S. HRG. 106–20, Pt. 1

GAMING REGULATORY IMPROVEMENT ACT OF 1999

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 309

TO AMEND THE INDIAN GAMING REGULATORY ACT

MARCH 24, 1999
WASHINGTON, DC

PART 1

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GAMING REGULATORY IMPROVEMENT ACT OF 1999

WEDNESDAY, MARCH 24, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 628, Senate Dirksen Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, McCain, and Reid.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The Committee on Indian Affairs will be in session. I apologize that some folks did not know that we had changed the room. I did not know, either. And we found about five or six people waiting over at our normal hearing room. But I suppose others will find their way over.

Today we will hear testimony on the Indian Gaming Regulatory Improvement Act of 1999. This is a bill that Senator Inouye and I introduced last month.

S. 399 addresses two important elements related to the regulation of Indian gaming: Minimum standards for Indian gaming nationwide, and fair fee assessments by the National Indian Gaming Commission.

With this bill, or any Indian gaming legislation, we must keep in mind the purpose of the 1988 Indian Gaming Regulatory Act, commonly called IGRA: Ensuring that gaming continues to be a tool for Indian economic development, and ensuring that the integrity of the industry is protected.

The existing Federal Indian Gaming Law was passed by Congress more than 10 years ago. At that time, gaming was a very small industry, consisting mainly of high stakes bingo operations.

Because of gaming, some tribes have become economically successful. They employ thousands of people, both Indian and non-Indian, and have greatly reduced the welfare rolls in their local areas, and contribute to the local economy.

Though gaming revenues and the number of gaming facilities have grown rapidly over the last 10 years, IGRA has been significantly amended only one time. In 1997, we introduced an amendment that would allow the NIGC to assess fees against class III gaming to fund its regulatory efforts.

Before the 1997 amendment was enacted, the NIGC employed seven investigators responsible for monitoring the entire nationwide Indian gaming industry. The 1997 amendment has enabled the NIGC to hire much-needed field investigators to monitor tribal gaming operations.

A large amount of tribal and joint tribal/State regulatory activities are undertaken locally. Many tribes have put in place standards regarding rules of play, and financial and accounting standards for their games. They are significant, and for many tribes, contribute the bulk of regulatory activities under IGRA.

It is my belief, and our responsibility, that all Indian tribal gaming ought to be protected from charges that we often hear that they are unregulated and havens for criminals.

These charges hurt both tribes that do not have adequate regulations and hurt the entire gaming industry. S. 399 attempts to accomplish that goal.

[Text of S. 399 follows:]

II

106TH CONGRESS
1ST SESSION

S. 399

To amend the Indian Gaming Regulatory Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 1999

Mr. CAMPBELL (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Indian Gaming Regulatory Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Indian Gaming Regu-
5 latory Improvement Act of 1999".
6 **SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGU-**
7 **LATORY ACT.**
8 The Indian Gaming Regulatory Act (25 U.S.C. 2701
9 et seq.) is amended—
10 (1) by striking the first section and inserting
11 the following:

1 **"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 "(a) SHORT TITLE.—This Act may be cited as the
3 'Indian Gaming Regulatory Act'.

4 "(b) TABLE OF CONTENTS.—The table of contents
5 for this Act is as follows:

"Sec. 1. Short title; table of contents.
"Sec. 2. Congressional findings.
"Sec. 3. Purposes.
"Sec. 4. Definitions.
"Sec. 5. National Indian Gaming Commission.
"Sec. 6. Powers of Chairman.
"Sec. 7. Powers of Commission.
"Sec. 8. Commission staffing.
"Sec. 9. Commission—access to information.
"Sec. 10. Minimum standards.
"Sec. 11. Rulemaking.
"Sec. 12. Tribal gaming ordinances.
"Sec. 13. Management contracts.
"Sec. 14. Civil penalties.
"Sec. 15. Judicial review.
"Sec. 16. Subpoena and deposition authority.
"Sec. 17. Investigative powers.
"Sec. 18. Commission funding.
"Sec. 19. Authorization of appropriations.
"Sec. 20. Gaming on lands acquired after October 17, 1988.
"Sec. 21. Dissemination of information.
"Sec. 22. Severability.
"Sec. 23. Criminal penalties.
"Sec. 24. Conforming amendment.";

6 (2) by striking sections 2 and 3 and inserting
7 the following:

8 **"SEC. 2. CONGRESSIONAL FINDINGS.**

9 "Congress finds that—

10 "(1) Indian tribes are—

11 "(A) engaged in the operation of gaming
12 activities on Indian lands as a means of gener-
13 ating tribal governmental revenue; and

14 "(B) licensing those activities;

1 "(2) because of the unique political and legal
2 relationship between the United States and Indian
3 tribes, Congress has the responsibility of protecting
4 tribal resources and ensuring the continued viability
5 of Indian gaming activities conducted on Indian
6 lands;
7 "(3) clear Federal standards and regulations
8 for the conduct of gaming on Indian lands will assist
9 tribal governments in assuring the integrity of gam-
10 ing activities conducted on Indian lands;
11 "(4) a principal goal of Federal Indian policy is
12 to promote tribal economic development, tribal self-
13 sufficiency, and strong Indian tribal governments;
14 "(5) Indian tribes have the exclusive right to
15 regulate gaming activity on Indian lands, if the gam-
16 ing activity—
17 "(A) is not specifically prohibited by Fed-
18 eral law; and
19 "(B) is conducted within a State that does
20 not, as a matter of criminal law and public pol-
21 icy, prohibit that gaming activity;
22 "(6) Congress has the authority to regulate the
23 privilege of doing business with Indian tribes in In-
24 dian country (as defined in section 1151 of title 18,
25 United States Code);

1 "(7) systems for the regulation of gaming ac-
2 tivities on Indian lands should meet or exceed feder-
3 ally established minimum regulatory requirements;
4 "(8) the operation of gaming activities on In-
5 dian lands has had a significant impact on com-
6 merce with foreign nations, and among the several
7 States, and with the Indian tribes; and
8 "(9) the Constitution of the United States vests
9 Congress with the powers to regulate commerce with
10 foreign nations, and among the several States, and
11 with the Indian tribes, and this Act is enacted in the
12 exercise of those powers.
13 **"SEC. 3. PURPOSES.**
14 "The purposes of this Act are as follows:
15 "(1) To ensure the right of Indian tribes to
16 conduct gaming activities on Indian lands in a man-
17 ner consistent with—
18 "(A) the inherent sovereign rights of In-
19 dian tribes; and
20 "(B) the decision of the Supreme Court in
21 California et al. v. Cabazon Band of Mission In-
22 dians et al. (480 U.S.C. 202, 107 S. Ct. 1083,
23 94 L. Ed. 2d 244 (1987)), involving the
24 Cabazon and Morongo bands of Mission Indi-
25 ans.

1 "(2) To provide a statutory basis for the con-
2 duct of gaming activities on Indian lands as a means
3 of promoting tribal economic development, tribal
4 self-sufficiency, and strong Indian tribal govern-
5 ments.

6 "(3) To provide a statutory basis for the regu-
7 lation of gaming activities on Indian lands by an In-
8 dian tribe that is adequate to shield those activities
9 from organized crime and other corrupting influ-
10 ences, to ensure that an Indian tribal government is
11 the primary beneficiary of the operation of gaming
12 activities, and to ensure that gaming is conducted
13 fairly and honestly by both the operator and play-
14 ers.";

15 (3) in section 4—

16 (A) by striking paragraphs (1) through (6)
17 and inserting the following:

18 "(1) APPLICANT.—The term 'applicant' means
19 any person who applies for a license pursuant to this
20 Act, including any person who applies for a renewal
21 of a license.

22 "(2) ATTORNEY GENERAL.—The term 'Attor-
23 ney General' means the Attorney General of the
24 United States.

1 "(3) CHAIRMAN.—The term 'Chairman' means
2 the Chairman of the Commission.
3 "(4) CLASS I GAMING.—The term 'class I gam-
4 ing' means social games played solely for prizes of
5 minimal value or traditional forms of Indian gaming
6 engaged in by individuals as a part of, or in connec-
7 tion with, tribal ceremonies or celebrations.";
8 (B) by redesignating paragraphs (7) and
9 (8) as paragraphs (5) and (6), respectively;
10 (C) in paragraph (5), as redesignated by
11 subparagraph (B) of this paragraph, by striking
12 "(5)(A) The term" and inserting "(5) CLASS II
13 GAMING.—(A) The term";
14 (D) in paragraph (6), as redesignated by
15 subparagraph (B) of this paragraph, by striking
16 "(6) The term" and inserting "(6) CLASS III
17 GAMING.—The term"; and
18 (E) by adding after paragraph (6), as re-
19 designated by subparagraph (B) of this para-
20 graph, the following:
21 "(7) COMMISSION.—The term 'Commission'
22 means the National Indian Gaming Commission es-
23 tablished under section 5.
24 "(8) COMPACT.—The term 'compact' means an
25 agreement relating to the operation of class III gam-

1 ing on Indian lands that is entered into by an Indian
2 tribe and a State and that is approved by the Sec-
3 retary.
4 "(9) GAMING OPERATION.—The term 'gaming
5 operation' means an entity that conducts class II or
6 class III gaming on Indian lands.
7 "(10) INDIAN LANDS.—The term 'Indian lands'
8 means—
9 "(A) all lands within the limits of any In-
10 dian reservation; and
11 "(B) any lands the title to which is held in
12 trust by the United States for the benefit of
13 any Indian tribe or individual or held by any
14 Indian tribe or individual subject to restriction
15 by the United States against alienation and
16 over which an Indian tribe exercises govern-
17 mental power.
18 "(11) INDIAN TRIBE.—The term 'Indian tribe'
19 means any Indian tribe, band, nation, or other orga-
20 nized group or community of Indians that—
21 "(A) is recognized as eligible by the Sec-
22 retary for the special programs and services
23 provided by the United States to Indians be-
24 cause of their status as Indians; and

1 "(B) is recognized as possessing powers of
2 self-government.
3 "(12) MANAGEMENT CONTRACT.—The term
4 'management contract' means any contract or collat-
5 eral agreement between an Indian tribe and a con-
6 tractor, if that contract or agreement provides for
7 the management of all or part of a gaming oper-
8 ation.
9 "(13) MANAGEMENT CONTRACTOR.—The term
10 'management contractor' means any person entering
11 into a management contract with an Indian tribe or
12 an agent of the Indian tribe for the management of
13 a gaming operation, including any person with a fi-
14 nancial interest in that contract.
15 "(14) NET REVENUES.—With respect to a gam-
16 ing activity, net revenues shall constitute—
17 "(A) the annual amount of money wa-
18 gered; reduced by
19 "(B)(i) any amounts paid out during the
20 year involved for prizes awarded;
21 "(ii) the total operating expenses for the
22 year involved (excluding any management fees)
23 associated with the gaming activity; and
24 "(iii) an allowance for amortization of cap-
25 ital expenses for structures.

1 "(15) PERSON.—The term 'person' means—
2 "(A) an individual; or
3 "(B) a firm, corporation, association, orga-
4 nization, partnership, trust, consortium, joint
5 venture, or other nongovernmental entity.
6 "(16) SECRETARY.—The term 'Secretary'
7 means the Secretary of the Interior.";
8 (4) in section 5(b)(3), by striking "At least two
9 members of the Commission shall be enrolled mem-
10 bers of any Indian tribe." and inserting "No fewer
11 than 2 members of the Commission shall be individ-
12 uals who—
13 "(A) are each enrolled as a member of an
14 Indian tribe; and
15 "(B) have extensive experience or expertise
16 in Indian affairs or policy.";
17 (5) in section 6(a)(4), by striking "provided in
18 sections 11(d)(9) and 12" and inserting "provided in
19 sections 12(d)(9) and 13";
20 (6) by striking section 13;
21 (7) by redesignating section 12 as section 13;
22 (8) by redesignating section 11 as section 12;
23 (9) by striking section 10 and inserting the fol-
24 lowing:

1 **"SEC. 10. MINIMUM STANDARDS.**

2 "(a) CLASS II GAMING.—As of the date of enactment
3 of the Indian Gaming Regulatory Improvement Act of
4 1999, an Indian tribe shall retain the rights of that Indian
5 tribe, with respect to class II gaming and in a manner
6 that meets or exceeds the minimum Federal standards es-
7 tablished under section 11, to—

8 "(1) monitor and regulate that gaming;

9 "(2) conduct background investigations; and

10 "(3) establish and regulate internal control sys-
11 tems.

12 "(b) CLASS III GAMING UNDER A COMPACT.—With
13 respect to class III gaming conducted under a compact
14 entered into under this Act, an Indian tribe or State (or
15 both), as provided in such a compact or a related tribal
16 ordinance or resolution shall, in a manner that meets or
17 exceeds the minimum Federal standards established by
18 the Commission under section 11—

19 "(1) monitor and regulate that gaming;

20 "(2) conduct background investigations; and

21 "(3) establish and regulate internal control sys-
22 tems.";

23 (10) by inserting after section 10 the following:

24 **"SEC. 11. RULEMAKING.**

25 "(a) IN GENERAL.—Subject to subsection (b), not
26 later than 180 days after the date of enactment of the

1 Indian Gaming Regulatory Improvement Act of 1999, the
2 Commission shall, in accordance with the rulemaking pro-
3 cedures under chapter 5 of title 5, United States Code,
4 promulgate minimum Federal standards relating to back-
5 ground investigations, internal control systems, and licens-
6 ing standards described in section 10. In promulgating the
7 regulations under this section, the Commission shall con-
8 sult with the Attorney General, Indian tribes, and appro-
9 priate States.

10 "(b) FACTORS FOR CONSIDERATION.—In promulgat-
11 ing the minimum standards under this section, the Com-
12 mission may give appropriate consideration to existing in-
13 dustry standards at the time of the development of the
14 standards and, in addition to considering those existing
15 standards, the Commission shall consider—

16 "(1) the unique nature of tribal gaming as com-
17 pared to commercial gaming, other governmental
18 gaming, and charitable gaming;

19 "(2) the broad variations in the nature, scale,
20 and size of tribal gaming activity;

21 "(3) the inherent sovereign rights of Indian
22 tribes with respect to regulating the affairs of Indian
23 tribes;

24 "(4) the findings and purposes under sections 2
25 and 3;

1 "(5) the effectiveness and efficiency of a na-
2 tional licensing program for vendors or management
3 contractors; and
4 "(6) any other matter that is consistent with
5 the purposes under section 3.";
6 (11) in section 12, as redesignated by para-
7 graph (8) of this section—
8 (A) by striking subsection (a) and insert-
9 ing the following:
10 "(a) CLASS I GAMING.—Class I gaming on Indian
11 lands shall be within the exclusive jurisdiction of the In-
12 dian tribes and shall not be subject to the provisions of
13 this Act.";
14 (B) in subsection (b)—
15 (i) in paragraph (1)—
16 (I) in subparagraph (A), by strik-
17 ing "and" at the end;
18 (II) in subparagraph (B), by
19 striking the period at the end and in-
20 serting "; and"; and
21 (III) by striking the flush lan-
22 guage following subparagraph (B) and
23 inserting the following:
24 "(C) such Indian gaming meets or exceeds
25 the requirements of this section and the stand-

1 ards established by the Commission under section 11.";
3 (ii) in paragraph (2)—
4 (I) in subparagraph (D), by striking "$25,000" and inserting "$100,000";
7 (II) in subparagraph (E), by striking "and" at the end; and
9 (III) in subparagraph (F)—
10 (aa) by striking subclause (I) of clause (ii) and inserting the following:
13 "(I) a tribal license for primary management officials and key employees of the gaming enterprise, issued in accordance with the standards established by the Commission under section 11 with prompt notification to the Commission of the issuance of such licenses;"; and
20 (bb) in subclause (III) of clause (ii), by striking the period and inserting "; and"; and
23 (iii) by adding at the end the following:

1 "(G) a separate license will be issued by
2 the Indian tribe for each place, facility, or loca-
3 tion on Indian lands at which class II gaming
4 is conducted;";
5 (C) in subsection (c), by striking para-
6 graph (3) and inserting the following:
7 "(3) Any Indian tribe that operates, directly or
8 with a management contract, a class III gaming ac-
9 tivity may petition the Commission for a fee reduc-
10 tion if the Commission determines that the Indian
11 tribe has—
12 "(A) continuously conducted that gaming
13 activity for a period of not less than 3 years, in-
14 cluding a period of not less than 1 year that be-
15 gins after the date of enactment of the Indian
16 Gaming Regulatory Improvement Act of 1999;
17 "(B) implemented standards that meet or
18 exceed minimum Federal standards established
19 under section 11;
20 "(C) otherwise complied with the provi-
21 sions of this Act; and
22 "(D) paid all fees and assessments that
23 the Indian tribe is required to pay to the Com-
24 mission under this Act."; and
25 (D) in subsection (d)—

1 (i) in paragraph (2)(B)(ii), by striking
2 "section 12(e)(1)(D)" and inserting "sec-
3 tion 13(e)(1)(D)"; and
4 (ii) in paragraph (9), by striking "sec-
5 tion 12" and inserting "section 13";
6 (12) in section 13, as redesignated by para-
7 graph (7) of this section, by striking "section
8 11(b)(1)" and inserting "section 12(b)(1)";
9 (13) in section 14—
10 (A) in subsection (a)—
11 (i) in paragraph (1), by striking "sec-
12 tion 11 or 12" and inserting "section 12
13 or 13";
14 (ii) in paragraph (3), by striking "sec-
15 tion 11 or 12" and inserting "section 12
16 or 13"; and
17 (B) in subsection (b)(1), by striking "sec-
18 tion 11 or 12" and inserting "section 12 or
19 13";
20 (14) in section 15, by striking "sections 11, 12,
21 13, and 14" and inserting "sections 12, 13, and
22 14"; and
23 (15) in section 18—
24 (A) in subsection (a)—

1 (i) by striking "(a)(1) The" and all
2 that follows through the end of paragraph
3 (3) and inserting the following:
4 "(a) IN GENERAL.—
5 "(1) ESTABLISHMENT OF SCHEDULE OF
6 FEES.—Except as provided in paragraph (2)(C), the
7 Commission shall establish a schedule of fees to be
8 paid to the Commission annually by each gaming op-
9 eration that conducts a class II or class III gaming
10 activity that is regulated by this Act.
11 "(2) RATE OF FEES.—
12 "(A) IN GENERAL.—The rate of fees under
13 the schedule established under paragraph (1)
14 imposed on the gross revenues from each activ-
15 ity regulated under this Act shall be as follows:
16 "(i) No more than 2.5 percent of the
17 first $1,500,000 of those gross revenues.
18 "(ii) No more than 5 percent of
19 amounts in excess of the first $1,500,000
20 of those gross revenues.
21 "(B) TOTAL AMOUNT.—The total amount
22 of all fees imposed during any fiscal year under
23 the schedule established under paragraph (1)
24 shall not exceed $8,000,000.

1 "(C) MISSISSIPPI BAND OF CHOCTAW.—
2 Nothing in this section shall be interpreted to
3 permit the assessment of fees against the Mis-
4 sissippi Band of Choctaw for any portion of the
5 3-year period beginning on the date that is 2
6 years before the date of enactment of the In-
7 dian Gaming Regulatory Improvement Act of
8 1999.
9 "(3) COMMISSION AUTHORIZATION.—By a vote
10 of not less than 2 members of the Commission, the
11 Commission shall adopt the rate of fees authorized
12 by this section. Those fees shall be payable to the
13 Commission on a quarterly basis.
14 "(A) IN GENERAL.—The aggregate
15 amount of fees assessed under this section shall
16 be reasonably related to the costs of services
17 provided by the Commission to Indian tribes
18 under this Act (including the cost of issuing
19 regulations necessary to carry out this Act). In
20 assessing and collecting fees under this section,
21 the Commission shall take into account the du-
22 ties of, and services provided by, the Commis-
23 sion under this Act.
24 "(B) FACTORS FOR CONSIDERATION.—In
25 making a determination of the amount of fees

1 to be assessed for any class II or class III gam-
2 ing activity, the Commission shall provide for a
3 reduction in the amount of fees that otherwise
4 would be collected on the basis of the following
5 factors:
6 "(i) The extent of regulation of the
7 gaming activity by a State or Indian tribe
8 (or both).
9 "(ii) The issuance of a certificate of
10 self-regulation (if any) for that gaming ac-
11 tivity.
12 "(C) CONSULTATION.—In establishing a
13 schedule of fees under this subsection, the Com-
14 mission shall consult with Indian tribes.";
15 (ii) by redesignating paragraphs (4)
16 through (6) as paragraphs (5) through (7),
17 respectively; and
18 (iii) by inserting after paragraph (3)
19 the following:
20 "(4) TRUST FUND.—
21 "(A) ESTABLISHMENT.—There is estab-
22 lished in the Treasury of the United States a
23 fund to be known as the Indian Gaming Trust
24 Fund (referred to in this paragraph as the
25 'Trust Fund'), consisting of—

1 "(i) such amounts as are—
2 "(I) transferred to the Trust
3 Fund under subparagraph (B)(i); or
4 "(II) appropriated to the Trust
5 Fund; and
6 "(ii) any interest earned on the in-
7 vestment of amounts in the Trust Fund
8 under subparagraph (C).
9 "(B) TRANSFER OF AMOUNTS EQUIVA-
10 LENT TO FEES.—
11 "(i) IN GENERAL.—The Secretary of
12 the Treasury shall transfer to the Trust
13 Fund an amount equal to the aggregate
14 amount of fees collected under this sub-
15 section.
16 "(ii) TRANSFERS BASED ON ESTI-
17 MATES.—The amounts required to be
18 transferred to the Trust Fund under
19 clause (i) shall be transferred not less fre-
20 quently than quarterly from the general
21 fund of the Treasury to the Trust Fund on
22 the basis of estimates made by the Sec-
23 retary of the Treasury. Proper adjustment
24 shall be made in amounts subsequently
25 transferred to the extent prior estimates

1 were in excess of or less than the amounts
2 required to be transferred.
3 "(C) INVESTMENTS.—
4 "(i) IN GENERAL.—It shall be the
5 duty of the Secretary of the Treasury to
6 invest such portion of the Trust Fund as
7 is not, in the judgment of the Secretary of
8 the Treasury, required to meet current
9 withdrawals. The Secretary of the Treas-
10 ury shall invest the amounts deposited
11 under subparagraph (A) only in interest-
12 bearing obligations of the United States or
13 in obligations guaranteed as to both prin-
14 cipal and interest by the United States.
15 "(ii) SALE OF OBLIGATIONS.—Any
16 obligation acquired by the Trust Fund, ex-
17 cept special obligations issued exclusively
18 to the Trust Fund, may be sold by the
19 Secretary of the Treasury at the market
20 price, and such special obligations may be
21 redeemed at par plus accrued interest.
22 "(iii) CREDITS TO TRUST FUND.—The
23 interest on, and proceeds from, the sale or
24 redemption of, any obligations held in the

1 Trust Fund shall be credited to and form
2 a part of the Trust Fund.
3 "(D) EXPENDITURES FROM TRUST
4 FUND.—
5 "(i) IN GENERAL.—Amounts in the
6 Trust Fund shall be available to the Com-
7 mission, as provided in appropriations
8 Acts, for carrying out the duties of the
9 Commission under this Act.
10 "(ii) WITHDRAWAL AND TRANSFER
11 OF FUNDS.—Upon request of the Commis-
12 sion, the Secretary of the Treasury shall
13 withdraw amounts from the Trust Fund
14 and transfer such amounts to the Commis-
15 sion for use in accordance with clause (i).
16 "(E) LIMITATION ON TRANSFERS AND
17 WITHDRAWALS.—Except as provided in sub-
18 paragraph (D)(ii), the Secretary of the Treas-
19 ury may not transfer or withdraw any amount
20 deposited under subparagraph (A)."; and
21 (B) in subsection (d), by striking "section
22 11(d)(3)" and inserting "section 12(d)(3)".
23 **SEC. 3. CONFORMING AMENDMENTS.**
24 (a) TITLE 10.—Section 2323a(e)(1) of title 10,
25 United States Code, is amended by striking "section 4(4)

1 of the Indian Gaming Regulatory Act (102 Stat. 2468;
2 25 U.S.C. 2703(4))" and inserting "section 4(10) of the
3 Indian Gaming Regulatory Act".
4 (b) INTERNAL REVENUE CODE OF 1986.—Section
5 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is
6 amended by striking "Indian Regulatory Act" and insert-
7 ing "Indian Gaming Regulatory Act".
8 (c) TITLE 28.—Title 28, United States Code, is
9 amended—
10 (1) in section 3701(2)—
11 (A) by striking "section 4(5) of the Indian
12 Gaming Regulatory Act (25 U.S.C. 2703(5))"
13 and inserting "section 4(11) of the Indian
14 Gaming Regulatory Act"; and
15 (B) by striking "section 4(4) of such Act
16 (25 U.S.C. 2703(4))" and inserting "section
17 4(10) of such Act"; and
18 (2) in section 3704(b), by striking "section 4(4)
19 of the Indian Gaming Regulatory Act" and inserting
20 "section 4(10) of the Indian Gaming Regulatory
21 Act".

