Harrison, United Methodist Church, Washington Office

The Rev. Elinora Giddings Ivory, Presbyterian Church (U.S.A.), Washington Office

The Rev. Jay Litner, United Church of Christ, Washington Office

Mr. Curtis W. Ramsey-Lucas, American Baptist Churches USA, Washington Office

NEWPORT - CITIZENS CONCERNED ABOUT CASINO GAMBLING

Mr. Donald Booth

Ms. Janet Booth

Ms. Frederica Gallagher

The Rev. Gregory Cole, Emmanuel Episcopal Church

CHARLESTOWN - ALLIANCE TO SAVE SOUTH COUNTY

Mrs. Patricia Almeida

Mr. James Arvanetes

Mrs. Joyce Arvanetes

Mr. Thomas DePatie

Mrs. Ann Maynard

Ms. Ruth Platner

Ms. Ann Roche

Mr. Robert Saglio

~~Mr. Michael Sullivan, former State Senator~~

Mr. Cliff Vanover

Statement of Gary Boden on behalf of
Residents Against Gambling Establishments
Regarding Rhode Island Indian Claims Settlement Act
Committee on Resources
May 1, 1997

Mr. Chairman, I appreciate this opportunity to testify about the rejection of a casino gambling proposal by Rhode Island voters in 1994. As a member of the citizen's group opposing the casino, I represent over 100 people who gave time and resources to preserve their quiet town. Some may wish to believe the failure of the local and state-wide referenda came from discrimination. This testimony will show, however, that the result was actually based on information, not prejudice. Most citizens of Rhode Island just think that the State has enough gambling.

In late August 1994 the former Governor of Rhode Island abruptly reversed his opposition to casino gambling by signing a Compact with the Narragansett Indian Tribe. In return for the State sharing revenues, he was willing to sacrifice the rural way of life in West Greenwich. This site had been selected for a casino because it afforded better access, easier building, and greater income than tribal lands fifteen miles away. With a scant nine weeks before election day, 3,000 local residents and 400,000 state-wide voters faced a decision that could change the character of their town and state forever.

An early poll suggested that sentiment was split down the middle. The State's economy was stalled and suffering the lingering effects of recession and loss of manufacturing and defense industry jobs. Many Rhode Islanders also sympathized with the Tribe's sad history of suffering since 1675 and their loss of ancestral lands. Nevertheless, at a public meeting over 300 townspeople criticized the casino proposal and began a campaign against it.

Residents Against Gambling Establishments found it troubling that opposing a casino might be misconstrued as opposition to the Narragansetts, both as individuals and as a Tribe. At every chance, our group stressed that the argument was against a casino, not the Tribe. We insisted that absolutely no racism would enter this debate and we are proud that the public record shows not even a whisper of this ugliness. In fact, if an objectionable comment was made about the Tribe, we immediately repudiated it and turned the conversation to the real issues.

Extensive research we did on the effects of gambling elsewhere in the nation amply documented the damage caused to individuals and communities.

We found the following things to be true:

- tax relief from casino revenues is largely a mirage because municipal costs rise steeply.

- crime invariably increases around casinos.
- serious crime ballooned a dramatic 37 percent in Ledyard, CT, in less than two years after the Foxwoods Casino opened.
- shocking flaws existed in the negotiated Compact such as allowing minors to gamble for prizes which is a violation of State law.
- local business is cannibalized by casinos for distances up to thirty miles away.
- property values often decline as potential buyers are scared away.
- problem gambling increases and has devastating effects on families.
- the appeal of gambling to teenagers increases (our local high school was located just one and a half miles way from the proposed site).
- the social costs of gambling addiction are huge.
- the true type and nature of casino jobs are not what they seem.
- overwhelming traffic congestion is likely around rural casinos.
- gambling interests soon come to exert disproportionate influence on local governments and leaders.
- residents would lose their highly valued country lifestyle.

In light of these distressing facts, we directed our efforts toward educating the public about the issues. Members of the group appeared on television programs and radio talk shows, met with the district Parent/Teacher Association, spoke to church groups and Chambers of Commerce. We wrote letters to all households in town and crafted a commercial that played on the local cable TV system. We organized an informational forum with an expert panel consisting of residents living near the world's largest casino in Ledyard, CT, the gambling researcher Dr. Robert Goodman, a long-time casino gambling opponent, and a State Representative. We held a Family March and Rally that was addressed by U.S. Senator John Chafee and Governor Lincoln Almond.

Meanwhile, the casino promoters (an out-of-state casino development company that stood to reap up to a third of the profits) bombarded the media with advertisements long on promise but short on facts. Two different professionally-produced videos were sent to every voter in town. Three million dollars per year was offered to the town along with a few concessions to local ordinances. They opened an information center and held job fairs. In contrast to the vast amounts of money behind all that, we raised funds by asking for donations, holding a yardsale of donated items, a bakesale, and pony rides. We were outspent by over 100 to 1.

On election day we stood outside the polling places carrying signs and passing out leaflets, right next to Tribal members distributing their own materials. Neither animosity nor disrespect were shown by either side. In the end thee-quarters of all eligible local voters turned out, defeating the local question 64% to 36%. The state-wide vote turned down the West Greenwich site 54% to 46%.

Mr. Chairman, Rhode Island voters clearly are not eager for casino gambling. We experience spill-over effects from casinos just over the Connecticut border. Increased crime, domestic assaults, negative impacts on local businesses, and a tripling of Gambler's Anonymous meetings all have been documented in the press. Simply put, we don't want any more of this. If there are any other legitimate concerns of the Narragansett Tribe, these should be addressed quickly and resolved; but the establishment of a gambling enterprise is a bad idea that finally should be put to rest.

Thank you again for this opportunity to present this testimony.

Respectfully submitted by:

Mr. Gary Boden
8 Lodge Road
Exeter, RI 02822

Statement of Ruth Platner
Regarding the Rhode Island Indian Claims Settlement Act
Submitted to the United States House of Representatives
Committee on Resources
May 1, 1997

Thank you Chairman Young and members of the Committee for allowing a citizen of the town of Charlestown to submit written testimony to your oversight hearing concerning the applicability of The Indian Gaming Regulatory Act to the Narragansett Indian Tribe of Rhode Island.

For the last twenty years I have been involved in land use and community planning issues in the Town of Charlestown, Rhode Island. I currently serve my community as a board member of the Charlestown Planning Commission and as a board member of the local land trust.

I have lived all of my adult life in Charlestown, but I grew up in Oregon, Idaho and Utah. Like many Westerners I imagined the Eastern seaboard as a completely built environment, but when I moved to Charlestown, I discovered an area nearly as undeveloped as the Oregon Coast and as beautiful in its own unique way. In fact the Charlestown area is one of the very few remaining stretches of rural coastline between New York and Boston.

In the late 1970's when a settlement was being negotiated to end the Narragansett Indian Tribe's land claims, natural resource issues were prominent. Within a three mile radius of the proposed Tribal land were Rhode Island's favorite state parks, state wildlife management areas, a federally designated Wild and Scenic River, coastal ponds, inland lakes and ocean beaches. In the densely populated state of Rhode Island, these public lands make up the State's most important recreation areas and are used for hunting, fishing, camping, swimming, boating and other recreations. Half of the land the Narragansett eventually received was a State wildlife management area, the other half was privately owned undeveloped land. The effect of creating a land base for the Narragansett in the center of this important natural resource recreation area was the most important issue for the citizens of Charlestown.

The Narragansett had fought hard to regain a part of their original land base, and I, like many others believed they would work to protect their own land and surrounding land as well. Many townspeople believed that once the Tribe had a land base, they would become the leading voice for conservation in our region of Rhode Island. At the same time, the prospect of removing a large portion of land from state and local law and regulation was troubling. If the land was unregulated, would it become a magnet for businesses seeking freedom from regulation?

The Narragansett suit to obtain possession of land in Charlestown caused Charlestown land titles to become clouded, resulting in economic hardship for those residents who needed to sell their property or obtain mortgages. The Settlement Act that was finally negotiated freed these land owners to transfer or use their property. The settlement agreement gained community acceptance partly to relieve these property owners, but more important to most residents were the provisions that preserved meaningful community planning for Charlestown and other nearby towns.