The CHAIRMAN. Senator Inouye, I would welcome any opening statement you have, before we get to our witnesses.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. I thank you very much, Mr. Chairman. I had intended to just say a few words.

Last evening, I had the opportunity to read and study the testimony of the National Governors Association, and I believe that I should at least comment on one aspect of it.

Mr. Chairman, in 1987 and 1988, following the Supreme Court's ruling in *Cabazon,* the bill that this committee drafted would have provided for a Federal regulatory framework.

I think all of us should recall that 10 years ago, the bill before us was one that complied with the Supreme Court's decisions of the past and the constitution of this land, in keeping with the Federal/tribal relationship.

The proposed Federal/tribal regulatory approach was consistent with 150 years of Federal law and policy, and also with the holding of the Supreme Court in the *Cabazon* case; namely, the Court held that State jurisdiction over gaming did not extend to Indian lands. That is the decision of the Supreme Court of the United States, that the State government does not have jurisdiction over gaming on Indian lands.

But notwithstanding that, because the States began to call upon us, begging us for a role in Indian gaming, we departed from the Federal/tribal standard, and provided a role for State governments in Indian gaming.

And as some of my friends in Indian country recall, I said, I apologize, because this would, in one way, diminish one aspect of your sovereignty, given that you would now have to deal with States, when historically, it was your right, by constitution and laws, to deal excusively with the Federal Government.

I agree with the assessment of the National Governors Association. There certainly is ample evidence that the law that we passed here, Indian Gaming Regulatory Act [IGRA], has worked. And as to the so-called good faith standard, I, for one, believe that we could dispense with that scheme.

Because the real issue is, what happens when the parties to a compact, a State and tribal government, reach an impasse in their negotiations? We clearly need a process that will enable the parties to bridge an impasse.

And despite the derogatory references to the Interior Secretary, I believe that he is sincerely trying to find a way to bring the parties to a resolution of their differences.

Nonetheless, following the Supreme Court's ruling in the *Seminole* case, the States have consistently opposed and effectively blocked all of the Secretary's efforts. This is the context in which we are dealing.

So I think it is both proper and appropriate to ask the States, the National Governors Association, what is your solution? What process would you propose to replace the current framework, so that the parties might have the means of overcoming an impasse and reach an agreement?

If you have a difference with regard to the scope of gaming authorized by State law, to whom would you suggest we turn to resolve these differences?

I think the governors have made clear that they do not want the Secretary of the Interior to be the arbiter in resolving these differences. That only leaves us with one other branch of the Government, the Judicial Branch, the courts. And, yet, how do we secure access to the courts, if one of the parties asserts its sovereign immunity to suit?

I think it is time that we consider the simple proposition, that as a condition of entering into compacting process, both parties are to agree that they will not assert their sovereign immunity to suit.

Then, if they reach an impasse, either or both parties can petition the Court to address the substantive matters of law, over which there is disagreement. Or if the parties find it more acceptable, they can enter into a process of mediation.

My point is this. The situation that we have right now is that if a State refuses to enter into negotiations for a compact, the tribes have no remedy, period. Thus, rather than having a role to play in Indian gaming, the States have an effective veto power over any gaming being conducted within the State's borders.

Mr. Chairman, this is not an acceptable balance. This is not the so-called level playing field that was given so much currency during the debates of 1988.

So I call upon the States. I call upon the governors. Give us your ideas, your suggestions. If you do not want the Secretary of the Interior involved, what is your solution?

Because, Mr. Chairman, we have had far too many hearings over the past 6 years in which we repeatedly hear the same thing.

States do not want to be compelled to enter into compact negotiations. States will oppose any legislation that does not provide for their involvement in Indian gaming. States will assert the 11th amendment immunity to defeat the jurisdiction of the Federal Courts, and thereby prevent the compacting process from going forward.

Mr. Chairman, I think it is high time that we move away from the ultimatums, and get down to the business of fashioning real solutions. I spent a lot of time, a few years ago, at this, and I am ready to roll up my sleeves to do so, again.

But I want people at the table who are sincerely going to try to address the problem of what happens when a State and a tribe reach an impasse in negotiations.

With that, I thank you very much, Mr. Chairman. I would like to, if I may, join you in extending my congratulations to Montie Deer, who will be sworn in this afternoon.

I hope that our schedule here will permit us to participate and witness this event. But in case we do not, congratulations. I wish you well, Mr. Deer.

The CHAIRMAN. Thank you. Senator Reid, coming from Nevada, you probably have a casual interest in this issue. Do you have a statement?

Senator REID. Mr. Chairman, today is one of my favorite days. At 9:30 a.m. was scheduled this hearing on Indian gaming, and at

9:30 a.m. in this same building is a hearing on nuclear waste. Can you believe how lucky I am?

The CHAIRMAN. I am on both committees, too. I understand your dilemma.

Senator REID. So I am going to have to take leave after this brief opening statement.

It is my understanding, Mr. Chairman, there will be no legislative action taken today.

The CHAIRMAN. That is correct.

Senator REID. This is strictly a hearing; is that right?

The CHAIRMAN. Yes.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Senator REID. Mr. Chairman, I appreciate your calling today's hearings. I especially appreciate the statement of Senator Inouye. No one has worked harder in the history of this country for the rights of Native Americans.

I have been on this committee since I have come to the Senate. And I am impressed with Senator Inouye's concern about fairness. And those of us who worked with him on this issue and other issues in the Congress have always been impressed with his fairness.

So we are very fortunate that he has taken such an interest in this committee, and in the problems of those who are Native Americans.

Mr. Chairman, with a couple of exceptions, I applaud what you have tried to do with this underlying bill. I support the goal of strengthening the Indian Gaming Regulatory Act.

And as former Chairman of the Nevada Gaming Commission, I believe I am in a unique position to understand the importance of effective regulation of a gaming industry.

Regulations have to be more than mere words in a law or code. They have to include teeth, and there must be a guarantee of enforcement.

In my view, the bulk of today's problems dealing with Indian gaming stem from the lack of enforcement of existing laws, and the need for more regulation and more law. The current level of uncompacted gaming is testament to the lack of Federal involvement and enforcement.

This committee needs to understand the nature of the gaming industry to appreciate the importance of regulatory enforcement. This is a cash industry. The commodity is money. Absent meaningful regulation, this is a recipe for disaster.

This bill takes steps in the right direction by providing for a more effective regulatory structure. The proof, though, will be in the pudding, and the proof will be in the enforcement.

Mr. Chairman, I am also concerned with the reference to the Cabazon decision in the purposes section of the bill. This touches upon the heated issue of scope of gaming.

This issue has been properly resolved by the Ninth Circuit in the *Rumsey* case. Under IGRA,

> Class III gaming activities shall be lawful on Indian lands only if such activities are located in a State that permits such gaming.

That is a direct quote from the *Rumsey* decision.

In *Rumsey,* the Court found IGRA neither compels the State to negotiate for gaming activities or devices that are prohibited by State law, nor requires the Court to refer to the Supreme Court's decision in *Cabazon.*

I believe that codifying *Rumsey,* not eroding it, is integral to any modifications of IGRA. I believe we must build on what the Chairman is proposing today. The issue of scope of gaming and alternative compacting need Congressional attention.

Courts can and will speak to these issues. Secretaries will continue their involvement. I believe it is time for us to step to the plate and legislate the solutions.

Mr. Chairman, I see walking into the room has been Senator McCain. Senator McCain was both the ranking member and the chairman of this committee. And he and Senator Inouye did not spend hours, days, weeks; they spent months trying to come up with some way to have an effective law that would be an improvement on IGRA.

And they were unable to do it; not because they did not try, not because they were not innovative, but because when we would get right almost to the goal line, something would go wrong. One time it would be the Native Americans. The other time, it would be the governors, the Attorneys General.

We never quite made it. We got very, very close. They are to be complimented and applauded for the work that they have done.

I would hope, Mr. Chairman, that we can contribute as much to working out this legislation. I will not even say as much. If you and I can contribute 25 percent of the time and effort that they did, we should be able to come up with something.

We have all done our share of posturing on this issue. We have done our share of promulgating our complaints. But I think we have to take the advice of Senator Inouye. It is time we came up with some solutions. It is easy to talk about what is wrong. You know, I could spend a lot of time on what I think is wrong with the whole situation.

I think we need to come up with a bipartisan solution, take it to the Senate Floor, and get the thing passed. It is badly needed.

And so I lend my efforts to helping you come up with legislation we can take to the Floor this year.

The CHAIRMAN. I thank the Senator, and wish you well in the hearing on trying to prevent Nevada from becoming a dump for nuclear waste. And I would remind him that I have been very supportive of you on that issue. And we would look forward to working with you on some solution on this committee.

Senator REID. There is rarely a time, Mr. Chairman, that I look at you, that I do not realize——

The CHAIRMAN. You think of nuclear waste?

Senator REID. Yes; right. [Laughter.]

The CHAIRMAN. Senator McCain, former Chairman of this committee, did you have a statement?

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCAIN. Very briefly, thank you, Mr. Chairman. And as Senator Reid leaves the room, I would like to thank him for not only his cooperative attitude, but the extreme comity— c-o-m-i-t-y—that has characterized our dealings on this issue, as strongly held views.

But those views have always been characterized by an extension of courtesy and respect, that I think has been very helpful as we have tried to address these difficult issues. Thank you, Senator Reid.

I thank you, Mr. Chairman, for holding this hearing today to review your proposed legislation, S. 399. I commend you and Senator Inouye for continuing your efforts to draft legislative proposals to evaluate some more alternatives to strengthen the gaming law.

I also extend congratulations to Montie Deer for his final Senate confirmation as Chairman of the National Indian Gaming Commission.

Indian gaming has become a major focal issue here in the Congress, as we know, and perhaps one of the most controversial. The phenomenal growth of gaming in Indian country and its consequential impacts on States and local communities have instigated a barrage of interest and scrutiny.

Many of us know that the Indian gaming is both a beacon and an albatross for Indian country, responsible for raising the standard of living for many Indian people forsaken in property, while elevating tribal governments with a new-found political force.

All this economic activity on Indian reservations occurs in places where I and others have gone to great lengths to assist tribes to attract jobs, dollars and business activity, with moderate success, to say the least.

The magnitude of the success for this $7 billion industry is also cause for apprehension about regulation and protection from potential corrupting influences.

In June, the Congress will receive a report from the National Gambling Impact Study Commission about the gaming industry, nationwide. Many expect that this report will highlight Indian gaming unfavorably. I expect that the Chairman and this committee will closely review those recommendations.

In hearing after hearing, we have discussed the need to ensure the highest standards for Indian gaming, consistent with the regulation of gaming, nationwide. Unfortunately, consensus remains illusive on how to make interval changes to the Indian gaming law.

After reading the written statement of the parties here today, it is clear that we are still far from reaching any middle ground. I do not have any great solutions to offer, but I do say that this stalemate undermines the environment of reason and goodwill that is necessary to resolve issues such as those involved with Indian gaming.

Finally, I would urge the Chairman at least to examine the gaming bill, which I introduced, working with Senator Inouye, which the National Indian Gaming Association has supported. That is a proposal I worked on for many years.

If the Indian Gaming Association, and the Attorneys General, and the governors oppose legislation that is being proposed, we all know where it is going.

Finally, Mr. Chairman, I want to thank you for your hard work and willingness to take on this difficult issue. Harry Reid just mentioned, Senator Inouye and I spent literally hundreds of hours of negotiations with governors, with attorneys general, and with the Native American tribes, and were unable to reach a successful resolution.

We need to have better enforcement and regulation of Indian gaming, but at the same time, I do not believe that it is within our Constitutional authority to undermine the principle of tribal sovereignty. And that is the trick here. And I hope that somehow we can reach it.

I thank you, Mr. Chairman. I thank all the witnesses who are here today.

The CHAIRMAN. With that, we will hear from our panels in two separate panels. And the first one will be made up of just one person, and that's Montie Deer, Chairman of the National Indian Gaming Commission.

So, Montie, if you would come to the table. And I would remind our witnesses today that all of the written testimony will be included in the record. And you may wish to abbreviate your statements. And there may be a light that goes on up here to kind of remind you.

Go ahead, Montie.

STATEMENT OF MONTIE DEER, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION, WASHINGTON, DC

Mr. DEER. Thank you, Mr. Chairman, Mr. Vice Chairman and members of the committee. As you know, I am Montie Deer. I am Chairman of the National Indian Gaming Commission. I thank you for the opportunity to appear before you this morning to testify on S. 399.

I would first like to thank Mr. Chairman, Mr. Vice Chairman, and this committee for your support on my nomination. As you know, on March 8, the Senate did confirm me, and I look forward to working with all of you in the next 3 years on that critical issue of Indian gaming.

You have asked me to address two parts of S. 399, that being section 11 and section 18. However, before addressing those two sections of the bill, I would like to provide you with an update of what the NIGC has been doing since we last spoke.

As has been mentioned this morning, prior to 1997, it was apparent to many, including this committee, that the NIGC lacked appropriate funding. Thus, you amended that to permit the assess of fees on class III activities, and raised it from $1.5 to $8 million.

And in response to that increased funding base, we reduced our fee rate, and increased funding base. And we now allow an exemption for all tribes that the first $1.5 million is not assessed a fee.

So with the availability of the funds, we embarked upon our expansion. I am pleased to announce today, that since I have come aboard, we now have doubled our field staff in the last 6 months.

We have hired four new field investigators, two new auditors, and two financial background investigators.

I am also pleased to announce that we have now opened our office in St. Paul, MN, and we plan to open offices in Sacramento, Tulsa, Phoenix, and Portland.

The CHAIRMAN. Denver. [Laughter.]

Mr. DEER. I heard that, Mr. Chairman. I will consider that.

The CHAIRMAN. Okay.

Mr. DEER. Now let us go to S. 399. Sections 10 and 11 require that the NIGC promulgate minimum Federal standards relating to background investigations, internal control systems, and licensing standards.

Let me first address the minimum internal control standards. As we all know, many tribes have strong minimum internal controls in place. However, those within and outside the Indian gaming community still recognize the need for a minimal level of control to apply universally throughout the industry.

And in January of this year, as you know, we promulgated the final class III and class II minimum control standards.

They do several things. They govern cash handling, documentation, game integrity, auditing and surveillance. And they do constrain stringent standards.

But I feel the tribes will find flexibility in complying with them, and I believe they are important. And I think it is also not our intent to regulate the tribal casinos out of business.

And as you know, when we embarked on promulgating these rules, we set up an advisory committee that included representations from both large Indian gaming representatives, as well as small. And we retained the Los Vegas accounting firm of Arthur Anderson to help us finalize those regulations. And we did that.

And then we embarked on a 14-city training of the MICS. We just recently completed that training. I am pleased to announce that 150 of the 198 gaming tribes were represented.

Further, we trained approximately 900 tribal leaders, gaming commissioners, tribal administrators, and gaming employees on the content of the MICS.

But the NIGC's authority to promulgate such a rule has been questioned. In fact, we expect a legal challenge to the authority at some time in the future.

So this is our recommendation. Since the law has been questioned, we would suggest that S. 399 should either delete the reference to internal controls, or the legislative history of S. 399 should make it clear that Congress views this provision as confirming and clarifying our authority to grant such rules under NIGC.

The minimal Federal standards for background investigations and licensing might be useful for some of the tribes. However, we would expect, as in the case with MICS, that the current practices and procedures in place for many of the tribes already exceed those minimums.

We strongly support and encourage Congressional authorization to establish authority for the NIGC to license vendors, consultants, and gaming suppliers.

Presently, the NIGC has no authority to requiring licensing or backgrounding of consultants, vendors, and suppliers. This creates two serious gaps in the regulatory process.

First, the NIGC currently is unable to identify any corrupting influences which might be using vending contracts as a foothold into Indian gaming.

Second, the tribes, themselves, cannot get FBI background checks on vendors, because there is no legal requirement to support their request.

Section 18 of S. 399 deals with the funding for the National Indian Gaming Commission. It provides that the Commission shall reduce its fees in consideration of one, regulation provided a State or Indian tribe or both; and second, issuance of a self-regulations certificate.

My concern with the approach of S. 399, section 18 is that it may require the NIGC to collect funds and fees at a much higher rate than the burden, and that the burden of those higher fees will fall upon the less wealthy tribes.

Our experience has been that very often the task of running a gaming operation is especially difficult for the poor and less sophisticated tribal gaming operations. When those tribes are in remote areas or are unable to anticipate high levels of revenue, they have less accessibility to management, contractors, consultants, and attorneys.

The end result is awful; that the poor tribes require the most attention from the outside regulators, while the wealthy tribes are able to buy whatever they need, to establish state-of-the-art regulation.

Thus, any significant fee reduction for self-regulated tribes is likely to result in much higher rates for the other tribes.

As I previously stated, our current fee structure takes into account other forms of gaming regulation by exempting the first 1½ million in gaming revenues for our fee assessments.

However, I must point out that trying to establish a formula for calculating "the extent of tribal and State regulation" will no doubt be a sophisticated and potentially controversial calculation.

Finally, we are concerned about the changes being proposed to the way the Commission is funded, especially the use of a trust fund.

Currently, we are able to assess and collect fees, and use them in the same fiscal year. With the trust fund, presumably, we will have to assess and collect fees well in advance of when they are needed, so that we can request that they be appropriated for our use during the subsequent fiscal year.

This will result, perhaps, in a sizeable increase in the amount of gaming industry funds being held by the Federal Government.

Further, the Department of Treasury requested yesterday and informed us that there are some technical problems with the trust fund portion of S. 399. They have indicated that they are happy to provide input in that provision.

Again, I want to thank you for the opportunity to speak to you today regarding S. 399 and other issues facing the NIGC.

We welcome the opportunity to work with your staff, as we have in the past, on those issues discussed today. I am available for your questions.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Deer appears in appendix.]

The CHAIRMAN. Could you just repeat what you said about Treasury having some concerns? What was the concern?

Mr. DEER. Yes; we received a fax, I believe, yesterday afternoon, Mr. Chairman, that they have some technical problems with the way the bill is worded. They did not go into detail, and they said that they would be more than happy to work with the committee on that issue.

The CHAIRMAN. I see. Okay, why do not we go ahead and start with Senator Inouye, if you have some questions of Monte.

Senator INOUYE. I have no questions.

The CHAIRMAN. Senator McCain, did you have some questions of Mr. Deer?

Senator MCCAIN. Mr. Deer, your testimony said there are possible regulatory gaps in the Indian Gaming Law, which do not allow the Commission to do certain background checks on vendors or management contracts for class III gambling.

If you got this authority, would this help you prevent some problems?

Mr. DEER. I believe it would, sir.

Senator MCCAIN. So that is a recommendation that you think is important.

Mr. DEER. Yes; also, I think it would same time. Once we do a background check of one vendor, as you know, sir, they all tend to be in the same business. And so the next time we see that name, it will be a little easier to go through that.

Senator MCCAIN. Are you experiencing any problems with fee assessments?

Mr. DEER. I do not believe anything in particular at this time, no sir.

Senator MCCAIN. You are getting your fee assessments?

Mr. DEER. Yes.

Senator MCCAIN. When you mentioned that you doubled the number of people that you have in the field, has not the Indian gaming operations more than doubled in the meantime?

Mr. DEER. No question. And we are working rapidly on increasing that number even greater. I hope to have five field offices with five investigator type individuals, including one of them to be an auditor.

Senator MCCAIN. Five in each office?

Mr. DEER. Right. And if that would work, then we would probably be as low as 8 to 10 investigators for each—they would each have 8 to 10 tribal entities.

Senator MCCAIN. Is that enough?

Mr. DEER. I do not know.

Senator MCCAIN. You know, I have to balance what you are doing against Nevada and New Jersey. And it seems to me it is minuscule, as compared with the amount of oversight and regulation that is extended to those in those States, and they still have problems.

So, you know, I am pleased that there is some improvement. But is not it dramatically short of what you actually need to exert the kind of oversight that you are chartered to do?

Mr. DEER. What we hope, Senator, is that by our education processes, as well, that the on the front line, that being the tribal gaming ordinance committees themselves, that we will train them so that they can be effective day by day, and therefore, we can be more of an oversight.

Senator MCCAIN. Well, in all due respect, that is like telling the casinos in Los Vegas to police themselves.

Mr. DEER. I understand.

Senator MCCAIN. So I am not sure I am satisfied with your answer.

Mr. DEER. Well, I think there is a little difference there. The gaming concerns in Vegas, and perhaps New Jersey, they are not separate from themselves.

In other words, we are hopeful that all the tribal gaming commissions will be a separate entity from the counsel itself; and, therefore, separate from the tribe; and therefore, know that their only job is the regulation of that gaming.

Senator MCCAIN. How many of those have that arrangement now?

Mr. DEER. I would say a majority.

Senator MCCAIN. A majority of them have a separate tribal gaming counsel?

Mr. DEER. To be quite sure on that, if you would allow me, I will supplement that answer, and send it to you immediately, but I think that is correct.

Senator MCCAIN. Have you seen the legislation that was originally introduced by me and Senator Inouye?

Mr. DEER. I believe I have, but I have not reviewed it lately.

Senator MCCAIN. We would like to have your written input about that, as well.

Mr. DEER. I will do that.

Senator MCCAIN. I wish you every success. But let us have no illusions about how little, and in some cases, lax, the enforcement has been in the past.

And I believe that Congress, and certainly this committee, and I can not speak for the Chairman, although he and I have very closely aligned views, that whatever you need, we will do our best to get, so that you can exercise the responsibilities under the law. And I do not think you have it, yet.

Mr. DEER. I thank you for that help. And I also will tell you, I know that has been there.

Senator MCCAIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. One of the complicating influences, of course, as Senator McCain knows, is that often some of the things we try to do are opposed by the tribes themselves. And they see much of what we do as some erosion of their sovereignty.

Let me just ally myself with what Senator McCain said. On the minimum internal control standards, which I assume would include background checks, FBI background checks, too, on vendors, do you believe that would ensure that all gaming operations on res-

ervations would be safeguarded against these so-called corrupting influences, as are other private gaming facilities?

Mr. DEER. Senator, nothing is perfect. But I think that would reach the point and help us get there more than it is today.

The CHAIRMAN. Thank you.

Did you have anything to add Senator Inouye?

Senator INOUYE. No.

The CHAIRMAN. Montie, thank you for appearing today. There may be some followup questions by other members of the committee, that we will submit in writing, if you could answer them.

And our second panel will be made up of Ray Scheppach, Executive Director, National Governors Association; and Richard Hill, Chairman of the National Indian Gaming Association of Washington.

And we will just go ahead and start with Mr. Scheppach. If you would go ahead and proceed, and then we will go to Rick.

STATEMENT OF RAY SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS ASSOCIATION, WASHINGTON, DC

Mr. SCHEPPACH. Good morning, Mr. Chairman. Thank you for the opportunity to appear before you today to convey the Governors' position on S. 399.

Let me say at the outset, that we have not had the opportunity yet to do an extensive review by sending this back to the States. We are in that process. So I would hold open the possibility of giving you some additional comments in the future. But let me give you some of our initial reaction.

First, in the years since the enactment of the Indian Gaming Regulatory Act of 1988, the vast majority of negotiations between States and tribal governments have resulted successfully completed compacts.

As of today, approximately 155 tribes have concluded over 195 compacts with 24 States, many of them since the enactment of IGRA, and many of them since the *Seminole* decision.

Difficulties remain in a few States where tribes and States differ with respect to the scope of gaming activities, and the devices subject to compact negotiation.

Most IGRA court cases have arisen because of the tribe's insistence on negotiating for gaming activities or devices that are otherwise illegal in the State.

The record of States negotiating in good faith is strong. However, the breadth of Indian gaming today that is uncompacted raises serious questions about the enforcement of IGRA by the Federal Government. It is unfortunate that the proposed legislation does not address this important issue.

I am confident in telling you that the Nation's Governors will strongly oppose any Congressional or administrative attempt to reduce the State role in implementing the Indian Gaming Regulatory Act.

Although S. 399 does take important steps in codifying Federal regulation of Indian gaming, generally, it would put States in a worse position than current law. Therefore, the Governors would oppose this bill, as it is currently written.

I want to focus, essentially, just on three issues: The scope of gaming, minimum regulatory standards, and membership on the National Indian Gaming Commission.

The most important issue, from our standpoint, is the whole question of scope of gaming. We have all worked on this issue long enough to know that the scope of gaming activities and devices subject to negotiation under IGRA has been the Governors' major concern.

However, the Governors' problems with the interpretation of IGRA with respect to scope of gaming seem to have been resolved by the courts.

The U.S. Court of Appeals at the Ninth Circuit reached a decision in *Rumsey*. In *Rumsey,* the Court found that IGRA neither compels a State to negotiate for gaming activities or devices that are prohibited by State law, nor requires a Court to refer to the Supreme Court's decision in *Cabazon*.

The Supreme Court denied the tribe's request for review of this decision, effectively endorsing the Ninth Circuit's interpretation of IGRA.

The Governors object to S. 399's reference to *Cabazon* in the purposes section. Because of this, these amendments could create a great deal of confusion for States, tribes, and courts, reversing the progress made to date with respect to IGRA implementation, and it would lead to further litigation.

With respect to the minimum regulatory standards, the Governors recognize that federally imposed regulatory standards for the operation of tribal gaming may sometimes be appropriate.

However, the Governors are interested in protecting the interests of tribal governments and casino patrons, as well as preserving the integrity of the gaming operations.

NGA policy supports the bill's intent to leave regulatory oversight responsibilities, subject to Federal standard, to be established by the National Indian Gaming Commission, in the hands of States and tribal governments, as negotiated in their compacts.

Detailed regulations were published earlier this year. The Governors are pleased with these regulations, as written, not as maximum standards, but rather as minimum standards. It is important that regulations pursuant to negotiated compacts be permitted to exceed these regulatory standards.

States and tribes should retain the prerogative to establish more stringent regulations for gaming activities. We are pleased at this aspect of the regulations, and that it is supported in the proposed legislation.

My final comment is with respect to the Indian Gaming Commission. Governors want to again express their concerns that the Commission requires representatives of tribes, but does not require representatives of States. We believe this weakens the Commission.

The compact negotiation process established by IGRA shows that the sovereignty of States and tribes requires negotiations between the two parties.

The failure of IGRA to reflect the balance in the Commission membership continues in this legislation. As the Commission takes on the regulatory responsibilities, the committee should take steps to correct this imbalance.

Mr. Chairman, I would be happy to answer any questions.

[Prepared statement of Mr. Scheppach appears in appendix.]

The CHAIRMAN. We will have some questions, but we will go ahead with the rest of the testimony first.

STATEMENT OF RICHARD G. HILL, CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION, WASHINGTON, DC

Mr. HILL. Good morning, Mr. Chairman, Vice Chairman Inouye, and Senator McCain.

Thank you for inviting me to testify here today. I want to thank you and this committee for your courageous efforts on behalf of Indian country.

This bill, S. 399, is a fine example of the very good efforts you and your staff have put forward as real solutions to the problems in Indian gaming.

Before I begin, I would like to comment that I hope this committee considers holding another hearing on S. 399 at which tribal leaders can testify.

My specific comments regarding S. 399 are contained in my written testimony, which I have submitted for the record. We request permission to add or to amend these remarks, prior to the final due date for submission of hearing materials. I will summarize from those remarks.

Regulation is working in Indian country. The primary focus of the Indian Gaming Regulatory Act was intended to provide well regulated Indian gaming, and to keep Indian gaming safe. The Indian Gaming Regulatory Act was intended to provide States limited access to Indian gaming.

I am pleased to report today that Indian gaming is well regulated. In terms of regulation, the Indian Gaming Regulatory Act works. For example, my tribe spends $8 million each year. There are several nations that spend more. And I think there is a real commitment, if we read a list of tribes who commit large dollar amounts for the purpose of regulation.

Most Indian nations only have to regulate one facility. Most Indian nations have established Indian gaming commissions and other distinct arms of their governments, whose only duty is to regulate that single gaming facility. The dollar rate of regulation per revenue is higher in Indian gaming than any other gaming in the United States.

There are several questions Indian nations have about Federal regulations. Indian nations questions why further regulation is necessary, when the National Indian Gaming Commission Federal appropriation was eliminated.

If increased Federal oversight of Indian gaming is necessary, why does not the Federal Government pay its fair share?

Indian nations were promised that Federal Government would pay its share for Federal regulation. This year, there are no dollars—zero dollars—appropriated for this Federal commission.

If increased regulation is so necessary, where is the Federal commitment? This is the Federal Indian Gaming Commission, not the Indian Gaming Commission.

Indian nations thank you for taking our advice from many previous hearings and incorporating that advice into S. 399. For exam-

ple, No. 1, raising the ceiling for audit reporting from $25,000–$100,000; No. 2, eliminating unnecessary floor for the NIGC assessments; No. 3, providing protection for the NIGC assessments through a separate fund; and No. 4, providing an allowance for amortization of capital for buildings.

There are other areas that only minor changes are necessary: No. 1, providing that all commissioners have expertise in Indian affairs, not just Indian commissioners; No. 2, tightening the definitions of management contractors so that Indian employees are not considered; No. 3, including secretarial procedures under the definition of the compact to provide the Johnson Act protections; and No. 4, making reasonable special circumstances and fee payments permissible under self-regulatory standards.

Indian nations are somewhat concerned that S. 399 would create standards, not minimum standards. In looking at the current NIGC published standards, Indian nations are concerned that the duplication of services will try to attempt to pay twice—once, twice, or three times for the same activity.

Now under compacts, Indian nations and States both conduct background checks. Under S. 399, will the Federal Government do background checks, as well?

Indian nations questions if 399 will throw a Federal presence into compact negotiations, which need no further problems. S. 399 will make the Federal Government an unnecessary third party to compact negotiations. At what point will the Federal Government make its intentions known?

Alternative compacting procedures—Indian country is well aware that this committee has been supportive of doing the right thing.

The Indian Gaming Regulatory Act is still the law, yet there are States that are ignoring Federal law. There are States out there that are breaking the Indian Gaming Regulatory Act law. We are all aware of this here today.

There are several Indian nations who are being denied their right under the Indian Gaming Regulatory Act, which we are all aware. Indian men, women, and children are homeless and jobless because there is little economic development.

For 3 years now, Indian nations have suffered under the injustice of the *Seminole* decision. We are very discouraged about the Enzi amendments being added to the Supplemental Appropriations Bill, without an opportunity for review by this committee, and without an opportunity for Indian nations to comment.

I think a good example, recently, of that is the Shoshone-Bannock in Idaho, where they have been in the process of trying to get a compact for 7 years. They completed compacts with the Governor. Henceforth, it was not ratified by the State legislative body.

It leaves Shoshone and others with no legal remedy or no alternative to achieve a compact. I think this adds to the 10-year frustration with the cost and the disappointment of an honest effort by a lot of tribes to achieve compacts.

We need a legal remedy. And I think that was the intent of Congress. So the intent of IGRA would be fulfilled with the intent of Congress in mind, to give tribes economic self sufficiency, self governance, and economic development.

So I guess we have been to a lot of these hearings together, and it has been 10 years. And we really need this committee's support to get a remedy for those tribes, for that particular situation.

In conclusion, in regard to S. 399, I report to you the position of Indian nation. It is not a new position. It is not a position of which this committee is unaware.

For several years, Indian nations have taken this position that they will not support any legislation that does not provide an alternative compacting provision. This position has not changed.

Indian nations are willing to work with this committee to craft any reasonable solution to State tribal disagreements. We support Secretarial procedures, even though they provide access to States at several points, because Indian nations seek compromise in State tribal issues, not domination.

I, once again, would like to request that you would hold a second hearing, because we have had a lot of inquiries by tribal nations for their leaders to testify.

And I would like to also add that we support the Chairman's efforts to use *Cabazon* as the gaming standard, and not reduce it down to *Rumsey,* because *Rumsey* is only in one—is only in the Ninth Circuit, and that should not prevail throughout. So we would support the *Cabazon* standards.

I would like to thank the Chairman and the committee here for listening to NIGA's testimony this morning, and we stand ready to answer any questions.

Thank you.

[Prepared statement of Mr. Hill appears in appendix.]

The CHAIRMAN. I thank both of you. I think I can say, though, from the outset, in just listening to both of your testimonies that it is what has stymied Senator McCain and Senator Inouye and me for years. And that is that neither side has really come up with anything to help us find an equitable solution that does not threaten the other side.

And tribes tend to want less control and more of their own limits. I understand that—less standards. Governors tend to want more of all three.

But I can tell you right now, under the way the rules of the Senate work, those who are opposed to change have the advantage. When we go to the Floor with anything, if there are people who oppose the bill through filibusters and holds and a number of other maneuvers, they can pretty much stop it.

And so we have not been able to find something that is equitable to both sides, so that we can move something forward.

Compacting is a good example. S. 399 does not deal with it. If we put that in, I am sure the tribes would like that. The Governors would oppose it. If we leave it out, the Indian tribes do not like it, and the Governors probably would like it.

And I do not know the answer to it. But I do know one thing, that in all the years that Senator McCain, Senator Inouye, and I have worked on it, we have not found the answer to satisfy everybody, and may not.

So the end result is, if we can not find some kind of legislative solution, you are going to be in courts a long time, both sides are, a long time.

And I would like to see, frankly, more people come in and offer helpful suggestions that the other side could live with, so we could finally get some resolution on this. And I know that S. 399 is not the answer to everything, but we have got to start somewhere.

Let me ask you, Mr. Scheppach, first, as I look through S. 399, I do not think it addresses the element of compacting, the compacting process.

But in your statement, you say that it would substantially change the balance between States and tribes in the compacting process, in the compacting negotiation. How would it do that if this bill does not deal with compacting?

Mr. SCHEPPACH. Well, the scope of gaming issue, I think, is the most important issue to the Governors. And what you have is, in the purpose section, your refer back to the *Cabazon* decision. And that, in our mind, can open up that whole decision of scope of gaming.

We think that it has been settled in the *Rumsey* decision. We think it is the right decision. It is consistent with our policy. And we think that that helps in terms of compacting process.

So I think by putting that *Cabazon* back in the purpose section, you may open up more court decisions on the interpretation. So in that sense, I think it may have an impact on the compacting process.

The CHAIRMAN. I see. Your testimony states, "that it is seldom the case" that a State completely refuses to negotiate with a tribe. There have been instances of that. And, certainly, that is what the *Seminole* decision was all about, in my view.

And in that case, in those instances when a State does not want to negotiate with the tribe, what alternatives do the tribes have; what can they do?

Mr. SCHEPPACH. Well, again, I think most times when the Eleventh Amendment protection is raised, it is because the tribes have been interested in games that are outside of State law. And, therefore, the States raise the 11th amendment.

I think that—and I do not have the exact number—but it seems to me that a good 20 or 30 compacts have, in fact, been signed, since the *Seminole* decision. So although there are stalemates at times, I feel that the process is still working.

The CHAIRMAN. Chairman Hill, tribes who operate class III gaming are assessed at the rate of 08 percent for revenues over $1.5 million.

So that means, if my math is right, that a tribe grossing $10 million would be responsible for $68,000 in fees to the NIGC. That relationship, $68,000 out of $10 million, can you tell me how that poses a hardship on the tribes? It seems like a pretty reasonable amount out of that kind of revenue.

Mr. HILL. I do not know if that formula—when Montie testified, I was not sure if that formula would harm tribes who have not been as successful. You know, it certainly would not harm the more successful tribes, but I think that the rate may harm tribes that are less successful.

The CHAIRMAN. Well, then let me ask you about the number of investigators. Do you think they can perform an adequate job with the growth of gaming, with only seven investigators?

Mr. HILL. Well, I think we are encouraged by the National Indian Gaming Commission's field offices' proposal. And I think that will lend some further technical assistance that we have been advocating for, for a number of years.

But I think what is really understated is that, you know, we are nations. We develop gaming commissions and ordinances. What I think is really understated is the commitment that the tribes have for the regulatory schemes, and the commitments they have put forward.

It always seems to me that, you know, there is always the need for big brother to do more watching at our expense. I think what is under appreciated is the job that the tribes are doing.

And I am sure that Montie would have testified to the fact that there would be a lot of red flags out there, if the tribes were not doing the proper job.

And I think that the schemes that the tribes worked out with the States when they negotiated a set of regulations in the scope of games are working. And I think there are several instances that you could testify to that they are working.

And I think that is further encouragement to have tribal leaders come and testify specifically on that particular question, and on your first question, on the impact of that 0.8 percent will have on their particular budgets; and have some of those smaller tribes and large tribes and medium size tribes come forward and tell you exactly what impact that would have on their revenue streams. And they could also testify to the level of enforcement that already exists.

And what we would encourage is that what they are attempting to do, through their new minimum standard mix, is that they will be looking the compacts. The arrangement is already being made between the tribes and the States in reference to the regulation scheme, and look forward to what areas need to be improved upon.

So I think there is some positive work in all these areas. And I think some of your proposals also supports some of these efforts.

The CHAIRMAN. Okay, thank you. Senator Inouye?

Senator INOUYE. Thank you. I am certain that all of us will agree, reluctantly or otherwise, that Indian nations and States, the several States of this Nation, are sovereign entities.

And as sovereign entities, they have the right of asserting or advancing sovereign immunity. That is the right of all sovereigns on this planet. But in the case that we have before us, in advancing sovereign immunity, an impasse can never be resolved.

Now the Chairman asked Mr. Scheppach a question, what do you propose, and no one has responded to that, yet.

What do you think of the naive proposal that I made, that as a condition of entering into a compact process, both parties waive their sovereign immunity and proceed; so you will not have an 11th Amendment situation, and the Indians will not have any remedy?

Mr. SCHEPPACH. Again, I think that, you know, States are very reluctant to bring up their 11th amendment defense. It is not good politics. It is difficult.

And I think that if you look at them pretty seriously, you find that when it happens, it is mostly in response to a tribe that wants

a fairly expansive gaming authority. So I think there is a real reluctance to give up the sovereign immunity.

Plus, for States to give up sovereign immunity in any particular area, I think has pretty significant Federalism, broad issues about, you know, do we waive sovereign immunity in other areas. It is not something States give up very easily.

Senator INOUYE. Well, Mr. Scheppach, I am certain you recall, because you have been with the Governor's Association for some time now, that soon after the *Cabazon* decision was rendered, the committee went to work, because to leave it as was may have resulted in some chaos, at least legal chaos.

And so we drafted legislation, which we seriously intended to advanced, which called for a Federal tribal regulatory approach, because that would have been consistent with the constitution and the laws of this land, where the relationship is between the Government of the United States and the tribal nation.

But at the behest of State governments, at the behest of Governors, who wanted some input in the process, we changed it. And we made the negotiating party not the Federal Government, but the State government.

To do that, we had to, in essence, diminish some of the sovereign rights of Indian nations, because they could have insisted that their relationship is not with the States, and the courts have ruled that their relationship is with the Federal Government.

So the Indians relinguished a bit of their sovereignty. And I know that the States jealously guard their 11th amendment immunity. But for this compacting process, what is so horrible about coming up with something that will resolve this? Because at this moment, looking over the testimony, the words that come out and hits me all the time is, I oppose, we oppose, we oppose.

I think it is about time we come out and say, we propose something. And I have come up with something. Maybe it is naive, too simple, but I would like to get something in writing from the Governors and from the Indians as to how they feel about this naive proposal that I have put forward.

Mr. SCHEPPACH. Well, the other point I would make, Senator, is that everybody focuses, basically, on the *Seminole* decision as the only problem. I would argue that States have significant other problems.

There is a substantial amount of uncompacted, and in some sense, illegal gaming, that the States have no authority to shut down. We have in the original act a one way street on good faith/bad faith.

So there are a number of other issues that the States are interested in fixing, if we are going to deal with this whole issue of compacting. Plus, again, I think if you look at the history, IGRA, I think, did a very good job at trying to create a balance and attention, so that States and tribes would attempt to work out their differences.

And the mere fact that we have got 190 compacts, and we have got 20 or 30 really over the last 4 or 5 years, I am not sure the process is broken.

And I think if you do some kind of a by-pass mechanism, then you have lost that intention for the tribes to sit down and work out

things with States. If there is an alternative mechanism, then they are going to go directly to that mechanism, and bypass; and attention to State-tribe negotiations, I think, is, in all practical purposes, gone.

Senator INOUYE. I would like to remind the Governors Association that in 1988, when we were proposing legislation, the Governors wanted a level playing field. Therefore, we set up this compacting process.

What is the level playing field with the 11th amendment Club poised over the Indian nation?

Mr. SCHEPPACH. Well, again——

Senator INOUYE. If you do not go along with us, it is going to fall on your head.

Mr. SCHEPPACH. I say, again, I think that the 11th amendment is only raised when the tribes are asking for games that are not legally available to other residents in the State. If all they are asking for is that which other citizens in the State can have, Governors do not, in fact, raise the 11th amendment. It is only under expansions.

Senator INOUYE. Well, if the question is, you say it is illegal; they say it is legal, why do not we have a court decide on your disagreement, as to whether it is legal or not legal?

Mr. SCHEPPACH. Well, we have had a lot of court decisions. I think that is part of our problem.

Senator INOUYE. Mr. Hill.

Mr. HILL. Senator Inouye and Mr. Chairman, I think we have made a lot of full faced efforts and attempts to provide solutions, in terms of providing this committee and through the State-tribal-Federal negotiations solutions on these issues.

And kind of the stalemate now in these negotiations is, you know, our proposal to bring some finality to this, in terms of providing the facilitator for that process. You know, some person of stature that could come forward and help us break this log jam.

And the States just refuse to accept our offer, and they continue to study it. And I think that would be a productive and positive solution to some of these things.

In terms of this term "bypass" I have heard it several times. And it is really disturbing in the fact that if you really review the material in terms of the Secretarial procedures, there are several entry points where the States get to participate.

We are not real excited about that because, you know, they get several more bites at the apple. But at least there is something there to start with and to work with. And, you know, to use this word "bypass" over and over again, the States are not being bypassed under the proposed solutions under the Secretarial procedures.

So I think there can be some movement to resolve these things. And I think if the States and the tribes could get back together, to look at what amendments we both can embrace and negotiate these out, and where we have trouble spots, to insert this facilitator position, we encourage this committee to encourage the States to accept that proposal.

And let us move forward, and let us try to work hard with the appropriate bodies to fashion solutions. And I think we can.

And I think we have something in terms of what is reasonable to resolve these things. But we keep running into this log jam with the States in cooperation in terms of these negotiated processes. And, certainly, you were aware of that when you started that, some years ago.

Senator INOUYE. Do you believe that the proposal I made makes any sense?

Mr. HILL. Yes; it makes a lot of sense, you know.

Senator INOUYE. Do you believe that the tribes you represent would be willing to waive their sovereign immunity rights?

Mr. HILL. Well, I do not think the tribes—maybe I misunderstood your position. I do not think the tribes want to waive their rights. But I think that, you know—I was thinking your proposal was throwing the ball back into the States' courts and saying, you know, where is your solution? What are your solutions to these remedies?

And I am getting a little help here.