It was the purpose of the 1978 Rhode Island Indian Claims Settlement Act to create a pristine land base for the Narragansetts which would help them receive Federal Recognition without adversely affecting the surrounding community. It was the intent of the Settlement Act to protect the rights of the residents of Charlestown, including their right to hold binding referenda on casino gambling. Enshrined in Rhode Island's constitution is the clear prohibition of any expansion of gambling, in any city or town, without voter approval. Article VI Section 22 of the Rhode Island State Constitution states: *"Restriction of gambling. -- No act expanding the types of gambling which are permitted within the state or within any city or town therein or expanding the municipalities in which a particular form of gambling is authorized shall take effect until it has been approved by the majority of those electors voting in a statewide referendum and by the majority of those electors voting in a referendum in the municipality in which the proposed gambling would be allowed."*

The Rhode Island Indian Claims Settlement Act was landmark legislation. At The Commission on Security and Cooperation in Europe (CSCE) hearings in April of 1979 on U.S. domestic compliance with the Helsinki accords, criticism was directed toward U.S. treatment of Indians. The Rhode Island Indian Claims Settlement Act was used as evidence of improving U.S. Indian policy. The Settlement Act was an example of what was possible when both an Indian Tribe and the surrounding community are given fair treatment. The goals of the Settlement Act were equity and environmental protection. It was a compromise that attempted to benefit the Tribe and protect the Town.

The settlement anticipated eventual federal recognition for the Tribe and provided that the conditions of the agreement would extend to the Tribe and their land regardless of their relationship to the federal government. We were promised by Congress that the settlement was permanent. If my town could have imagined that these agreements might lead to a casino or other unwanted or inappropriate development we would have never settled. Without the permanent protections of the Settlement Act we would have been far better off to take our chances in court.

The U.S. Supreme Court ruled in 1987 that since the Cabazon Indian Tribe was not subject to California regulatory law, they could operate gambling enterprises on Tribal land. Tribes in Maine, Massachusetts and Rhode Island

were not affected by this ruling since their Settlement Acts left their tribal land under state regulation.

Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988 in an attempt to regulate Indian gambling, protect the tribes from corruption and abuse, and establish federal standards. The Indian Gaming Regulatory Act was crafted in an effort to regulate Indian gaming. IGRA's effect in New England has been to deregulate gambling. It is not Treaty Law, the Constitution, or Supreme Court rulings, but IGRA alone that is attempting to force a gambling facility into my town.

The rights of the Narragansett and all landowners to develop their land is protected by law. Our community's right to protect natural resources and to direct the kind and scale of development is seriously threatened by the Indian Gaming Regulatory Act.

There has been a claim since September that the 1996 amendment to the Settlement Act was accomplished without hearings. Since the Narragansett Tribe announced its plans to build a casino in July of 1992 there were numerous hearings before the U.S. Senate Indian Affairs Committee, and the Tribe, the State and citizens of Charlestown have testified. In the years since the Cabazon ruling there have been many hearings on the issue of the Narragansett Tribe's rights to conduct gaming on Settlement land in the Town of Charlestown and the testimony from the State of Rhode Island and the Town of Charlestown has consistently relied on the promise made by Congress in 1978.

In the years before the passage of IGRA there were also hearings and the same groups were represented. The Town of Charlestown and the State of Rhode Island were promised by lawmakers that IGRA would have no effect on the Settlement Act. Since Rhode Island was not affected by Cabazon, the Rhode Island delegation did not need to support IGRA. If they had believed the Settlement Act could be harmed they would have voted against IGRA. A Senate subcommittee report that summarizes IGRA and was given to legislators stated, "It is the intention of the Committee that nothing in the provisions of this section or in this Act will supersede any specific restriction or specific grant of federal authority or jurisdiction to a State which may be encompassed in another federal statute, including the Rhode Island Claims Settlement Act."

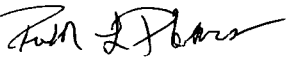
In 1994, the U.S. Court of Appeals ruled that the Narragansett were still bound by the Settlement Act, but that Congress had damaged the Settlement Act with respect to gambling when it passed IGRA. The court suggested however, that Congress could restore the Settlement Act, and this September that is exactly what Congress did. The 1996 Settlement Act amendment will not stop the Narragansett from having a casino, but it has returned choice on this issue to the voters of Rhode Island. By restoring the primacy of the

Settlement Act, Congress kept a promise that was made 19 years ago to the people of Charlestown.