The CHAIRMAN. Well, I might just, if I could interject, Senator Inouye has got a lot more patience and understanding than I have. And Senator McCain and I and he have worked on this issue ever since 1988, trying to find some equity and parody and fairness that we have not been able to find, yet.

And, very frankly, my patience is beginning to run out. So I admire Senator Inouye for kind of sticking to this.

But let me ask you this, both of you, would you be satisfied if we just stepped back from this whole thing as a committee, do nothing, and just continue on, letting you fight it out in Court?

You mentioned, Mr. Scheppach, that court decisions are part of the problem. Well, I think so, too. They are expensive and angry, and neither one is satisfied when they get done. But if you do not help us find a solution, that is what you are in for, just more and more fights in courts. Is that what you want?

Mr. HILL. Well, I was reminded here about the Floor statement by Senator Enzi that he would be the first to admit that the States, at this present time, have the bigger stick.

So, being a reasonable person, I would say in the State/tribal negotiations, the facilitator is the solution. I really—unless I hear a better idea, I think that is the route to go. I would not want to see this committee back away from this issue.

I think in terms of the Enzi/Reid situation, you know, I think we should stop these appropriation riders. I think this committee is the committee of jurisdiction. If those kind of things need to come up, they need to come here. Tribal leaders need to come here and testify, and respond to those kinds of things. And, you know, we are getting no where but a log jam by entertaining those types of measures.

The CHAIRMAN. Well, there have been a number of attempts, as you may know, to stop appropriations riders. It is probably not going to happen. It is probably going to continue, would be my guess.

And we simply do not have the votes on the Floor anymore, for the few of us who are really trying to protect tribes, to stop some of those writers. So I would expect more of those to continue.

Mr. HILL. I would just further add, Mr. Chairman, that we are not for or against this particular bill. That is a political answer. But, you know, we are willing to work with this committee, to any extent, to bring some real solutions to these issues. And we will continue to work with you and your staff to——

The CHAIRMAN. Well, everybody that comes to this committee always says that. We will be willing to work with this committee. That is what the Governors say, too, but they do not want to work with each other.

That is where the problem is, not working with the committee. We are just trying to reflect some equity on both sides. And I think too many people have talked to us, and not talked to the people on the other side of the table from them.

Mr. HILL. That is why I am still proposing that you would also help to advance the facilitator position. Because I think that if people would buy into that process, I think we could make some progress.

Mr. SCHEPPACH. Mr. Chairman, let me just say that I think that both sides have tried, you know, over the last 10 years, to resolve some of these issues.

It is just that these are very difficult issues. And I think the tribes feel very strongly about it and the Governors feel very strongly about it.

But I would argue, the tribes have come to the table in good faith, and I think we have, really. It is just that these are very difficult issues.

The CHAIRMAN. They sure are.

Mr. SCHEPPACH. And, you know, you asked whether the committee should just drop out. I guess the Governors' position is that we do not want to see a bill that just zeros in on this particular 11th amendment problem.

We are more interested in, you know, a solution that deals with some of the other things. As I said, uncompacted gaming——

The CHAIRMAN. Well, as Senator Inouye always said, you have not offered anything up, as an alternative to what we are trying to do.

Mr. SCHEPPACH. Well, that is right, but we have been, you know, negotiating with the tribes to see whether some of that has been possible.

The CHAIRMAN. Well, when you find that solution, if you would bring it before the committee, I know I would appreciate it, and I think Senator Inouye would, too.

Do you have any further comments, Senator Inouye?

Senator INOUYE. No.

The CHAIRMAN. Okay, I thank you. And this record will stay open for 2 more weeks. We may submit some questions on behalf of the committee members. Thank you for appearing.

[Whereupon, at 10:40 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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

Good Morning, Chairman Campbell, Vice Chairman Inouye and distinguished members of the Committee on Indian Affairs. I am W. Ron Allen, President of the National Congress of American Indians [NCAI], the oldest and largest Indian advocacy organization in the United States, and Chairman of the Jamestown S'Klallam Tribe. I appreciate the opportunity to comment on S. 399, the Indian Gaming Regulatory Improvement Act of 1999.

In general it is my feeling that tribal leaders ore still analyzing your proposed legislation which was introduced only a little over 1 month ago, so my testimony will be general. We expect to provide more detailed comments on S. 399 as we receive more input from tribal leadership. It is extremely important to NCAI that tribal governments have all opportunity to consider the legislation and then form NCAI's position through our resolution process.

S. 399 is more limited than some other Indian Regulatory Act [IGRA] amendments bills, such as last year's S. 1870, "The Indian Gaming Regulatory Improvement Act of 1998." S. 399 focuses largely on two areas: 1) authorizing the National Indian Gaming Commission [NIGC] to promulgate minimum Federal standards for tribal gaming operations; and, 2) establishing a fee schedule for class II and class III tribal gaming facilities.

In general, NCAI has supported these types of changes to IGRA. Even though tribes commonly implement regulatory standards and controls of their own that far exceed any proposed Federal minimum standards, implementing Federal standards will do much to improve public confidence in Indian gaming. In addition, a fair and equitable system for collecting regulatory fees from class II and class III gaming operations will help to put the NIGC on a sound financial footing for regulatory oversight, which will also improve public confidence in Indian gaming.

However, the tribal leadership of NCAI and the National Indian Gaming Association have taken a position that we do not support any amendments to IGRA unless those amendments include provisions intended to create a "Seminole" remedy, so that States will no longer have the power to unilaterally defeat the good faith negotiation requirement of the original IGRA compact process. We note that last year's proposed S. 1870, "Indian Gaming Regulatory Improvement Act of 1998," did contain a Seminole remedy but that S. 399 does not. We would strongly encourage the Senate Committee on Indian Affairs to include such a remedy in S. 399 as well.

In 1988, Congress enacted the IGRA to provide a statutory basis for the operation and regulation of Indian gaming as a means of generating revenue for tribal governments. Prior to IGRA, under the Supreme Court's 1987 *Cabazon* decision, States were generally excluded from any regulation of gaming on Indian reservations. IGRA was a compromise that gave the States a powerful role in regulating "class III" or casino-style gaming by requiring States and tribes to negotiate compacts over class III games, but only those that are "permitted to be played in the State by any

person or entity." Thus in States such as Utah, where all gaming is prohibited, tribal governments may not operate gaming at all.

IGRA contains dispute resolution mechanisms for when States refuse to negotiate compacts for such games, but these mechanisms have reached an impasse. The act authorizes tribes to sue in Federal court when a State refuses to negotiate "in good faith," and enables the Department of the Interior to issue alternative procedures if a State refuses to ratify the compact selected by a court-appointed mediator. The 1996 Supreme Court *Seminole* decision affirmed the States' immunity from such suits, creating a malfunction in the dispute resolution mechanism. IGRA was intended to allow the States to have a role in regulating Indian gaming, but was never intended to give States authority to veto tribal government gaming. The 1996 *Seminole* decision gave States an ability, unintended by Congress, to completely block the compacting process by asserting their sovereign immunity. This result has tipped the balance overwhelmingly in favor of State control in derogation of tribal self-determination.

I would like to note that there is strong public support for resolving these conflicts and allowing tribal governments to move forward in their efforts at self-reliance and self-sufficiency through Indian gaming. In California's November 1998 elections, the voters approved a model compact initiated by tribal governments by a margin of 63 percent to 37 percent.

Since IGRA's passage in 1988, more than 150 compacts in more than 20 States have been successfully negotiated by tribes and States and approved by the Department of the Interior. Today, Indian gaming generates significant revenue for a number of Indian tribes, bringing hope and opportunity to some of the most impoverished communities in the United States. As required by IGRA, gaming revenues are devoted to providing essential government services such as roads, schools and hospitals, as well as economic development. These revenues are much like the revenues from State lotteries and serve as tax revenues for tribal governments. All tribes should have the opportunity to engage in this important form of economic development under the statutory guidelines established in IGRA.

I would also like to note a closely related development regarding the impasse over compacting and request the assistance of the Senate Committee of Indian Affairs. On January 22, 1998, the Department of the Interior published draft regulations under IGRA to create alternative procedures for permitting class III gaming on Indian land when a State asserts its sovereign immunity from suit under *Seminole.* These draft regulations are a long-awaited development in the impasse over class III gaming compacts. The proposed regulations will allow the Department of the Interior to mediate compacts between states and tribes and create alternative procedures if negotiations break down. These regulations will affect only the small number of States that have refused to negotiate in good faith for gaming compacts as required under IGRA.

A small number of opponents of these draft regulations have led an effort to place a moratorium on their implementation. Their efforts resulted in a rider on last year's appropriations bill that prevents the Department of the Interior from finalizing its regulations until March 31, 1999. In NCAI's view, this moratorium is all the more objectionable because the leading opponents of the draft regulations are motivated not by opposition to gaming, but by their desire to prevent competition with their own States' gaming industry.

Tribal governments strongly object to this denial of their statutory and constitutional rights to self-determination through the use of appropriations riders. However, there is currently a continuation on this ban that was added to the Senate version of the fiscal year 1999 Emergency Supplemental Appropriations bill. I would respectfully urge each member of the Senate Committee on Indian Affairs to oppose the extended moratorium on the Secretarial procedures. The draft regulations give great deference to the State's role under IGRA and give ample opportunity for participation even by States that have refused to negotiate gaming compacts as required by Federal law. The regulations do not give tribes a right to engage in gaming, but only create a forum where their rights can be determined. These regulations should be given an opportunity to work and resolve the few remaining conflicts.

Minimum Federal Standards

I understand that a central focus of S. 399 is the establishment of minimum Federal standards applicable to Indian gaming. Work groups from Indian country have been working very hard over a period of years to develop such standards. Tribal leaders have envisioned that these standards would be the product of a negotiated rulemaking process, which should allow the rulemakers to benefit from the insights and expertise developed by those work groups and the hundreds of tribal regulators

who have been fulfilling this responsibility on reservations across the country. I am heartened by the provisions of the bill that would create such a formal rulemaking as suggested in prior hearings by NCAI and NIGA. Such standards, jointly developed by tribal and Federal representatives, will confirm that Indian gaming is well-regulated. They may, in fact, serve to streamline the many layers of sometimes overlapping regulatory responsibility under which many of us labor. We look forward to participating in a process that may finally silence the spurious allegations that tribal governmental gaming is somehow easier to corrupt than commercial gaming activities.

NIGC Funding and Fee Structure

In general, NCAI supports increasing the funding and the fees for the NIGC in order to enable the Commission to fulfill its vital role in the regulation and oversight of Indian gaming. The NIGC was created under IGRA to perform essential regulatory functions such as conducting background checks, approving tribal gaming ordinances, assessing the fairness of casino management contracts, judging the suitability of casino managers, and monitoring compliance with the Indian Gaming Regulatory Act. The integrity of and public confidence in Indian gaming is enhanced by having a vigorous, well-equipped NIGC to perform these functions, and like any governmental body, the NIGC must have adequate funding in order to meet its statutory responsibilities. Over the last several years, the NIGC has received some criticism for failing to adequately respond to its oversight responsibilities and it has become clear that these shortcomings are in large part caused by inadequate funding.

NCAI supports extending the NIGC fees to class III gaming. The NIGC was conceived under IGRA as the regulator for class II gaming, while class III gaming would be regulated by tribal-State compacts. Thus, originally, the IGRA provided for fees on class II gaming only. However, in practice, a large percentage of the NIGC's efforts have been focused on class III gaming and it is reasonable and appropriate that class III gaming share the burden of funding for the NIGC.

I am pleased to see that the provisions in S. 399 for increased fees respond to many of the issues raised by NCAI and NIGA in previous hearings. Specifically, we have urged that any increase in fees should be closely fitted to specific funding needs at the NIGC and that Federal funding should be retained. NCAI fully understands the need for increased funding at the NIGC and the Federal budget reality that most of this increase must come from increased fees. As stated in previous testimony to the Senate Committee on Indian Affairs [July 10, 1997], NCAI supports reasonable and appropriate increases in NIGC fees that meet the following principles:

- The NIGC should specifically identify and justify the regulatory costs for which the fees will be assessed and collected. The NIGC should publicly release a proposed budget that justifies the regulatory expenditures.
- The fees should be assessed and collected only in a manner that will ensure that the aggregate amount collected during any fiscal year does not exceed the aggregate amount of the regulatory costs. The best way to ensure this is to impose a cap on fees that is closely tailored to an appropriate NIGC budget.
- In order to meet the Federal obligation to Indian gaming and the NIGC as established by Congress, the existing authorization for direct Federal appropriations from general treasury revenues to support the work of the NIGC should be retained.
- All fees collected should be placed in a special trust account that is dedicated for NIGC operations, including the authority to utilize the revenue interest. Excess fees collected should remain available until expended and carried over to the next year with an appropriate adjustment to the fee rate.
- The disproportionate impact of the fee on small, marginally successful tribal gaming facilities should be mitigated. This could be accomplished by creating a level of gross revenues below which no fee would be assessed or some sort of a sliding scale.
- The amount of the fees should be structured such that any tribe's liability for fees is reasonably based on the proportion of the NIGC regulatory activities which relate to that tribe.
- The fee structure should take into account IGRA's goal of tribal self-regulation. IGRA specifically indicates that tribal governments may be issued certificates of self-regulation, at which time no more fees for the NIGC should be collected.

Conclusion

Overall, NCAI has great appreciation for the efforts in S. 399 to address minimum internal controls and NIGC fees. However, NCAI does not support any amendments to IGRA unless those amendments include provisions intended to create a "Semi-

nole" remedy. We are very concerned that failing to address this keystone issue in the Act will make any other improvements hollow. We would strongly encourage the Senate Committee on Indian Affairs to include such a remedy in S. 399 as well.

In the weeks ahead when the issues of Indian gaming are under consideration, I encourage Congress to keep in mind that Indian gaming revenue is governmental revenue for Indian tribal governments to carry out their responsibilities to care for their citizens and ensure adequate education, health care, housing and other infrastructure. As this committee is well aware, there has historically been a grossly inadequate supply of services for Indian people. Tribal governments are beginning to step up their effort to meet the needs and to become self-sustaining. Indian gaming is the economic development tool that a number of tribes are using to create tribal revenues and begin the economic recovery of the country's most impoverished communities. These opportunities should be available to all tribes—and not cutoff by State intransigence, as confronts tribes still unable to obtain a freely negotiated compact or deprived through discriminatory legislation, as imposed on the Narragansett Tribe of Rhode Island.

While media hype about Indian gaming leads the public and the Congress to believe that Indian tribes are using Indian gaming to get rich, the reality is that Indian unemployment is six times the national average; and Indian health, education and income statistics are the worst in the country. Only a relatively small number of the 558 tribes have been fortunate enough to have successful gaming operations; and for the most part, the revenues are just beginning to address these tribes' needs for essential services and infrastructure needs.

Mr. Chairman, NCAI stands ready to work with you, Vice Chairman Inouye, and Senator McCain to develop an IGRA amendments bill which protects the sovereign rights of tribal governments and which regulates Indian gaming so that we can ensure its continued integrity and its place as a source for critically needed development in Indian country.

Thank you, once again, for the opportunity to provide this statement.

TESTIMONY OF
THE HONORABLE MONTIE R. DEER, CHAIRMAN
NATIONAL INDIAN GAMING COMMISSION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

MARCH 24, 1999

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission). Thank you for the opportunity to appear before you today to testify on S.399, the Indian Gaming Regulatory Improvement Act of 1999.

First, I would like to give my personal thanks to the Chairman, the Vice-Chairman and to the Committee for all your help and support of my confirmation. As you know, on March 8, I was confirmed by the Senate and I look forward to working with each of you during the next three years on the important issue of Indian gaming regulation.

You have asked me to address two sections of S.399 - Section 11 (creating minimum federal standards) and Section 18 (Commission funding). Before addressing those two sections of the bill, I would like to provide you with an update on the what the NIGC has been doing since we last spoke.

Background

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, was enacted to promote "tribal economic development, self-sufficiency, and strong tribal governments," and to protect Indian Tribes and the public from corrupt influences by establishing a sound regulatory framework for Indian gaming. 25 U.S.C. § 2702.

Since the enactment of the IGRA, just over 10 years ago, there has been positive and substantial growth within the Indian gaming industry. In 1988, when IGRA was enacted, it was estimated that Indian gaming revenues totaled approximately $100 million a year. Most of that revenue was generated by bingo and games similar to bingo, or what IGRA deems to be Class II gaming. However, after the passage of IGRA and the negotiation of compacts which provide for slot machines, black jack and other casino type games (which IGRA refers to as Class III gaming) the industry experienced considerable growth. Today, Indian gaming generates over $7 billion dollars in annual revenue.

The funding mechanism created for the NIGC by IGRA allowed for the annual appropriation of $1.5 million of taxpayers' dollars and assessments on Class II tribal gaming revenues to generate up to $1.5 million annually. Thus, a structure was in place providing a core budget of up to $3 million, to regulate a rapidly growing industry.

It quickly became apparent to many, including this Committee, that the resources of the NIGC

were not up to the task of providing the oversight demanded of it by IGRA. The regulatory scheme provided in IGRA essentially provided that the Class II gaming (bingo, pull tabs, etc.) shall be regulated by the tribes and the NIGC and that Class III gaming, the casino activities, shall be regulated pursuant to the terms of the compacts the tribes enter into with the states. Much latitude is permitted in the framework the compacts create and indeed there exists a wide variety of models currently in use. However, in all instances, no tribal gaming is permitted until the tribe enacts tribal law providing for the conduct of gaming and these laws and ordinances must be reviewed and approved by the Chairman of the NIGC. IGRA and NIGC regulations require that those tribal laws provide for strong tribal regulation of the gaming activity and most tribes have created independent tribal gaming commissions to implement that regulation.

Thus, tribes and the NIGC have direct roles in the regulation of Class II gaming and the tribes and states, under the terms of their compacts, are responsible for the direct regulation of a majority of Class III gaming. The NIGC, however, is not wholly excluded from the regulation of the Class III or casino-style activities. In fact, IGRA specifically gives the NIGC the authority and responsibility to take enforcement action, including the ability to issue notices of violation, impose fines and issue closure orders, when the terms of the IGRA, the NIGC regulations, or tribal gaming ordinances approved by the Commission are violated. Thus, while the Commission is not involved in the around-the-clock, 365 days a year on site, regulation of Class III gaming, if there is a violation of the IGRA, NIGC regulations or the tribe's gaming ordinance, it is the responsibility of the NIGC to take enforcement action.

Currently, the NIGC is responsible for monitoring and regulating 198 tribes operating 310 gaming operations in 28 states. The NIGC is responsible for, among other things: 1) monitoring gaming operations on a continuing basis; 2) approving all contracts for the management of gaming operations by non-tribal parties; 3) conducting background investigations on individuals and entities with a financial interest in, or management responsibility for, a Class II or combined Class II/III gaming management contract; 4) approving all gaming related tribal ordinances; 5) reviewing background investigations of key gaming employees conducted by the tribes; 6) reviewing and conducting audits of the books and records of the gaming operations; and, 7) initiating enforcement actions to help ensure the integrity of Indian gaming operations.

Expansion

As you know, IGRA was amended in 1997 to permit the assessment of fees on class III gaming activities. The Commission's ability to collect fees was spread from Class II alone, to Class II and Class III. The maximum amount that the NIGC was permitted to collect annually from its fee assessments was also increased from $1.5 million to $8 million. With the expanded fee base, the NIGC was able to exempt the first $1.5 million of revenues for each tribal operation. This was done in an effort to recognize amounts tribes already spend locally for gaming regulation. The fee rate was reduced to .08% on revenues exceeding the exempt amount, thereby providing the NIGC with a FY 1998 budget of $5.4 million. It is expected that as the NIGC expands it will raise the fee assessment rate to allow for collection of fees up to the $8 million cap.

With the increase of funds, the NIGC has embarked upon an expansion of the agency to fulfill the mandate of IGRA. The NIGC is pleased to report that it recently opened its first field office in St. Paul, Minnesota. The office is currently staffed by three employees, two field investigators and an administrative assistant. It is expected that two additional staffers, including an auditor will be added in the near future.

I am also pleased to announce that we have more than doubled our field staff in the last six months. We have hired four field investigators, two auditors and two financial background investigators. These new employees come to the NIGC with a wealth of gaming regulatory experience from places such as the Nevada Gaming Commission and large sophisticated tribal gaming operations. Additionally, they have experience in areas such as: (1) auditing and accounting; (2) security and background investigations; (3) gaming operations and internal controls; and (4) environment, health and public safety.

The Commission has plans this year to open four additional field offices in, Tulsa, Phoenix, Sacramento and Portland. The offices will be located near Indian gaming facilities and will provide tribes with additional resources to assist meeting their regulatory responsibilities. There is no doubt that these field offices will allow the NIGC to work more closely with the tribes, on a day-to-day basis, to provide effective regulation of the Indian gaming industry.

The NIGC's Washington office will continue to coordinate the activities of the NIGC, and will serve as a clearinghouse for the data and information generated by the field operations. All tasks will be carefully analyzed to determine if they are most efficiently performed at the headquarters or satellite office level.

Minimum Federal Standards

Sections 10 and 11 of S.399 require that the NIGC promulgate minimum federal standards relating to background investigations, internal control systems, and licensing standards. It further requires that in promulgating the regulations that the NIGC consult with the Attorney General, Indian tribes, and appropriate states. I would like to address these three areas separately, beginning with minimum internal control standards.

1. Minimum Internal Control Standards (MICS)

Gaming, by its nature, is a cash-intensive business, often involving large amounts of coins and currency. Tribal casino operations and the gaming public are subject to risk of loss because of customer or employee access to cash and cash equivalents within a casino. In January of this year, the NIGC published its final rule on Minimum Internal Control Standards (MICS) for Class II and Class III tribal gaming operations in order to reduce that risk. The MICS rule, among other things, contains standards and procedures that govern cash handling, documentation, game integrity, auditing, and surveillance.

While many tribes have strong minimum internal controls in place, those within and outside the Indian gaming community recognized a need for a minimum level of control, to apply universally throughout the industry. In developing the MICS, control standards from several other gaming jurisdictions such as Nevada and New Jersey were evaluated. In practice, these systems and procedures vary from casino to casino. As such, the MICS were developed to allow for the unique operating environment of each tribal casino. Although the MICS contain stringent standards, the tribes will find flexibility in complying with them. I believe this aspect of the MICS is important because it is not our intention to regulate the tribal casinos out of business.

S. 399 requires that the NIGC take into consideration several factors including the unique nature of tribal gaming, the broad variations in the nature of the gaming and the inherent sovereign rights of the tribe when it drafts the minimum standards. In developing the MICS, the NIGC did take these factors into account as evidenced by the tiering system, the development of tribal MICS and the variance mechanism. One commentator to the NIGC's proposed rule on the MICS wrote that, "[t]he approach in Section 542.3 recognizes the sovereign authority of the Tribe and allows for flexibility in the implementation of the standards."

As the NIGC embarked upon the course of establishing MICS it formed an Advisory Committee made up of tribal gaming officials so as to ensure tribal input. Officials representing large and small gaming operations commented on our procedures. The NIGC also retained the Las Vegas office of the accounting firm Arthur Anderson to assist in the drafting of the regulations. Over a five-month period, the Advisory Committee met on several occasions to review and comment on the proposed MICS.

Since finalizing the regulations, the NIGC has embarked on a 14 city tour to provide training on the MICS. We just recently completed the training. I am pleased to announce that 153 of the 198 gaming tribes were represented. Further, we trained approximately 900 tribal leaders, gaming commissioners, tribal administrators and gaming employees on the content of the MICS.

Further, the NIGC's authority to promulgate such a rule has been questioned. In fact, we expect a legal challenge to that authority at some time in the future. Our recommendation is that since the NIGC has already promulgated MICS, and since our authority to do so under the present law has been questioned, S.399 should either delete the reference to internal controls or the legislative history of S.399 should make it clear that Congress views this provision as confirming and clarifying authority which the NIGC had been granted under IGRA.

2. Minimum Federal Standards for Background Investigations and Licensing.

Minimum federal standards for background investigations and licensing might be useful for some of the tribes; however, we would expect (as is the case with the MICS) that the current practices and procedures in place for many of the tribes already exceed those minimums.

We strongly support, and encourage, Congressional authorization to establish authority for the NIGC to license vendors, consultants and gaming suppliers. With respect to management contractors, our current practice for class II operations amounts to a de facto national license, that is, we must approve the background of persons and entities managing class II operations, and, once we have given such an approval, subsequent contracts may be more easily approved. The problem is that we do not have authority under current law to obtain background information and get reimbursed for the cost of background investigations of Class III management contractors. S.399 would cure that problem.

Additionally, the NIGC presently has no authority to require licensing or backgrounding of consultants, vendors and suppliers. This creates two serious gaps in the regulatory process. First, the NIGC currently is unable to identify corrupting influences which might be using vending contracts as a foothold into Indian gaming. Second, neither the NIGC nor the tribes can get FBI background checks on vendors because there is no legal requirement to support the request. Again, S.399 cures these problems.

Please be assured that the cooperative process by which the NIGC undertook in creating the MICS will likewise be utilized if the agency promulgates regulations regarding licensing and backgrounding.

Commission Funding - Fees

Section 18 of S.399 deals with the funding for the NIGC. It provides that the Commission shall reduce its fees in consideration of: 1) regulation provided by a State or Indian tribe (or both); and, 2) issuance of a self-regulation certificate.

We are currently funded entirely by the regulated community through the assessment of fees. We collect fees at a rate of 8/100th of a percent on gaming revenues. No fees are collected on revenues below $1.5 million. The Act provides for a cap of $8 million on the NIGC's fee collections. So long as we continue to assess fees evenly on all gaming operations, it is unlikely that we would ever need to raise our fees to a rate higher than 12/100th of a percent assuming current levels of revenue. In fact, the 5 percent authorized by IGRA, and S.399, is more than 60 times the rate we are now using.

My concern with the approach of S.399, Section 18, is that it may require that the NIGC collect fees at a much higher rate and that the burden of those higher fees will fall upon the less wealthy tribes. Our experience has been that, very often, the task of running a gaming operation is especially difficult for poorer and less sophisticated tribal gaming operations. When those tribes are in remote areas and are unable to anticipate high levels of revenue, they have less access to quality management contractors, consultants and attorneys. The end result is that, often, the poorer tribes require the most attention from outside regulators, while the wealthy tribes are able to buy whatever they need to establish a robust regulatory regime. Thus, any significant fee reduction for self-regulated tribes is likely to result in much higher rates for the other tribes.

I should also say that I have no objection in principal to the suggestion that our fee structure take into account the cost to the tribes of state regulation, but I should point out that this could be a sophisticated and potentially controversial calculation. I have asked my staff to begin studying this concept.

Trust Fund Concept

Finally, we are concerned about the changes being proposed to the way the Commission is funded, specifically, the use of the Trust Fund. Currently, we are able to assess fees based on current information and needs. We are able to assess and collect fees and use them in the same fiscal year. With the Trust Fund, presumably we will have to assess and collect fees well in advance of when they are needed so that we can request that they be appropriated for our use during the subsequent fiscal year. This will result in a sizable increase in the amount of gaming industry funds being held by the federal government. We have no objection to the fact that the earnings on those funds would go to the Commission rather than the Treasury. However, the same result could be obtained by appropriating funds equivalent to the Treasury's earnings for use by the Commission. If this concept is one in which the Committee is committed to pursuing, the NIGC would welcome the opportunity to work with your staff on this issue.

Conclusion

I want to thank you for the opportunity to speak to you today regarding S.399 and other issues facing the NIGC. I am available to answer your questions.

April 9, 1999

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
838 Senate Hart Building
Washington, DC 20510

Dear Senator Campbell:

Thank you for your questions of March 26, 1999. I appreciate the opportunity answer your inquiry and supplement my testimony on S.399. Following are the National Indian Gaming Commission's (NIGC) answers to your questions:

1. Would minimum internal control standards ensure that all Indian gaming operations are as safeguarded against "corrupting influences" as are private, non-Indian gaming facilities?

The MICS were intended to protect the integrity of the games and gaming revenue and to safeguard all tribal casino operations against potential "corrupting influences" to the same extent as MICS from other jurisdictions are intended to protect the private, non-Indian gaming facilities from those same influences. In developing the MICS, the NIGC reviewed and considered the MICS of other jurisdictions including, New Jersey, Nevada and those recommended by the National Indian Gaming Association/National Congress of American Indian MICS task force. Additionally, we hired the Las Vegas office of the Arthur Andersen accounting firm to assist in the drafting of the MICS.

2. In January, the NIGC published its final rule on "Minimum Internal Control Standards" or "MICS". How will the "MICS reduce the "risk of loss" you indicate tribes are vulnerable to?

Tribal casino operations are subject to risk of loss because of customer or employee access and potential access to cash and cash equivalents within a casino. Furthermore, for table game operations, individual transactions are not recorded as they occur and cash receipts are not precisely known until they are removed from the drop boxes and counted. In response to these inherent risks and the need for effective controls in tribal gaming operations, the NIGC established

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the MICS.

MICS will reduce the risk of loss to tribal gaming operations because the rule contains, among other things, standards and procedures that govern cash handling and counting, documentation, game integrity, auditing and surveillance. For example, with regard to the game of Bingo, the MICS (1) establish game play standards; (2) restrict access to bingo supplies and equipment; (3) require collection and review of data; and (4) establish standards for linked electronic games. In addition to Bingo, the MIC's also establish minimum standards and procedures for Class II and III games such as pull tabs, card games, manual and computerized Keno, pari-mutuel wagering, table games and gaming machines.

3. What effect has the 1997 fee amendment had in allowing the NIGC to assess lower rates on Indian gaming operations? Further, given the current number of gaming facilities, and their respective income levels, what is the probable rate the NIGC will assess in future years to achieve the statutory maximum of $8 million annually?

As a result of the 1997 fee amendment, which increased both the base and the cap, the NIGC has been able to reduce its preliminary annual fee rate from 0.5% to .08%, a reduction of 84%. To raise $8 million, assuming the current gaming income levels remain constant or increase, the annual fee rate will be no more than .12%. This would result in a fee rate reduction of more than 76% from the pre-1997 rate.

4. For FY 1998 the NIGC's fee assessments totaled $5.4 million. How did the NIGC expand its staff levels with the additional funds?

The amendment to increase our fees became effective late in 1997 and the first fee payments were due in April 1998. However, shortly after assessing the first fees against Class III operations, the NIGC was sued regarding its authority to assess such fees on "self regulated" Class III operations. That issue was resolved legislatively in the fall of 1998. Accordingly, the NIGC expansion did not begin until that time. Since the fall of 1998, we have increased our staff from 32 employees to 44. The hiring primarily took place in our field operations. We went from six field investigators/financial auditors to fourteen. In addition, the NIGC opened it first Field Office in St. Paul, Minnesota and is in the process of opening four additional Field Offices in locations near concentrations of Indian gaming operations.

5. During the hearing the question was asked about the independence of tribal gaming commissions from the larger tribal governments. You indicated that "a majority" of tribes have such independent commissions. Can you provide further detail as to the numbers involved as well as our views on the performance these commissions in maintaining the integrity of Indian gaming?

To begin, it is important to note that the Indian Gaming Regulatory Act does not require that Indian tribes have an independent tribal gaming commission in order to conduct gaming on Indian lands. Nonetheless, the NIGC's policy is to encourage the establishment of independent tribal gaming commissions. The independent tribal gaming commissions that exist vary in nature, size and effectiveness. Some tribal gaming commissions are as well funded and effective as independent commissions in the gaming states, and some tribal gaming commissions are smaller and less sophisticated. Generally, size and sophistication is a function of the magnitude of the gaming taking place, and it is difficult to provide a blanket characterization of all tribal gaming commissions. NIGC has seen continued and marked improvement in the effectiveness of tribal gaming commissions and the level of regulation they provide, and NIGC field staff are constantly working with these commissions to offer training and advice on effective gaming regulation.

The NIGC has compiled a list of those tribes which have separate gaming commissions. The list is current as of the date provided but new commissions are being established on a continuing basis. Currently, 186 tribes out of a total of 198 gaming tribes have separate gaming commissions.

We also note that under the NIGC's recently promulgated rules on self-regulation for Class II gaming operations, a tribe must submit an organizational chart depicting the tribe's independent tribal regulatory body as well as a description of the process by which all employee and regulator positions at the independent tribal regulatory body are filled, including qualifying and disqualifying criteria. 25 C.F.R. § 518.3(ii), (iii). In addition, the tribe must also provide a description of the process by which the independent tribal regulatory body is funded and the funding level for the three years immediately preceding the date of the petition. 25 C.F.R. § 518.3 (iv). The purpose of this requirement is to ensure the independence of the regulatory body.

6. Your testimony questions the provisions in S. 399 that reduce the fees for federal regulation based on the extent and adequacy of tribal and state regulation. How do you respond to the argument that you are advocating fees on larger tribal gaming operations, not to fund the regulation of their activities, but to subsidize the regulation of more marginal operations?

The NIGC is responsible for regulating the industry of Indian gaming as a whole. We do not charge individual tribes on a fee-for-service basis, rather, fees are based on a percentage of revenues. In order to ensure that the entire industry maintains its integrity, the NIGC not only provides services but also in the course of its regulation, provides education, training and oversight to all tribal casinos including the small or "marginal" operations as well as the larger operations. Thus, it is difficult to quantify the level of regulation, services, education and training that each tribe receives and whether it is equivalent to their fee payment. To be sure, in some instances the level of service greatly exceeds that of the payment while in other instances the payment may be greater than the level of service received.

The fee currently assessed by the NIGC is a very modest 0.08%. In attempting to allocate via fee imposition the cost for this IGRA-mandated service, one must consider the indirect as well as the direct benefits that national oversight provides to the Indian gaming industry, and to each facility. If NIGC plays a significant role in assuring the integrity of tribal gaming operations, which Congress and the public demand of Indian gaming, quantifying that benefit for each tribe or operation will likely be difficult. Small rural, remote operations may require disproportionate amounts of service, as they strive to maintain the integrity required by IGRA, NIGC regulations, and demands of the public and the industry. Imposing a disproportionately high fee or charge on these tribal operations, however, might prove prohibitive to them, leading to their failure. Often, these tribes are among those most needing the economic development IGRA sought to deliver. Yet, failures among such operations would impair and threaten the Indian gaming industry as a whole. Such intangible factors need to be considered in allocating the funding for NIGC's operation.

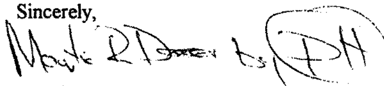
7. In its FY 2000 Budget Request, the Administration requested no funds for the NIGC and indicated that for FY 2000 and beyond, the NIGC would be funded solely through fee assessments. How do you respond to the charge that some tribes themselves are subsidizing the federal regulation of other tribes?

While it is true that some tribes pay more regulatory fees than others, to characterize it as subsidizing the regulation of other tribes would be inaccurate. The NIGC regulates the industry as a whole. In order to protect the integrity of the Indian gaming industry all tribes must be in compliance with NIGC regulations. If one tribe is not in compliance, that affects the integrity of the entire industry. As discussed in the preceding response, the alternative fee-for-service model would place unbearable burden on the smaller operations.

Again, I would like to thank you for the opportunity to answer your questions. I look forward to working with you and your staff on these critical issues.

Kind personal regards.

Sincerely,



Montie R. Deer
Chairman

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T E S T I M O N Y

Statement of
Raymond C. Scheppach

before the

Indian Affairs Committee

United States Senate

on the

Indian Gaming Regulatory Improvement Act of 1999

on behalf of

The National Governors' Association

March 24, 1999

NATIONAL GOVERNORS' ASSOCIATION
Hall of the States • 444 North Capitol Street • Washington, DC 20001-1512 • (202) 624-5300

Good morning, Mr. Chairman and distinguished members of the committee. I am Ray Scheppach, executive director of the National Governors' Association (NGA). Thank you for the opportunity to appear before you today to convey the Governors' position on S. 399, proposed legislation titled the "Indian Gaming Regulatory Improvement Act of 1999."

In the years since the enactment of the Indian Gaming Regulatory Act of 1988 (IGRA), the vast majority of negotiations between states and tribal governments have resulted in successfully completed compacts. As of today, approximately 155 tribes have concluded over 195 compacts with 24 states, many of them since the enactment of IGRA. Difficulties remain in a few states where tribes and states differ with respect to the scope of gambling activities and the devices subject to compact negotiations. Most IGRA court cases have arisen because of a tribe's insistence on negotiating for gambling activities or devices that are otherwise illegal in the state. The record of states negotiating in good faith is strong. However, the breadth of Indian gaming today that is uncompacted raises serious questions about the enforcement of IGRA by the federal government. It is unfortunate that the proposed legislation does not address this important issue.

I am confident in telling you that the nation's Governors will strongly oppose any congressional or administrative attempts to reduce the state role in implementing the Indian Gaming Regulatory Act. Although S. 399 does take some important steps in codifying federal regulation of Indian gaming, generally it would put states in a far worse position than current law. Therefore, the Governors strongly oppose this bill as it is currently drafted.

The rest of my statement will focus on:

- the scope of gaming;
- the compact negotiation process;
- the good-faith negotiation standard;
- the establishment of minimum regulatory standards; and
- the membership of the National Indian Gaming Commission.

Scope of Gaming
We have all worked on this issue long enough to know that the scope of gambling activities and devices subject to negotiation under IGRA has been the Governors' key concern. However, the Governors' problems with the interpretation of IGRA with respect to the scope of gaming seem to have been resolved by the courts. The U.S. Court of Appeals for the Ninth Circuit reached a decision consistent with NGA policy in the case of *Rumsey Indian Rancheria of Wintun Indians v. Wilson.* In *Rumsey*, the court found that IGRA neither compels a state to negotiate for gaming activities or devices that are prohibited by state law, nor requires a court to refer to the Supreme Court's decision in *California v. Cabazon Band of Mission Indians* to interpret the law. The Supreme Court denied the tribe's request for review of the decision, effectively endorsing the Ninth Circuit's interpretation of IGRA.

Not all forms of Class III gaming are the same. States have a fundamental public policy interest and responsibility to distinguish among different gambling activities and devices, choosing to legalize some and prohibit others. The Governors agree with *Rumsey* that "a state need only allow Indian tribes to operate games that others [in that state] can operate, but need not give tribes what others cannot have." Moreover, they believe that the *Rumsey* decision reflects what states believe to be the original intent of Congress. The Governors cannot support amendments to IGRA that would erode the *Rumsey* interpretation of the scope of gaming under IGRA.

The Governors object to S. 399's references to *Cabazon* and its holding. These amendments would create a great deal of confusion for states, tribes, and courts, reversing the progress made to date with respect to IGRA implementation and leading to continued litigation. The Governors have long decried the lack of uniformity with respect to the implementation and court interpretation of IGRA and have consistently called for congressional clarification of the statute. The Governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operations of gambling activities that are prohibited by state law. The *Rumsey* decision now clearly articulates this principle, and the Governors urge your support for this interpretation of current law that has been upheld by the United States Supreme Court.

Compact negotiation process

Any changes to the compact negotiation process should encourage active negotiation between states and tribal governments. The Governors oppose any efforts by Congress or the administration that would allow a tribe to avoid negotiation with a willing state in favor of compact negotiation with another entity, such as the secretary of the U.S. Department of the Interior. The relationship between tribes and states is a complex and broad relationship, covering land rights; hunting and fishing rights; land use and zoning matters; health care, education, and job training programs; taxation, and many other issues besides gaming. Governors entered into discussions with tribes in mid-1998 to begin the possibility of negotiations on the most pressing issues. Persistent efforts by the secretary to change the relationship between states and tribes with respect to the compact negotiations process could affect many of these necessarily related issues as well as bias the process toward increased gambling activities.

Good-Faith Negotiation Standard

Another issue related to the compact negotiation process is the good faith negotiation standard. S. 399 fails to address the Governors' concerns that this standard currently applies only to states.

It is seldom the case that a state completely refuses to negotiate with a tribe. Most often, a state comes to the table—in good faith—ready to negotiate with a tribe. Accusations of a breach of good faith tend to arise when compact negotiations between states and tribes reach a stalemate over a tribe's demand to compact for gambling activities and devices that are prohibited by state law. A state's refusal to negotiate for gambling that is not legal in the state is not an act of bad faith on the part of the state. NGA policy urges that any amendments to IGRA apply the good-faith standard to both states and tribes and clarify that limiting the compact negotiations to gambling activities and devices permitted by state law is not an act of bad faith on the part of the state.

Establishment of Minimum Regulatory Standards

The Governors recognize that federally imposed regulatory standards for the operation of tribal gaming facilities may sometimes be appropriate. However, they

are interested in protecting the interests of Indian tribal governments and casino patrons as well as preserving the integrity of the gambling operations. NGA policy supports the bill's intent to leave regulatory oversight responsibilities -- subject to federal standards to be established by the National Indian Gaming Commission, in the hands of states and tribal governments, as negotiated in their compacts.

Detailed regulations were published earlier this year. The Governors are pleased that these regulations are written not as maximal standards, but, rather, minimum standards. It is important that regulations pursuant to negotiated compacts be permitted to exceed these regulatory standards. States and tribes should retain the prerogative to establish more stringent regulations for the gambling activities. We are pleased with this aspect of the regulations, and that it is supported in the proposed legislation.

Membership of the National Indian Gaming Commission

The Governors want to again express their concerns that the commission requires representatives of tribes but does not require representatives of states. We believe this weakens the commission. The compact negotiation process established by IGRA shows that the sovereignty of states and tribes requires negotiations between the two parties. The failure of IGRA to reflect that balance in the commission membership continues in this legislation. As the commission takes on the regulatory responsibilities outlined in S. 399, the committee should take steps to address this imbalance.

Conclusion

The Governors respect the committee members' continuing efforts to resolve the complex issues arising out of IGRA implementation. However, they strongly oppose S. 399 as currently drafted, as it would substantially change the current balance between the states and the tribes with respect to the compact negotiation process.

The Governors remain committed to resolving these issues and stand willing to assist the committee. A copy of NGA's Indian gaming policy is attached to my testimony. I would be happy to answer your questions.

NATIONAL GOVERNORS' ASSOCIATION

NGA Policy

EDC-6. THE ROLE OF STATES, THE FEDERAL GOVERNMENT, AND INDIAN TRIBAL GOVERNMENTS WITH RESPECT TO INDIAN GAMING AND OTHER ECONOMIC ISSUES

6.1 Preamble

The Governors recognize and respect the sovereignty of Indian tribal governments and support economic advancement and independence for tribes. State and tribal governments must continue to work together on many significant issues. Governors value their important relationships with tribal governments.

There is no question that by enacting the Indian Gaming Regulatory Act of 1988 (IGRA), Congress intended to provide states with a meaningful role in determining which gambling activities and devices would be conducted under a tribal-state compact. Therefore, implementation of IGRA requires a fair balance between state and tribal sovereignty.

As a state's chief executive officer and the primary defender of state sovereignty, a Governor has the ultimate responsibility to act in the best interests of all state citizens. Although the gambling activities conducted under IGRA occur within the boundaries of tribal lands, they are designed to attract nontribal patrons, and the effects of these activities are felt far beyond the geographic boundaries of the reservations.

The Governors have long decried the lack of uniformity with respect to the implementation and court interpretation of IGRA and have consistently called for congressional clarification of this statute. Although several problems exist, the states' primary concern continues to be clarifying the scope of the gambling activities permitted to tribes under the act. The Governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operation of gambling activities that are prohibited by state law.

The Governors remain committed to resolving the conflicts arising out of IGRA implementation. Any amendments to the act must address the Governors' principal concerns and ultimately must be designed to keep states and tribes in negotiations and out of court. In addition, the Governors urge Congress and other federal entities to include them in decisions that will have an impact on states.

6.2 IGRA Reform

Ambiguities in the current law have led to inconsistent court interpretations of the act. Amendments to IGRA should be designed to encourage state and tribal governments to work together to resolve conflicts that may arise during the compact negotiation process. IGRA should be amended to resolve the following issues.

6.2.1 **Clarification of the Scope of Gaming.** Much of the confusion and conflict that has arisen out of IGRA implementation centers around determining which gambling activities and devices are permitted by a state's public policy. The Governors assert that gambling public policy must be determined by reading a state's laws and regulations.

Amendments to IGRA must define the scope of the gambling activities and devices subject to negotiation under the law. It must be made clear that tribes can negotiate to operate gambling of the same types and subject to the same restrictions that apply to all other gambling in the state. Ultimately, a Governor must not be compelled by federal law to negotiate for gambling activities or devices that

are not expressly authorized by state law, although the Governor may have the discretion to negotiate across a broad range of options.

6.2.2 **Application of the "Good Faith" Negotiation Standard.** The "good faith" negotiation standard set forth by IGRA must be clarified and applied to both states and tribes. Further, the burden of proving an allegation should rest with the party making the allegation. Inability to agree on a compact should not be treated as an indication of bad faith by either party. In particular, a state's adherence to its own laws and constitution should not be regarded as bad faith.

6.2.3 **Regulatory Oversight.** The Governors recognize that in many cases, federally imposed minimum regulatory standards for the operation of tribal gambling facilities may be appropriate. In general, careful regulatory oversight is necessary to protect the integrity of the gambling activities and the interests of patrons, the states, members of tribes, and Indian tribal governments.