When Congress enacted IGRA it changed the Rhode Island Settlement Act without the knowledge or consent of the people of Charlestown. In fact as the Settlement Act was being altered, the people of Charlestown and the entire Rhode Island Congressional delegation were being assured that nothing was changing. The 1996 Settlement Act amendment has returned the Settlement Act to a form that more closely resembles the document that all the original stake holders agreed to. The relationship between the Town of Charlestown, the Narragansett Tribe and the State of Rhode Island will change through time, but this needs to be accomplished through cooperation and mutual consent.

The Rhode Island Indian Claims Settlement Act was model legislation and should be respected by Congress and the Interior department. Over one hundred Indian Tribes are currently seeking federal recognition. Many of these tribes are in settled areas similar to Charlestown. If the provisions of Rhode Island's Settlement Act are allowed to endure, then these communities can look to the Rhode Island experience and may be encouraged to form similar agreements with tribes and thus ease their path to recognition. But if Congress refuses to honor our Settlement Act, then the communities which surround unrecognized tribes will have a strong incentive to fight land claims and to resist recognition.

The Settlement Act was a fair compromise, it was fair for the Tribe and the Town. Destroying the Settlement Act will upset that balance and hurt innocent people. It is my hope that the Committee on Resources will keep the promise Congress made to Charlestown in 1978. It is my wish that your Committee will do nothing to diminish my community's ability to have meaningful land use planning and that you will not take any action that would deprive the citizens of Charlestown of the voting rights that other Rhode Island citizens enjoy.

Ruth Platner 

TESTIMONY FOR THE RECORD OF THE HOUSE RESOURCES
COMMITTEE MEETING ON MAY 1,1997

My name is Ann Roche. I am a resident of Charlestown, RI, and a member of the Alliance to Save South County. The Alliance to Save South County is a citizens' action group formed to protect the fragile natural resources and small businesses of South County from the development of a large gambling facility in its center. The need for such a group arose when the Narragansett Indian Tribe, with the backing of Capital Gaming International of Atlantic City, New Jersey, announced its intention to build a gambling casino in Charlestown in violation of the Rhode Island Indian Claims Settlement Act of 1978. In this negotiated settlement, the Narragansetts were granted 1800 acres by the state and Federal Government on which the tribe agreed to abide by state and local laws.

When the Indian Gaming Regulatory Act (IGRA) became law in 1988, the Narragansetts said they were no longer bound by the Settlement Act. The issue was disputed in the courts by the Narragansett Indians and the State of Rhode Island. The U.S. Court of Appeals ruled in 1994 that the tribe was still bound by the Settlement Act, but that Congress had weakened the Settlement Act when it passed IGRA. The Settlement Act needed to be clarified, the court suggested, and that is exactly what Congress did when it passed an amendment as part of the 1996 omnibus federal spending bill which requires the Narragansett Indians to

seek voter approval before establishing any gambling facility in Rhode Island.

This is clearly what the majority of citizens of Rhode Island want for Rhode Island. In a statewide referendum in 1994, Rhode Island voters overwhelmingly rejected a proposal to permit casino gambling in the state. They felt so strongly about this issue they also voted overwhelmingly to amend the state constitution to require that any future effort to establish high stakes gambling require voter approval.

Several members of the House Resources Committee have described their determination to help Native American tribes in the United States. If they believe the only way to "help" these tribes is by permitting them to establish gambling facilities on Indian land, their definition of "help" seems dubious indeed. Statistics abound on the social and moral problems that proliferate where gambling casinos are erected. The growth of alcoholism, prostitution, grand and petty larceny committed to pay gambling debts, and infiltration of organized crime are just a few of the evils that go hand in hand with gambling. If gambling is the Congress's best solution for "helping" the Native American tribes, there is something sadly lacking in Congress's vision.

Congressman Patrick Kennedy has announced he is against gambling but wants to "help" the Narragansett Tribe. His crusade might be more believable if his campaign chest wasn't already filled with tens of thousands of dollars from gambling interests.

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Lynn M. Fischer
May 12, 1997