Congressional establishment of minimum regulatory standards should not preempt stricter state laws, nor should it prevent states from negotiating with tribal governments for more stringent regulatory standards as part of a tribal-state compact.

State and tribal governments should determine their respective regulatory oversight roles through the tribal-state compact negotiation process. If such standards are established, the federal government's oversight role should be limited to cases in which the state and tribe fail to meet established minimum regulatory standards.

6.3 The Effect of the *Seminole* Decision on the Authority of the Secretary of the U.S. Department of the Interior

The U.S. Supreme Court fortified state sovereignty in its March 1996 decision in *Seminole Tribe of Florida v. Florida*. Clearly, the *Seminole* decision rendered the judicial remedy contained in IGRA unenforceable against a state unwilling to consent to federal jurisdiction. In the wake of the decision, however, questions have been raised about whether the secretary of the U.S. Department of the Interior can unilaterally create a process through which tribal operation of Class III gaming can be authorized in the event a state invokes the Eleventh Amendment defense.

As the Governors interpret the effects of *Seminole*, nothing remains in IGRA or any other law that endows the secretary with the authority to independently create such a process. IGRA continues to be the sole mechanism through which tribal governments can operate Class III gaming. It is unthinkable that a Supreme Court decision endorsing state sovereignty could become the vehicle for an inappropriate expansion of the secretary's authority.

The Governors will actively oppose any independent assertion by the secretary of the power to authorize tribal governments to operate Class III gaming. State and tribal governments are best qualified to craft agreements on the scope and conduct of Class III gaming under IGRA.

6.3.1 **Congressional Delegation of Authority to the Secretary.** If Congress delegates to the secretary of the U.S. Department of the Interior the authority to provide a remedy to a tribe in the event a state raises the Eleventh Amendment defense to suit, the secretary's ability to permit tribal Class III gaming must be strictly limited to what is allowed under the state's gambling laws, regulations, and ordinances.

6.4 Federal Enforcement

The federal government should actively and aggressively use existing IGRA enforcement authority to shut down Class III gaming conducted on Indian lands in violation of or in the absence of a tribal-state compact.

6.5 The Governors' Role in Congressional and Other Federal Decisionmaking

The Governors should have a concurrent role in any action taken by Congress that would have a significant impact on states, including federal recognition of new tribes and acquisition of trust lands for tribes. Tribal recognition through any federal administrative procedure should require the concurrence of the Governor(s) of the state(s) in which the tribe is located.

6.5.1 **Trust Land Acquisition for Gambling Purposes.** Congress must support its commitment to provide Governors with concurrent authority in the trust land acquisition process. Congress must preserve the Governors' participation in this decisionmaking process—namely, that no trust land acquisition for gambling purposes should be possible without a Governor's concurrence. The U.S. Department of the

Interior has acknowledged that a Governor's concurrence is required before noncontiguous land can be acquired for gambling purposes. The ability of a Governor to give partial concurrence to a tribe's proposal to take land into trust for gambling purposes, such as when a Governor is willing to authorize the playing of some types of games but not others, should be recognized. Additionally, the secretary should establish procedures to permit the views of all affected Governors to be heard when a gambling proposal will have an impact across state lines.

6.5.2 **Trust Land Acquisition in General.** The Governors also must have concurrent authority with respect to other trust land acquisition decisions undertaken by the U.S. Department of the Interior.

6.5.2.1. **State and Local Taxation Authority Over New Trust Lands.** Removing land from state and local tax roles may have a significant economic impact on many states and localities. Therefore, Congress should take action to require that before new land is taken into trust by the U.S. Department of the Interior, the state and the tribal government must reach a binding agreement regarding the application of state and local taxes on new trust land. Such an agreement could include a waiver by the state of any taxation authority on the new trust land.

6.6 **Commitment to a Solution**

The Governors are committed to resolving the complex issues involved in the implementation of IGRA and the management of other congressional and federal decisions that have an impact on the states in this area.

Time limited (effective Winter Meeting 1999–Annual Meeting 1999).
Adopted Winter Meeting 1997; reaffirmed Winter Meeting 1999.

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GOVERNORS'
ASSOCIATION

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Governor of Delaware
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April 16, 1999

The Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
838 Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Below are responses to your questions following my testimony on March 26 on S. 399, the Indian Gaming Regulatory Improvement Act of 1999.

1. S. 399 would "substantially change the balance between states and tribes in compact negotiations" because in section 3, purposes, S. 399 reads as follows:
   "The purposes of this act are as follows:
   (1) To ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with--...
   (B) the decision of the Supreme Court in *California et al. v. Cabazon Band of Mission Indians et al.* involving the Cabazon and Morongo band of Mission Indians."

   It is the Governors' position that not all forms of class III gaming are the same and that states have a fundamental public policy interest and responsibility to distinguish among different gambling activities. The Governors believe that states have the authority to legalize some types of gambling and prohibit others. This position is supported by statutes in many states that make distinctions among types of class III games. It also is supported by the Supreme Court's willingness to let the *Rumsey* decision stand, which notes that "a state need only allow Indian tribes to operate games that others [in the state] can operate, but need not give tribes what others cannot have."

   By establishing that one of the purposes of S. 399 is to ensure tribes' rights consistent with an earlier Supreme Court decision, the proposed legislation would cause confusion and result in litigation costly for tribes, states, and the federal government. The Governors believe that *Rumsey* is consistent with the Indian Gaming Regulatory Act of 1988 (IGRA) and with principles of state sovereignty and federalism. The central finding of the court in *Rumsey* is that IGRA does not compel states to permit, through negotiations with tribes, the operation of gambling activities that are prohibited by state law. Until the purposes section of S. 399 is amended to drop the reference to *Cabazon*, the bill would "substantially change the balance between states and tribes in compact negotiations."

Honorable Ben Nighthorse Campbell
April 16, 1999
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2. Your question addresses what options tribes have if states refuse to negotiate with them, but my statement asserted that states are negotiating with tribes. The large number of gaming compacts signed with more than 150 tribes in half of the states demonstrates that negotiation is working. Your question needs to reflect that a duly elected Governor has the responsibility to uphold the laws and constitution of his or her state. If there are laws that prohibit the operation of certain games in the state, the Governor has no authority to allow an Indian tribe to operate such games. If a tribe is asking to operate games that are prohibited in a state, the Governors argue that such a request is not permissible. Such a decision is *not* a refusal to negotiate with a tribe; it is a decision to uphold the constitution and laws of the state. There is no "option" available to state elected officials in this instance, except to work to change the laws to permit such games if the citizens of the state so request. A request by Indian tribes does not constitute a public policy determination that specific class III games should be permitted.

3. There have been no negotiations to this point. However, since last July, discussions initiated by the secretary of the Department of the Interior have sought to jump-start negotiations on consensus amendments to IGRA. Discussions were held in Denver, Colorado, in September and in Oneida, Wisconsin, in November. Gubernatorial representatives at both meetings indicated that Governors have numerous concerns they want to raise with the tribes. However, with Governors in thirty-six states and territories facing elections in November, these representatives clearly articulated that the newly elected and re-elected Governors would need time to shift their focus from campaign issues to state legislative and fiscal business. Additional time would be needed for the Governors to have an opportunity to meet and learn about the discussions to date with the tribes. The winter meeting of the National Governors' Association (NGA) provided the Governors with an opportunity to meet and discuss Indian gaming. Governor Howard Dean, M.D., of Vermont and Governor William J. Janklow of South Dakota, NGA's co-lead Governors on Indian gaming, prepared briefing materials for the Governors. Following the meeting, they drafted a letter and provided the tribes with a written response on March 17, 1999.

   The tribes requested a mediator, but they also specifically asked that the Governors' representatives come back to the table with a position representing all Governors. The Governors' response, included in the March 17 letter, is that until there is further progress in the negotiations, they cannot adequately evaluate the tribes' request for a mediator. The Governors are participating in good faith, deterred only briefly by a major election and the need for discussion among themselves. However, they are concerned that the secretary has promulgated the rule regarding the secretary's role in permitting class III gaming in the absence of a state-tribal compact. The Governors believe that his action is a clear violation of IGRA.

4. The Governors have several issues that they want to negotiate with the tribes, including federal enforcement of IGRA with regard to noncompact gaming. The status quo is problematic for states. However, the Governors believe that *Seminole* has clarified, rather than changed, IGRA. They also believe that your suggestion of turning to the courts would result in further inconsistent decisions and expensive litigation for all parties, including the federal government. The Governors await the findings of the National Gambling Impact Study Commission and urge Congress to hold extensive hearings before taking further action on Indian gaming.

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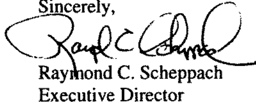
Following are responses to the questions of Senator John McCain.

1. Your first question characterizes S. 399 as the "implementation of stronger federal standards" for Indian gaming. However, the Governors believe that restating the goal of IGRA to "ensure the right of tribes to conduct gaming activities on Indian lands in a manner consistent with ... the decision of the Supreme Court in *California et al. v. Cabazon Band of Mission Indians et al.*" is implementing weaker standards, not stronger standards. The scope of gaming defined in the *Rumsey* decision retains a clear and consistent role for states in maintaining state laws and state constitutions. The redefining of IGRA based on *Cabazon* significantly weakens the state role. Other provisions of the bill that clarify the authority of the National Indian Gaming Commission with regard to gaming oversight, regulation, and fees are consistent with IGRA and protect state authority.

2. Indian gaming remains a priority of the National Governors' Association, and, as the record shows, Governors and states continue to negotiate and complete negotiations on gaming compacts. Discussions have been underway since last July with the tribes and the Departments of Justice and Interior on the possibility of negotiations on IGRA amendments. The Governors are awaiting the tribes' response to a March 17 letter from Governor Howard Dean, M.D., of Vermont and Governor William J. Janklow of South Dakota, NGA's co-lead Governors on Indian gaming.

Again, thank you for the opportunity to inform your committee on the position of the nation's Governors on Indian gaming issues. We look forward to continued discussions of this important area of public policy.

Sincerely,



Raymond C. Scheppach
Executive Director

S. 399 – The Indian Gaming Regulatory Improvement Act of 1999
Testimony before the Senate Committee on Indian Affairs

Richard G. Hill, Chairman
National Indian Gaming Association
March 24, 1999

Chairman Campbell, Vice-Chairman Inouye, Members of the Senate Committee on Indian Affairs, I am Rick Hill, Chairman of the National Indian Gaming Association (NIGA). On behalf of the member Indian Nations of NIGA, I humbly thank you for inviting me to testify today on this important proposed legislation.

The National Indian Gaming Association (NIGA) is a non-profit organization established in 1985 by Indian Nations engaged in governmental gaming. NIGA membership is composed of 168 sovereign Indian Nations and 99 non-voting Associate (Corporate) members representing tribes, organizations and businesses engaged in Tribal gaming enterprises throughout the United States. NIGA was formed by Tribes to protect their sovereign governmental rights and to support their gaming and economic interests in Congress and elsewhere.

We are here today to discuss S. 399, the Indian Gaming Regulatory Improvement Act of 1999, a bill introduced by Senator Campbell. The bill is co-sponsored by Senator Inouye.

First, however, I would like to take this opportunity to thank Senators Campbell and Inouye and other members of the Committee for your continued courage and leadership in Indian affairs, and on the Indian Affairs Committee. Let me say to both the Chairman and Vice-Chairman, Indian Country is very much aware of the very difficult work you and this Committee have engaged in on behalf of Indian Nations.

Indian Country is particularly gratified that the leadership of this Committee has consistently been committed to working together, with all sides, to achieve solutions to the problems in Indian gaming. I pledge my continued personal support, the support of NIGA, as well as that of the NIGA-NCAI Task Force and Indian Country, to work together in the future with the leadership of this Committee for workable solutions to the serious challenges that continue to face Indian Country in the area of gaming.

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History of S. 399

Indian Country is aware that S. 399 is substantially similar to S. 1870, a bill introduced in the 105th Congress. The proposed mark-up changes to S. 1870, which occurred late in the 105th Congress, were never fully reviewed and considered by Indian Nations. We note for the record that the Senate Committee on Indian Affairs held no hearings during the 105th Congress to consider the changes from the original draft to the proposed mark-up version of S. 1870. Though this is a different Congress, we believe it is very appropriate that this similar proposed legislation, S. 399, now be the subject of a Senate Indian Affairs Committee hearing and that Indian Nations be offered the opportunity to comment.

Last year in the 105th Congress, the position of Indian Country, the NIGA/NCAI Task Force and NIGA on S. 1870 was to not oppose but, also, to not support this legislation. Instead, Indian Country indicated its willingness to work with the Senate Committee on Indian Affairs to craft a comprehensive solution to ***all*** the problems which exist in Indian gaming, not just the perceived regulatory problem.

As we will elaborate on later, Indian Country has consistently not been able to support legislation that does not contain a fix for the problem created by the U.S. Supreme Court in the *Seminole* case. Indian Country has made Congress well aware of this position. There has historically been no change in this position and there is no change today.

S. 399: General Comments

We make several general comments regarding concerns in with S. 399. The comments contained below are intended to be constructive and informative. In addition, NIGA and the NIGA/NCAI Task Force indicate their willingness to continue working with the Committee to further refine S. 399 and bring it to a level where it may be acceptable to all parties.

1) Need for an Alternative Compacting Procedure

Most importantly, Indian Country is concerned that no Alternative Compacting Procedure is included in S. 399. Massachusetts, Oklahoma, Nebraska, Michigan, Florida, California, Alabama and Texas are among the states that continue to ignore Federal law and refuse to negotiate in good faith with Indian Nations for Class III gaming compacts. New Mexico, Wisconsin, Montana, South Dakota, and Washington are among the states that have used or are using the *Seminole* hole in the Indian Gaming Regulatory Act to impose unreasonable demands on Indian Nations. Congress did not pass IGRA with the intent that several states would ignore Federal law and continue to abuse the process.

Unfortunately, we continue to have state Governors and legislatures insisting on as much as 16% of Indian gaming revenue as the price of a compact without much apparent concern to the Congress. This is absolutely wrong. Without a *Seminole* fix, states will continue to make unconscionable demands for the limited revenue generated from tribal

governmental gaming. Indian Nations are concerned that in spite of our limited revenue resources, some state governments continue to pursue these revenue enhancements voluntary payments, exclusivity payments, whatever the term may be. But this method of overreaching cannot possibly be consistent with IGRA's goal of promoting the TRIBES' economic welfare as expressed most appropriately by Congress.

The treatment of Indian Nations has been among the most appalling chapters of American history. The treatment of Indian Nations under IGRA is a continued sad and embarrassing aspect of the history of America's treatment of Indian Nations. I should not have to remind this Committee of the following passage which appeared in the President's Advisory Board on Race, One American in the 21st Century: Forging a New Future (1998):

> American Indians and Alaska Natives history is unique, their relationship with our state and federal governments is unique, and their current problems are unique. While not large in numbers, their situation tugs at the heart. I confess to being embarrassed this past year at my lack of knowledge of their overall situation, embarrassed because I actually grew up and worked much of my life in geographic areas populated by Indian tribes, and I was oblivious to all but the common stereotypes. I suspect that most Americans are as equally oblivious, and believe a focused "education" initiative [for] the American public is in order.
>
> On virtually every indicator of social or economic progress, the indigenous people of this nation continue to suffer disproportionately in relation to any other group. They have the lowest family incomes, the lowest percentage of people ages 25-34 that receive a college degree, the highest unemployment rates, the highest percentage of people living below the poverty level, the highest accidental death rate, and the highest suicide rate.

Where is the shame among those states and Governors who fight Indian Nations over gaming because they see Indian gaming as competition to state tax and lottery dollars, while Indian Nation's view gaming as a fundamental means for survival? Where is the shame among those states and Governors who never took the opportunity to help Indian Nations before gaming and now claim their proximity to Indian Nations gives them basis to seek to impose their laws and policies on Indian Nations? Does the quest for dollars make inhumanity, injustice, and racism accepted public policy, so long as it is a state that makes the request?

The economic health of Indian Nations has not been completely restored by the limited success of gaming; however, gaming is the most successful Native American economic development effort on Indian reservations in the history of the United States. For the first time ever, many Indian Nations have a reason for economic hope. At the same time, many other Indian Nations are being denied a similar opportunity to pursue the American

dream because states continue to ignore the legislative intent and the will of Congress by breaking Federal law and refusing to negotiate in good faith.

Indian Nations, the NIGA-NCAI Task Force on Tribal Gaming, NCAI and NIGA have been consistent in our position that legislation must include alternative compacting procedures or it will not be supported. Indeed, legislation without alternative compacting procedures, may be vigorously opposed by Indian Nations. We cannot leave Indian Nations in the affected states without the economic gaming opportunity, and without the hope that many Indian Nations have been fortunate to achieve. Furthermore, we cannot leave those Indian Nations with fixed-term compacts without a fair means to renegotiate them.

We respectfully request that Congress do what is right and fair, and that Congress follow *Cabazon* and IGRA, and include an alternative compacting procedure in S. 399 that is fair to both state governments AND Indian Nations.

We are informed that the Committee is considering a stand-alone bill that addresses alternative compacting procedures. A stand-alone bill would provide an opportunity for Congress to examine this specific issue. In the haste to support or defend other alternative compacting proposals (most prominently Secretarial Procedures), Congress has not examined this issue through the Committee process. The appropriate legislative process has been subverted.

Alternative compacting procedures, whatever form it may take, is an issue that must be examined closely, utilizing the appropriate and open Committee hearing process. This is also an issue that must be addressed in a timely and comprehensive manner. And, we believe that an open examination of the issue, within the appropriate Congressional process, is one that Indian Nations would support.

I state for the record, NIGA would be first in line to support a bill that includes alternative compacting procedures. However, as noted above, the idea of a prospective stand-alone bill does not decrease the necessity for alternative compacting procedures in S. 399, or any comprehensive Committee bill regarding Indian gaming.

2) Indian Country is already successfully regulating Indian gaming.

The primary focus of S. 399 is the development of Federal minimum internal control standards for Indian gaming. Many Indian Nations express concern that Federal standards are being contemplated. Indian Nations are already successfully regulating Indian gaming. Some Indian Nations spend several million dollars each year just to regulate a single facility.

To most Indian Nations, Federal standards do not mean better regulation. To most Indian Nations, which already have adequate regulatory systems in place, Federal standards mean increased regulatory costs, increased Federal compliance work and increased Tribal bureaucracy to regulate a gaming facility. It means paying twice, for the same regulatory

activity; or paying a third time for the same work to be performed by the Indian Nation, the state government, and, now, the National Indian Gaming Commission (NIGC). Most importantly it means less dollars available to our tribes and tribal members to purchase the necessities of life - - food, housing, health care and education.

All Indian Nations already comply with IGRA regulatory requirements and these requirements are regularly reviewed by the NIGC. NIGA, through the NIGA MICS Task Force, developed standards for Indian Nations. These standards have been in place for two years. S. 399 may be addressing a problem that has already resolved itself due to the development of the industry.

The primary problem with Indian gaming regulation, today, is not Indian gaming regulation. It is those special interests which attack Indian gaming by making false claims that "Indian gaming is unregulated," and then seeking to reap the benefits of this misinformation and prey upon public fears and ignorance. State representatives have been the most guilty in spreading this fallacy. Whether to secure a better compact or to limit Indian gaming, claims of unregulated Indian gaming are made as if they were fact with no analysis, no context, and no substantiation. Such statements buy into stereotypes of Indians being incapable of regulating gaming, a belief widely held especially by non-Indian elected officials. Indian gaming and Indian Nations cannot possibly be capable of regulating themselves and therefore the Federal government must intercede.

Indian gaming is the most regulated gaming in the United States. For example, no Federal Commission oversees commercial gaming such as in Nevada or Atlantic City. No Federal Commission oversees riverboat gaming. And, most prominently, no Federal Commission oversees lotteries. Just as importantly, there are no Federal standards for commercial gaming, riverboat gaming or lotteries. (Although the need for Federal oversight may be much greater in those areas.)

3) Federal regulations will deteriorate compacts and the compact process.

Perhaps the most intrinsically damaging aspect of Federal standards is the potential for harming the compact process, and existing compacts. Tribal/state Compacts are difficult to achieve in the best of circumstances. Federal standards place the Federal government at the negotiating table as a Third party. The Federal government will now become responsible for a portion of the compact.

Compact negotiations will become hindered by the need to address Federal concerns and to answer the many questions created by the new Federal presence. Are the Federal standards being met? Who will decide? Is the state standard adequate? Is the Tribal standard adequate? At what point should the Federal government intercede? During Negotiations? During compact review? Can the Federal government invalidate a compact agreed on by the Indian Nation and state due to regulatory issues? What appeal avenues are available?

Federal standards raise many unanswered questions. The answers are not contained in the recently published NIGC standards. Many of the answers will have to be developed over time. An entire new subjective area of Federal decision-making will come into play, affecting the lives of Indian people and the livelihoods of Indian Nations. Indian Nations are very concerned about the impact and change Federal standards will have on Class III gaming compact negotiations.

4) The NIGC has already achieved a proper role in Indian gaming regulation.

The NIGC should not and cannot be the primary regulator in Indian gaming. Due to proximity, jurisdiction and other issues, Indian Nations must be the primary regulators of Indian gaming. As we have been told many times, the best decisions are those made locally.

While it can not be the primary regulator, the NIGC has, in its decade of existence, developed an oversight role in Indian gaming in which it plays a substantial role in the areas which are most appropriate, and a lesser role in areas where it cannot and need not have involvement. The NIGC has developed a flexibility to help the Indian Nations that need help the most and provide a level of freedom to Indian Nations which are obviously capable of conducting many regulatory activities themselves. This is right and proper.

Federal standards place the NIGC in an entirely different role. The NIGC becomes "big brother" and not having authority to distinguish among capable and less capable Indian Nations.

5) The increase of the NIGC funding level means NIGC improvement.

Indian Nations agree the previous NIGC funding levels were too low. Recent changes to the NIGC funding authority mean the NIGC will have their funding greatly increased.

Several claims have been made that the NIGC was not adequately completing its duties. With increased funding, the NIGC has the opportunity to address this criticism and address areas where increased funding is needed.

In fact the NIGC should be allowed the time to absorb these increased resources and a period of time for reassessment, reflection and measurement so that any calls for more resources can be based upon an informed process.

The NIGC and the current regulatory system may, in fact, be functional and adequate with the additional funding. Indian Nations believe they are.

6) The NIGC has promulgated minimum internal control standards.

The Indian Gaming Regulatory Act does not provide clear authority for the NIGC to promulgate minimum internal control standards, particularly for Class III gaming. We

expect the NIGC standards will in all probability be challenged by an Indian Nation or Nations.

Indian Nations would appreciate the counsel of the Senate Committee on Indian Affairs regarding the concern that the NIGC does not currently have authority to promulgate those regulatory standards.

Most Indian Nations are currently expending funds to meet the NIGC regulations of questionable authority. If the NIGC does not, in fact, have the authority to promulgate standards, these funds are better spent elsewhere. Passage of after-the-fact legislation authorizing NIGC standards is perhaps not the most ideal way to proceed in developing Indian gaming regulation.

Specific Comments

We believe this bill is reflective of a dedicated effort to address perceived problems in Indian gaming. We thank Senator Campbell and the Indian Affairs Committee staff for their hard work and good efforts.

Below are specific comments with regard to S. 399.

Section #2. Findings. We note the presence of new findings, in particular (7), (8) and (9). The reference to the U.S. Constitution and Indian Commerce Clause adds to the basis and understanding of the purposes of IGRA and S. 399.

Section #3. Purposes. We note the references to the inherent sovereignty of Indian Nations and the *Cabazon* Case. We believe this may serve to assist several Courts and public policy makers which have made incorrect decisions, not recognizing IGRA as codifying *Cabazon.*

Section #4. Definitions. (1) Applicant. This is a new definition. We are somewhat concerned that there is no grandfather clause or other consideration of existing service clause under this provision. Although we agree each new license would have to comply with new standards, some consideration should be provided to renewal applicants to avoid unnecessary interruption of business activity.

Section #4. Definitions. (8) Compact. This definition should also include procedures issued by the Secretary; or, Johnson Act provisions may not be exempted.

Section #4. Definitions. (12) Management Contract. This definition is overly broad. Any contract for gaming may be considered to fall under this provision, including employee managers, hired by the Indian Nation. The intent is to increase the professional scrutiny of outside management contracts and non-Tribal managers, not to make it increasingly difficult for the Indian Nation to hire managers. Tribal management is already reviewed and checked under key employee requirements. "Outside" or "non-

Tribal" contracts (or other similar language identifying a non-Tribal employee) should be specified.

Section #4. Definitions. (13) Management Contractor. See above. "Outside" or "non-Tribal" contracts (or other similar language identifying a non-Tribal employee) should be specified.

Section #4. Definitions. (14) Net Revenues. (B). Management fees are considered Net Revenues and excluded from operating expenses. There is no reasonable basis to do this. The cost of management is an operating expense. This determination means the amount reported as revenue for Federal purposes is significantly higher than what is actually realized by the Indian Nation. If the purpose for this is to discourage management contracts, there are other means to do so; such as limiting the length and decreasing the percentage of management contracts.

Section #4. Definitions. (14) Net Revenues. (B). The allowance for amortization of capital is long overdue. This is a necessary addition.

Section #5. NIGC. Adding "expertise in Indian affairs or policy" is generally an improvement. However, we urge that this requirement should be a requirement for ***all*** Commissioners, not just the prospective Indian Commissioners.

Section #11. Rulemaking. This provision should be clarified with respect to the January 4, 1999 NIGC MICS. Until this clarification is made, the authority of those NIGC MICS remains in question. If the intent of S. 399 is that the NIGC start all over again, the 180 days will likely be appropriate. If the intent of S. 399 is to authorize the January 4 NIGC MICS, there are several considerations Congress must make. (In addition to the comments made above about the potential for interference with compact negotiations) Several Indian Nations have commented that the NIGC MICS are overly comprehensive. They are not ***minimum*** standards, they are standards. This is not the intent of S. 399. The NIGC may very well have exceeded the authority of S. 399 in their January 4 MICS. As commented above, the NIGC cannot be, nor should it be, the primary regulating authority. There must be a process in place for appeal and removal of the January 4 MICS which exceed the authority granted by S. 399.

Section #11. Rulemaking. Factors for Consideration. In general, this is a good section. In terms of priority and process, we comment the item listed number (3), dealing with consideration of the sovereign rights of Indian Nations, should be the first consideration.

Section #11. Rulemaking. In regard to a licensing program for vendors, we realize this is an effort to provide the most innocuous of all the provisions in all the Indian gaming bills. However, this provision shifts the decision-making from Congress to the NIGC. The NIGC can then make this as odious as it chooses. Vendors, if they are eventually subject to Federal regulation, deserve consideration, and the right to be heard, by Congress ***before*** the fact. So that all parties can arrive at an informed solution.

There is a basis to consider licensing gaming equipment and supply vendors beyond a certain dollar amount. There is less basis to require licensing non-gaming service workers such as the plumber, the bus company, the cook and the custodian, who would also be considered vendors. The movement toward licensing vendors must be cautious. Many vendors, with smaller contracts, would rather not serve Indian gaming facilities than go through a time consuming and costly licensing process. We respectfully request this provision be removed and/or considered as a separate proposal so that vendors may comment.

Section #12. Tribal Gaming Ordinances. The increase of Contracts for Services Subject to Audit increase to $100,000 is reasonable.

Section #12. Tribal Gaming Ordinances. The requirement of a separate license for each place, facility or location is generally good. Temporary licenses for fairs, pow-wows and other gatherings should be permitted. These are best distinguished by other factors than place, facility or location. This consideration should be included in S. 399.

Section #12. Tribal Gaming Ordinances. The Section on Self-regulation must also be distinguished and/or coordinated with the NIGC's Self-regulation regulations. Until this clarification is made, the authority of those NIGC Self-regulation regulations remains in question. If the intent of S. 399 is that the NIGC start all over again, the 180 days will likely be appropriate. If the intent of S. 399 is to authorize the NIGC Self-regulation regulations, there are several considerations Congress must make. The NIGC may have exceeded the authority of S. 399 in their Self-regulation regulations. There must be a process in place for appeal and removal of the Self-regulation regulations which exceed the authority granted by S. 399.

Section #12. Tribal Gaming Ordinances. The requirement that all fees and assessments be paid prior to self-regulation status is good. The provision should also consider special circumstances, such as an Indian Nation on a payment schedule or an Indian Nation proceeding through an appeal process concerning fees.

Section 18. Commission Funding. Removing the floor on rate of fees will eliminate accounting problems for the NIGC. This is a needed change to IGRA.

Section 18. Commission Funding. Indian Country and NIGA have yet to see a coherent plan from the NIGC documenting an increased need, the level of need, a plan for growth or any other basis for an increase in funding authority to $8 million. Indian Country recognizes that a need for increased funding does exist. We just want to know, and we deserve to know, that our money is being spent in the best possible manner.

As evidenced by the Chairman's own bill S. 612, Indian Country would appreciate an inventory of the current resources and needs of the NIGC so that an informed decision could be made.

Indian Nations were promised when IGRA was enacted that the cost of the NIGC would be shared by the Federal government. Last year, Congress broke this promise and failed to appropriate any funding for the NIGC. This is not just one more broken promise to Indian Nations. It is unreasonable for Indian Nations to pay the entire cost of a Federal regulatory agency, which not only does not answer to Indian Nations, but fails to come up with a plan to explain why they need even more funding from Indian Nations. At the same time, in an era of unprecedented budget surplus, the Federal government continues to pursue spending policies as detailed by a March 20, 1998 Senate Budget Committee report, which and I quote is as follows:

> The data show that Indian-related spending, corrected for inflation, has been going down in almost all areas...
>
> When one looks not only at overall Indian spending but also at its major components – BIA, IHS, Office of Indian Education in the Education Department, Indian Housing Development program in HUD, ANA and INAP – one sees that, in constant dollars, all major spending items except IHS have declined during the period FY 1975 – 1999. Moreover, a comparison in constant dollars of overall Indian budget items in the full federal budget, on the other, indicates that most Indian-program spending areas have lagged behind their equivalent federal spending areas.

Indian Nations are not pleased with this situation and request the Federal promise of funding for the NIGC be restored.

Section 18. Commission Funding. Mississippi Band of Choctaw. We note the phase out on the prohibition of NIGC assessing fees against the Mississippi Choctaw. We support the Mississippi Choctaw comments regarding this provision.

In the previous section on Self-regulatory status, a provision for decreased fees was available to Indian Nations who met the criteria. The Mississippi Choctaw Self-regulation Provision, contained in a previous appropriations bill, caused NIGC attention to be drawn to self-regulation for the first time in the history of the Act. This attention to a legislative mandate was long overdue. If an Indian Nation meets all the standards of self-regulation, that Indian Nation should be assessed fewer fees given that Federal oversight will not be as necessary.

Section 18. Commission Funding. Commission Authorization. We are very pleased to see that fees must be "reasonably related to the costs of services." We hope Congress will be diligent in its oversight of the NIGC to ensure this provision is not ignored and forgotten as historically typified by the Self-regulatory status.

S. 399 might consider a separate NIGC fee schedule for "(i) the extent of regulation of the gaming activity by a State or Tribe (or both.)"

Section 18. Commission Funding. Trust Fund. We understand the Trust Fund provision is intended to preserve all fees collected by the NIGC for NIGC use. As is Congress, Indian Nations are cautious about Trust Funds established by the Federal Government. It must be safe and documentable. This is a new way of handling NIGC accounts. Indian Country has not fully explored all ramifications of a NIGC Trust Fund. We request a meeting in the future to explore all possibilities and potential pitfalls of a NIGC Trust Fund.

We request that interest earned by the Trust fund not be considered a NIGC bonus or excess. Interest should be used by the NIGC to lower the Fee assessments. We request S. 399 express this sentiment.

Section 18. Commission Funding. Investments. This is a new way of handling NIGC accounts. Indian Country has not fully explored all ramifications of a NIGC Investment Fund. We request a meeting in the future to explore all possibilities and potential pitfalls of a NIGC Investment Fund.

Political Concerns

In closing, we wish, again to address the unfortunate political aspect which has often driven the consideration of increased Federal regulation of Indian gaming.

There is a delicate balance which needs to be struck. Indian Country has never opposed Federal minimum control standards. Indian Nations do not believe though that increased Federal regulatory authority is necessary. After ten years of IGRA and NIGC, it is documentable that Indian Nations regulate Indian gaming effectively, adequately and sufficiently.

Increased Federal regulation proposals, such as the NIGC MICS and S. 399 are not opposed by Indian Nations because Indian Nations are very much aware that they serve as protection against false claims that Indian gaming is unregulated.

We ask, however, how much Federal oversight, intervention and regulation is too much? It is all a matter of degree and at some point, Indian Nations will draw a line. We do not draw that line today.

We thank Senators Campbell and Inouye, and all the co-sponsors and supporters of S. 399. Indian Nations, the NIGA/NCAI Task Force, NCAI and NIGA are very much aware of their honest concern for Indian Nations and their efforts to guard and protect Indian gaming through S. 399.

However, it is increasingly difficult to support increased Federal regulatory authority when Indian Nations still suffer from the *Seminole* decision and the lack of a remedy in the form of alternative compact procedures.

Indian Nations ask, if S. 399 passes, what more motivation will Congress have to revisit needed changes to IGRA? Is this the last opportunity for a *Seminole* remedy to be passed by Congress? In effect I ask the committee, in all honesty, will the train have left the station?

The many injustices caused by *Seminole* have not moved Congress to action. How very sad and unfortunate. As a result, Indian Nations have had to spend millions of dollars on ballot initiatives, Court cases in every Federal jurisdiction and endless unproductive meetings with state officials. This is money better spent on, and intended for, Indian Nations and Indian people.

If Congress is only moved by increased regulation, it is only fair and just to provide, along with that solace, the restoration of the intent of IGRA that all Indian Nations have an example of an opportunity to develop gaming and perhaps secure a better future for themselves and their children if they so choose. Afterall, isn't that the American dream?

Thank you for your kind consideration and I am available for questions.

National Indian Gaming Association
Chairman Richard G. Hill

Response to Questions from the
Senate Committee on Indian Affairs
RE: S. 399 - the Indian Gaming Regulatory Improvement Act of 1999

1. **How do the NIGC "MICS" published in January differ from the NIGA MICS? If these MICS are not substantially different, how do they pose a hardship to Tribes? If NIGA has termed these substantially similar Internal Controls, "MINIMUM", why do they feel the NIGC MICS are too comprehensive?**

The NIGC MICS and the NIGA MICS are similar, but the NIGA MICS were developed by representatives of approximately 25 to 30 tribal governments engaged in gaming from throughout the United States. These representatives provided perspectives from large and small gaming facilities, different types of Class II and Class III games, and different types of tribal/state gaming compacts. These tribal representatives are professionals in their respective lines of regulatory work and include Gaming Internal Auditors, Tribal Auditors, Regulatory Officers, Tribal Governmental Representatives, Gaming Consultants, and Attorneys. The NIGA MICS are the result of the direct collective experiences of day-to-day regulators. As such, these experiences are reflected in the final work product.

The NIGA MICS are updated continuously based upon the changes in the Indian gaming industry. It is much more expedient to change a "standard" that is recommended by the Tribes and NIGA, as opposed to changing the NIGC MICS, which can only be changed and amended through a federal regulatory process. As you know, the federal process involving evaluation from conception to enactment of federal policy changes can be burdensome and lengthy. This federal process could potentially interfere with the protection and integrity of the Indian gaming industry because technology in the marketplace can outrun the regulatory environment. Therefore, standards and regulations need to change at the same pace.

Our primary concern with the NIGC MICS as minimum standards is not that they create new or more strict standards. Rather it is that the new NIGC requirements create an additional layer of regulatory standards beyond the tribal or tribal/state (by compact) regulatory standards already in place. Thus, the NIGC MICS establishes a third Indian gaming regulatory structure.

Indian tribes are currently assessing whether or not, they meet the NIGC MICS with their current regulatory standards. Many have already determined that their own regulations and regulatory systems are working well. There is, however, a great deal of confusion as to how a tribe should deal with the additional NIGC regulations. Tribes are concerned that

their own determinations of compliance will be questioned, and that their interpretations may be a reason for the NIGC to find them out of compliance.

Which set of standards will an Indian tribe be held to if the standards are written similarly, but interpreted differently? Who will make this determination? By the very nature of the regulatory process, interpretation will be subjective and elicit differing views, perhaps even among the several NIGC staff charged with determining compliance.

We understand the intent of the NIGC MICS, and the underlying intent of S. 399, to provide a safeguard of regulation for the protection of Indian gaming's integrity. At the same time, we also maintain, and have recommended, that the NIGC MICS be presented as guidelines and thus, eliminate the potential for multiple interpretations or choice of law questions. Such guidelines could indicate that an Indian tribe must have a substantial basis to not adopt the NIGC MICS. That is, the tribe could be required to prove that its existing regulations are more strict or substantially equivalent to those being proposed.

As to the question of hardship, tribes may experience it in several ways. First, tribes will be faced with the possibility of having to change their existing regulatory standards and systems that have been in place for some years. Currently, tribes will have either their own MICS in place, they may have existing tribal/state gaming compacts with attached MICS in place, or they may have instituted the NIGA MICS as a matter of their own policy. In any case, being required to come into compliance with the new NIGC MICS will involve changes which affect the existing regulatory systems.

Second, the costs of audits are expensive as it is. Now, the NIGC MICS will require an additional audit for which tribes will be forced to expend additional funds.

Third, the number of employees will have to be increased in order to fulfill the NIGC MICS requirements, resulting in additional costs.

Finally, there is the issue of compliance resulting in hardship, whereby tribes may be required, at least initially, to pay two or more times for a regulatory activity during the transition to the NIGC MICS. For example, having to pay to have an audit performed to satisfy the existing tribal standards, then paying again for an audit with different requirements in order to be in compliance with the new NIGC audit standards.

2. **Tribes who operate Class III gaming are assessed at a rate of .08% for revenues OVER $1.5 million. So a tribe grossing $10 million would be responsible for $68,000 in fees to the NIGC. Please tell me how these fees would pose a hardship to tribes.**

To those who have been in the mainstream of the United States economy, the $68,000 in fees may not appear to be a huge amount in comparison to the $10 million. However, to Indian tribes who have a long history of no revenue, no employment and no business background, $68,000 is a substantial amount. This amount, in fact, could provide the means of survival for four or five families who are used to an average yearly income of $12,000 to $17,000.

Several tribes have commented that their size by population, combined with decades, even centuries of poverty and neglect, mean that gaming funds do not meet the existing backlog, much less current needs. When the call is made between the needs of tribal members against the needs of the federal government (noting that a March 1998 Senate Budget Committee documents continued inadequate federal funding for Indian programs), the determination will always be that the funds could be better spent at the local level. Moving these scarce revenues from the tribal community to the NIGC serves to create an added hardship.

Finally, Indian tribes have not forfeited the right to insist that the fees paid to the federal government is well spent, regardless of how much revenue tribes generate. It is fundamentally unfair that the federal government eliminates its appropriations for the NIGC, decreases overall federal spending for Indian programs, then requires Indian tribes to increase their payments to the federal government. This most assuredly creates a hardship.

The NIGC has yet to provide any substantive means of transparency, such as a business plan or final portrait of how the federal commission will alter its look after it receives the increased funds from tribes. Without some assurance that the NIGC will utilize these new funds constructively, or without information necessary to make an informed decision - such as an inventory of risk exposure, needs and available resources - tribes will continue to be cautious about additional funding.

3. **Do you believe that the NIGC can perform an adequate job of regulating Indian gaming with 7 field investigators?**

The NIGC is not the only federal entity with a role in the regulation of Indian gaming. Federal oversight of Indian gaming is also shared with the Department of Interior - Bureau of Indian Affairs, Department of Treasury, the Financial Crimes Enforcement Network, Internal Revenue Service, Department of Justice, and the U.S. Attorneys.

The NIGC is not the day-to-day regulator of Indian gaming; tribal governments are the day-to-day regulators in Indian country. The NIGC is, by necessity, left to an oversight role because, as it is often stated in our current political environment - the best decisions are those made at the local levels of government.

In drafting the Indian Gaming Regulatory Act of 1988, the authors were both clear and wise with their intent that tribal governments have primacy in the regulation of gaming on Indian lands. Now, it appears that much of the country, including the Congress, have forgotten such Congressional intent.

We can assure you that tribal governments have not. The fact is that tribal governmental gaming is heavily regulated and appropriately staffed. It is not uncommon to find former law enforcement officials or former gaming regulatory professionals, who have come from other, non-Indian gaming jurisdictions with years of regulation experience, to be at the helm of tribal gaming regulation.

Let me cite a few specific examples of the state of regulation of Indian gaming.

A. One tribal government in **Arizona** appropriated **$2,215,000** for regulation of its gaming operations for the year ended September 30, 1998. This sum includes $1,845,000 appropriated for the local tribal gaming regulatory commission with 61 regulatory, surveillance, security, compliance and investigative professionals. The sum also includes $250,000 paid to the state gaming department to cover the cost of the state's regulatory responsibilities for Class III gaming under the tribal/state gaming compact. The state gaming department employs upwards of 50 regulatory professionals. The sum also includes $20,000 paid to the National Indian Gaming Commission for Class II responsibilities.

B. One tribal government in **New Mexico** allocated **$3,109,150** for tribal governmental gaming regulation. This sum included $2,461,000 for the tribes gaming commission with 64 regulatory professionals, $625,000 paid to the state government to cover its regulatory costs as required by their compact, and $22,380 to the NIGC for Class II gaming regulation.

C. One tribe in **Oklahoma** appropriated **$822,419** to cover the cost of regulating its gaming operations. Twenty-seven (27) regulatory professionals are on staff.

D. One tribe in **South Dakota** appropriated **$1,100,000** for its gaming commission to cover the costs of 25 tribal regulatory professionals handling surveillance, security, auditing, compliance, investigations, and other responsibilities.

State governments also are provided a level of oversight of Indian gaming through tribal/state gaming compacts.

In all cases, tribal governments pay the full costs of gaming regulation on Indian lands.

It is our belief that seven NIGC field investigators alone cannot do an adequate job of regulating Indian gaming nationally. However, when the entire Indian gaming regulatory network, with its full funding and trained professionals, is considered as a part of the equation, one cannot help but conclude that Indian gaming is both heavily and appropriately regulated.

4. Even where tribes are self-regulating, they still receive services from the NIGC, don't they?

The NIGC has testified that their services and oversight responsibilities do not substantially decrease for self-regulating tribes.

For ten years following the enactment of IGRA, the NIGC failed to publish regulations for self-regulation. Since 1998 when the self-regulation rules were adopted, only one tribe has qualified as self-regulating. Because of the limited number of tribes with this designation, it is premature to try to ascertain the precise level of responsibilities the NIGC might have in regard to those tribes. However, we may presume that any tribe who may qualify for self-regulating status will be those with mature and proven regulatory structures.

The NIGC has been very helpful to tribes seeking assistance in developing their regulatory systems. Those Indian tribes that need the help are apparently getting the help. Conversely, the NIGC spends less time assisting those tribes with proven and effective regulatory systems.

We agree that the NIGC may have similar authority with regard to oversight responsibilities for all tribes, whether self-regulating or not. However, the actual degree of oversight activity will differ from tribe to tribe. We would recommend that the NIGC examine the amount of time it might take to carry out their responsibilities in the various scenarios involving tribes with mature regulatory systems and those with less than mature systems. As we have stated before, factual information as to the perceived risks, and the resources needed to address such risks, is required to make an informed decision.

With regard to funding, we share the NIGC's concern that reducing the funding responsibilities for those self-regulating tribes may mean those tribes who can least afford it will pay a larger portion to the NIGC. It is also fundamentally unfair for those tribes receiving minimal services to pay more than those receiving more services. The NIGC has resisted performing a strict cost/benefit analysis of the services they provide. They should

be required to perform this analysis to ensure fairness in assessing fees.

5. Could you elaborate on your statement that establishing federal minimum internal control standards will interfere with compacting negotiations?

The question of when the NIGC MICS are implemented remains unresolved. Tribes and States negotiating a compact will not want to risk having that compact voided by the Secretary for lack of compliance with the NIGC MICS. It is not beyond reason that tribes and state governments may determine that the best way to avoid such a potential situation will be to invite the federal government into the compact negotiations. It might also be possible that inviting both the Secretary and the NIGC would be necessary to avoid the risk described herein, especially since the Secretary must approve the compact and the NIGC has oversight and compliance responsibilities.

Simply adopting the NIGC MICS in tribal/state compact negotiations will not be sufficient because specific, customized standards may still have to be drafted to address specific situations. A federal review process would still be required since it makes no practical sense to have the legislation crafted to place the NIGC MICS review after Secretarial approval of the compact. The purpose of MICS is to assure standards are in place from the outset.

Thus, it make little sense to prohibit the NIGC from participating in tribal/state compact negotiations. If the NIGC MICS are required, there is a definite need for some level of consultation. And that need is best and most readily addressed <u>at</u> the negotiation table involving standards, not after negotiations are complete.

If, as we anticipate, the NIGC and the Secretary become a part of the compact negotiations, an entire host of new, interpretation questions arise regarding the specific nature of individual standards, Each standard which differs from the NIGC MICS language (even those more strict provisions) will be subject to interpretation.

We agree that the NIGC MICS are substantially based on the NIGA MICS. We also agree that the NIGC MICS will be able to be substantially implemented by Indian tribes. However the process of implementation will very likely place additional federal parties at the compact negotiation table. Tribal/state gaming compacts are difficult enough to achieve as the system currently exists, without additional parties.

Question posed by Senator John McCain:

1. **The NIGC stated a need for an increase of its regulatory authority to do background checks on vendors and management contracts. Would the National Indian Gaming Association agree with this extended authority? How have the tribes dealt with this type of background checks on its own?**

Many of the tribes already have complete background investigation departments that perform the background checks on vendors and management contracts. Tribes have been fulfilling this responsibility effectively for as long as ten (10) years. So there is no need to have this process mandated.

If tribes did not have the resources or expertise to perform the background checks on the vendors and management contracts, perhaps a Memorandum of Understanding (MOU), which directs the tribes and NIGC to perform this function, might be appropriate. Such an agreement, however, should be made at the tribe's request.

As it is, the NIGC is presently backed up on many of its responsibilities. There are no assurances that the increase in authority for NIGC over background checks would be completed in a more timely or efficient manner. The pace of the gaming industry is much too quick for the existing NIGC process for the background checks on vendors and management contracts. Tribes could face unnecessary loss of revenue and work resources. The duplication of services is expensive and not necessary in many cases.

Many tribes have gaming compacts that dictate how the background checks on vendors and management contractors are to be processed. Again, tribes already perform the required background checks.

ONEIDA INDIAN NATION

ONEIDA NATION TERRITORY, VIA ONEIDA, NEW YORK

TESTIMONY OF KELLER GEORGE
on behalf of the
ONEIDA INDIAN NATION

Before the
United States Senate
Committee on Indian Affairs
S. 399, the "Indian Gaming Regulatory Improvement Act of 1999"
April 1999

Mr. Chairman, Vice Chairman, and members of the Committee, thank you for the opportunity to submit my testimony on S. 399, the Indian Gaming Regulatory Improvement Act of 1999. My name is Keller George, and I am a member of the Wolf Clan of the Oneida Indian Nation. I serve on the Oneida Indian Nation's Men's Council and am also the Special Assistant to the Nation Representative. I have served as chair of the Nation's Gaming Commission for almost a decade. In addition, I have served for nearly five years as the President of the United South and Eastern Tribes, which is composed of 23 federally-recognized tribes ranging from Florida to Maine, South Carolina to Texas. Like other USET member tribes, the Oneida Indian Nation is engaged in gaming as a means to develop our economy, and to make our government strong and our people self-sufficient.

Overview. One of the goals behind the Indian Gaming Regulatory Act was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. More than ten years later, there is no doubt that IGRA is working well beyond anyone's expectations. In short, IGRA has provided numerous Indian nations, including my own, with the ability to become self-sufficient governments.

The Oneida Indian Nation appreciates the leadership and dedication that the Chairman and Vice Chairman bring to the many significant issues facing Indian Country. We have significant concerns, however, with S.399. The following is a brief summary of our general

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concerns. A more detailed explanation follows beginning on page three of my testimony.

> (1) *Minimum Standards*. We do not believe there is a need for federal gaming standards. We believe that the tribal-state compacting process and the statutory safeguards set forth in IGRA are sufficient to ensure an adequate level of regulatory control over gaming operations. In addition, without grace periods, minimum federal standards also are likely to result in the harmful disruption of existing gaming operations until they can comply with the new requirements. Moreover, the proposal could create a host of practical managerial problems for Indian nations that operate under tribal-state compacts.
>
> (2) *Fees*. The current Indian gaming fee structure is unfair. There is no reason that one tribe should be completely exempt from having to pay any fees to the National Indian Gaming Commission. In addition, many Indian gaming facilities operate under comprehensive tribal-state compacts and should not have to pay fees to the Commission for services already being adequately performed at the local level. Consequently, the Oneida Indian Nation would recommend a Commission revenue system based primarily upon user fees. In addition, we ask the Committee to reconsider the establishment of an Indian gaming trust fund.
>
> (3) *Compacting*. We cannot support any major amendment to the Indian Gaming Regulatory Act that does not address the compacting problem that has been created by the *Seminole* decision.

Background. Many members of the Committee are familiar with the story of the Oneida Indian Nation. At one time, the Oneida people inhabited some six million acres of land stretching from the St. Lawrence River to what is now the New York-Pennsylvania border. During the Revolutionary War, the Oneida Indians, joined by the Tuscaroras, were the only members of the Iroquois Confederacy to side with American colonists. The Oneidas played a crucial role in the strategically important Battle of Oriskany, one of the bloodiest battles of the war. Many Oneidas fought and died with their allies as the colonists sought freedom for the new nation. Since that time, Oneida blood has been shed to defend the United States in every war and conflict over the last two hundred years.

Only a handful of years ago, the Nation had been reduced to living on a 32-acre territory with no water or septic system and a one-lane, dirt road. Our housing primarily consisted of second-hand trailer homes donated to us by the federal government. Unemployment was at a record high, and the surrounding region was in the midst of an economic recession. Although the Oneida Indian Nation was a sovereign government, it did not have the means to provide basic, governmental services to its 1,100 members.

Gaming has revitalized the Nation. First a bingo hall and then a casino stimulated an economic and social revitalization of the Nation and its surrounding communities. The Nation's leadership began to look at the economic incentives available to a sovereign nation to find ways to inject new opportunities and create jobs to benefit not only the Oneidas, but to stimulate an economic and social revitalization of the surrounding communities. At that time, the Nation's goal of economic self-sufficiency was rather remote, however, the leadership pledged that it would once again be a sovereign government in the fullest sense. It was an ambitious goal, but one that currently is well underway. Perhaps the most telling indication of how far we have come toward reaching that goal, was our decision last fall to no longer accept the $2.6 million in Tribal Priority Allocations that we had been allotted by the federal government. What a difference a handful of years can make.

Attached is a more detailed summary of the Nation's various enterprises, the benefits we provide our Members, the local philanthropy in which we have been engaged, and a summary of a recent survey that describes the economic impact we have on the surrounding region. I have also included a copy of our most recent Annual Report.

The Oneida Indian Nation's Gaming Operations. In 1993, the Nation entered into a tribal-state compact with the State of New York and opened Turning Stone Casino. The compact that was negotiated between the Nation and the State of New York has been referenced as the "gold standard" of gaming compacts because of the level of its detail and regulatory safeguards. The entire Compact, including appendices, is over 240 pages long, and it includes specific standards for each game that is operated by the Nation. It includes specific directions for everything from annual audits to closed circuit television monitoring of all aspects of the operations, to procedures for shift changes at gaming tables. In total, the Nation spends $8 million annually on regulating its gaming operation, $3 million of which is given directly to New York State for reimbursement of its regulatory costs.

The Nation-State Compact provides a regulatory role for the Oneida Nation Gaming Commission, the New York State Racing & Wagering Board, the Nation Police, and the State Police. The Nation Gaming Commission is independent of the Nation's government and its casino management. The Commission includes members who are very experienced in casino regulation in New Jersey and Nevada; and it has a full-time staff of 27, including 17 inspectors

and four auditors. There also are in excess of 100 surveillance and security personnel. In addition, the Nation has a 40-person tribal police force that is responsible for safety at the Nation's casino resort. Beyond that, the State of New York has 12 agents from its Racing & Wagering Board detailed to the casino, as well as 17 New York State Troopers.

The view is widely held that the regulations embodied in our Compact are more strict than the regulation of Atlantic City casinos by the State of New Jersey. To illustrate, under the Compact, not only must the Oneida Nation Gaming Commission review and approve the internal controls for casino gaming, as would the New Jersey Casino Control Commission, but the Nation also must submit its internal controls to review by independent Certified Public Accountants. Coopers & Lybrand audits the Nation's casino operations and provides certification regarding the results of those audits to the State of New York, pursuant to the Nation-State Gaming Compact.

Concerns with S.399

Minimum Standards. The Nation does not believe that there is a need for new federal gaming standards. Standards relating to the operation of Class III Indian gaming are set forth in IGRA and are already addressed through tribal-state compacts. Should a tribal-state compact fail to meet IGRA's statutory standards or the more specific standards of a tribal-state compact, then IGRA provides the NIGC with the authority to fine or even shut down the operation. In our opinion, a sufficient justification for the promulgation of new federal standards has not been demonstrated.

The rules and regulations governing the Oneida Nation's gaming operations were developed through the Tribal-State compacting process called for in IGRA. IGRA spells out the areas of regulation and supervision that must be covered by tribal or tribal and state regulation and the end result that must be guaranteed by that regulation. There must be a system that ensures that:

> (1) net revenues are used for the purposes set out in the statute;
> (2) there are annual outside audits of all gaming records and all significant contracts related to the gaming;
> (3) the construction of the gaming facility and the operation of the gaming is conducted in a manner that protects the environment and the public health and safety; and,
> (4) meaningful background investigations, licensing and oversight of management officials and employees is in place. 25 U.S.C. §§ 2701 (b)(2) and 2710 (d)(1).

Beyond those guidelines, IGRA recognizes that the most effective and efficient way to ensure the development of sensible, specific rules--which are appropriate to the gaming that will be conducted by a particular tribe in a particular state--is to put the burden on the tribe and the state to work out those details.

The process envisioned in the current statute, and that has resulted in the comprehensive regulation of the gaming operation conducted by the Oneida Indian Nation, should continue to be the model for federal oversight of Indian gaming. The tribes and the states in most instances can and will do a much better job than the federal government in regulating gaming. In the event that the local regulation is ineffective, the NIGC retains the authority under the current statute to impose civil fines or order the closing of gaming operations not operated according to requirements of the tribal ordinances that incorporate IGRA's guidelines. 25 U.S.C. § 2713.

If new federal standards are to be developed, however, then Congress should define clearly what it means by "minimum Federal standards" and precisely what role the NIGC should have in the day-to-day regulation of gaming. In S.399, the Commission would be directed to promulgate regulations relating to background investigations, internal control systems and licensing standards. The Commission is directed to consider "the broad variations in the nature, scale and size of tribal gaming activity" and the "inherent sovereign rights of Indian tribes with respect to regulating the affairs of Indian tribes." On the other hand, the bill would direct the Commission to consider, among other things, "the effectiveness and efficiency of a national licensing program for vendors or management contractors." We are concerned that the latter factors involve a level of micro-management that is not necessary and would be burdensome to tribal operations.

For example, the State of New York already licenses vendors for the Nation casino. At best, a national licensing program could only duplicate what the State is already doing and at worst, it would become a bottleneck that results in disruption of supplies and services to the Nation's gaming operation.

Before passing legislation authorizing the NIGC to establish Federal minimum standards that will affect substantially the way tribal gaming operations are conducted, Congress should set clear limits on the extent to which those standards will intrude on a tribe's ability to regulate its own gaming operations, or the ability of the tribe and state together to decide how best to regulate gaming in that state.

Moreover, if Congress decides to enact minimum federal standards, then it should apply them across-the-board to all gaming conducted in the United States. There is no reason to treat Indian gaming any differently than gaming conducted by a State or other non-Indians under state

regulation. Certainly, gaming by non-Indians affects commerce sufficiently to warrant federal regulation if state regulation is perceived as insufficient or ineffective. On the other hand, if states are competent to regulate gaming by non-Indians, there is no reason why those states cannot be trusted, in compact with Indian tribes, to impose regulations for and to monitor the operation of Indian gaming.

We also are concerned that S.399 would provide a grace period to allow gaming operations to comply with new federal standards. S. 399 appears to provide that tribes must meet or exceed the minimum federal standards established by the Commission upon the Commission's promulgation of those standards. No grace period is provided for by the bill. To ensure that these gaming operations will have time to come into compliance with the new standards, Congress should establish a sufficient statutory grace period, which would begin running from the effective date of the Commission's final regulations. In addition, we are of the opinion that new federal standards should apply prospectively only and that existing gaming operations should be grandfathered in.

Fees. Currently, one tribe continues to be entirely exempt from federal fees on Class III gaming, the Mississippi Band of Choctaw. All other tribes engaged in Class III gaming must pay fees without regard to their costs to regulate such gaming. We believe that this inequity should be addressed by Congress. However, we also are troubled by the federal fee provisions in S.399. As I have discussed, the Oneida Indian Nation's gaming facilities operate under a comprehensive tribal-state compact. We do not believe that we should have to pay fees to the Commission for services already being adequately performed at the local level.

We are encouraged that S.399 attempts to address this situation, however we are concerned that the legislation would not provide for any real reductions in fees. For example, the proposal addresses fees in the aggregate, not by tribe. Accordingly, there may be no direct correlation between any particular tribe's state and tribal regulatory costs and the amount in federal fees it must pay. The proposal also does not quantify the amount of fee reduction mandated by the statute. To say that the NIGC "shall provide a reduction" does not ensure any tribe that the reduction will be meaningful, or directly correlated to the services already being performed at the local level.

Moreover, the proposal makes a reduction dependent on the issuance of a certificate of self-regulation. It is not clear, however, whether the Commission is still planning on promulgating regulations addressing the self-regulation of Class III operations. Consequently, we would propose that the Commission revenue system be based primarily upon user fees.

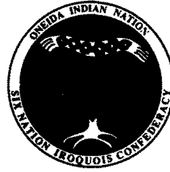
In addition, we have concerns with the proposed Indian Gaming Trust Fund. There is no explanation of need for this fund and the federal government's experience in managing Indian

trust funds is not encouraging. In his submitted testimony on this bill, Chairman Deer writes, "Currently, we are able to assess fees based on current information and needs. We are able to assess and collect fees and use them in the same fiscal year." (Testimony of Montie R. Deer, March 24, 1999, at page 6) The Chairman's testimony makes clear that a trust fund is not necessary. We believe a system where the Commission collects fees and uses them in the same fiscal year is the best approach to Commission funding. We do not see any justification for setting up and maintaining a new trust fund.

Seminole. The Indian Gaming Regulatory Improvement Act of 1999 would make substantial changes to IGRA. As a matter of policy, we cannot support a bill that would substantially amend IGRA without the inclusion of a remedy for the problem caused by *Seminole v. State of Florida.* In the wake of the *Seminole* decision, there has been no remedy for Indian tribes when states refuse to lawfully negotiate in good faith with Indian Nations. The result has been that Indian Nations are unable to negotiate compacts, or they are forced to negotiate compacts from an unequal bargaining position.

Conclusion. Mr. Chairman, we have serious concerns with S.399 and cannot support it in its current form. We would like to see real reductions in federal fees for those tribes that already have large regulatory costs, as we do. In addition, we believe that the best regulation of Indian gaming is at the local level. We are concerned that broadening the NIGC's regulatory role would result in unnecessarily duplicating work already performed by tribes and states and would create confusion and additional layers of bureaucracy. In addition, it would drain Indian tribes of the very resources that gaming was intended to provide to care of their people. We intend to have alternative language on some aspect of S.399 for your consideration and look forward to working with you and the rest of the Committee in a manner that is reasonable and fair to all interested parties.

ONEIDA INDIAN NATION



ONEIDA NATION TERRITORY, VIA ONEIDA, NEW YORK

The Oneida Indian Nation

The Oneida Indian Nation is a federally recognized Nation of 1,100 Members located in Central New York State. At one time, the Oneida people inhabited some 6 million acres of land stretching from the St. Lawrence River to what is now the New York-Pennsylvania border. During the Revolutionary War, the Oneida Indians, joined by the Tuscaroras, were the only members of the Iroquois Confederacy to side with the American colonists. The Oneidas played a crucial role in the strategically important Battle of Oriskany, one of the bloodiest battles of the war. Many Oneidas fought and died with their allies as the colonists sought freedom for the new nation. Since that time, Oneida blood has been shed to defend the United States in every war and conflict over the last two hundred years.

Only a few years ago, the Nation had been reduced to living on a 32-acre territory with no water or septic system, dilapidated housing, and a dirt, one-lane road. Unemployment was at a record high, and the surrounding region was in the midst of an economic recession. But the Nation had a vision for the future. The Nation's leadership began to look at the economic incentives available to a sovereign nation to find ways to inject new wealth and create jobs to benefit not only the Oneidas and their future generations, but to stimulate an economic and social revitalization of the surrounding communities. It was an ambitious goal, but one that currently is well underway. What a difference five years can make.

This year, the Nation is celebrating the fifth anniversary of the opening of Turning Stone Casino Resort, which was the catalyst that enabled the Oneidas to leap forward in their drive to achieve economic self-sufficiency. It also heralded the beginning of an economic revitalization for the entire region. Today, the Nation is the largest employer in two counties, providing jobs to almost 3,000 people, with a weekly payroll of approximately $1.5 million. Every penny of the proceeds from the resort and the Nation's other enterprises is spent to improve the Nation's ability to provide security to its Members. The following is a brief summary of these enterprises and the programs that benefit the Nation, its Members, and the surrounding region.

PO Box 1 • Vernon, NY 13476
(315) 829-3090 • Fax (315) 829-3141

Oneida Indian Nation Enterprises

Turning Stone Casino Resort—After five years of consistent growth and expansion, the "casino in a cornfield" has matured into a world-class resort. Highlights from 1998 include—

- Hector "Macho" Comacho and Tommy Small fought in a scheduled 10 round bout during the fifth annual Fame and Fortune Celebrity Boxing Night.
- ABC's "Wide World of Sports" came to the resort to air the International Boxing Federation Flyweight title match between Mark "Too Sharp" Johnson and Luis Rollin.
- Country music superstar Billy Ray Cyrus performed at Turning Stone
- Sports legends like baseball's Pete Rose, NASCAR driver Kyle Petty, and former NFL quarterback Joe Theismann visited Turning Stone.
- World-renowned entertainers Chubby Checker, David Brenner, Pat Cooper, Bobby Rydell and Smokin' Joe Frazier performed at Turning Stone Casino.

The Villages at Turning Stone—More than 20,000 guests from around the world stayed at the award-winning Turning Stone Recreational Vehicle Park. The 60-acre park has 175 campsites and several ponds for fishing, swimming and paddle boating. Its facilities also include a heated swimming pool, whirlpool spa, kiddie pool, and picnic areas and nature trails.

The Shoppes at Turning Stone—1998 marked the first full year of operation of the Shoppes at Turning Stone, which provide an upscale retail shopping experience for guests.

SavOn—A state-of-the-art automotive servicing facility was added to the growing regional chain of gas stations and convenient stores.

Oneida Textile Printing—The Nation's Oneida Textile Printing, which prints high quality T-shirts, sweatshirts, and other clothing, expanded its niche in the motor sports industry as an associate sponsor of a NASCAR racecar. The enterprise's logo was featured on the side Mike McLaughlin's number 34 Goulds Pump Chevrolet Monte Carlo. In addition, a partnership with Kmart, the nationwide discount retailer, resulted in the manufacturing and shipping of more than 62,000 T-shirts with designs that highlighted a mix of NASCAR Winston Cup drivers.

The Special Events Complex at Turning Stone Casino—The number and quality of events will only expand with the opening of the Special Events Complex at Turning Stone Casino Resort. The 82,000-square foot complex, with banquet facilities and show room, will make Turning Stone an ideal host for premier entertainment events. The 21,000 square foot banquet facility will seat as many as 2,300 people.

The Shenendoah Golf Course at Turning Stone. This year a golf academy and nine hole executive course and the first nine holes of an 18-hole course are scheduled to open. The

back nine of the course will open by spring 2000. The course is being designed by award winning golf architect Rick Smith.

Economic Impact of the Oneida Indian Nation

In 1998, the Oneida Indian Nation and its enterprises have become the largest employer in a two-county region. Unemployment levels in Central New York are lower than in the rest of the state—and the rest of the country as a whole. Last year, the Nation's payroll outlay totaled more than $82 million—a 49 percent increase over last year's outlay of $55 million. In addition, last year Turning Stone Casino Resort attracted more than 3.4 million visitors.

This economic resurgence generates substantial tax revenues for both New York State and the federal government. Employees pay an average of $4,847 annually in federal and state taxes. In 1998 alone, the employment base supported by the Nation—both directly and indirectly—paid more than $26.3 million in federal and state income taxes in 1998.

Tourism—The 3.4 million visitors to Turning Stone Casino in 1998 represents a 35 percent increase over 1997 and brings the total number of visitors since opening day to 12.8 million.

- Based on a formula used by the New York State Department of economic Development, visitor spending on lodging, food, visits to other attractions, transportation and car rentals in Oneida County totaled $98.7 million last year.
- The increasing number of cars passing through New York State Thruway booths at Exit 33, the exit adjacent to Turning Stone Casino Resort, resulted in more than $3.7 million in collected tolls. At one time, this was the least-utilized toll in the New York State Thruway system.
- The Nation contributed $750,000 to launch the "Land of Living Colour" campaign to promote Central New York as a year-round tourist destination.

Philanthropy—The Nation has always prided itself on trying to be a good neighbor. Because the Nation has now moved beyond the clutches of poverty, it can contribute to the surrounding community. Some highlights include:

- Silver Covenant Chain Grant Program. The Nation launched this program in 1996 to demonstrate its belief in the importance of education for all children while at the same time lessening the burdens on area tax payers as it reacquires its land base. This year, area school districts received more than $400,000 in quarterly disbursements from the Nation. This brings the total amount given since 1996 to $679,320.
- Municipal Water. Last year marked the completion of the Marble Hill Water Line project, which the Nation funded in collaboration with the Town of Vernon, the Cites of Oneida and Sherrill, Oneida county and Indian Health Services to provide a new water source for the area.
- TPA Funds. Last year, the Nation announced that it would not accept the more than $2.5 million in Tribal Priority Allocation funds from the federal

government. Instead, the Nation requested that those funds be redistributed to benefit more needy tribes.

Services to Members

The proceeds from the various Nation enterprises are used to provide safe and affordable housing, college education, and health care for Nation Members. In fact, every dollar of revenue is spent to ensure the security and well being of not just current Oneida Indian Nation Members, but to ensure the well being of future generations. These proceeds go toward providing care for elders, a head start for children, and hope for a people who have suffered from two centuries of poverty.

- *Ray Elm Children and Elders Center.* This new 35,000 square foot building fulfills two of the most important missions of the Oneidas: educating the Nation's young people and caring for our Elders.
- *Village of the White Pines.* The Nation spent $1.2 million to build 10 more townhomes in 1998, bringing the total number of townhomes in the Village to 20. Plans were also announced to build additional 27 single-family homes.
- *Mutual Help.* This program allows Members to lease Nation-owned homes with the option to buy.
- *Continuing Education.* More than 140 Oneida Members pursued higher education in 1998. And 15 Nation Members were able to earn high school diplomas
- *Education Resource Center.* This new facility will house a library, a language facility, and a career resource center and an adult learning center.
- *Caring for Elders.* More than 5,100 meals were served to the Nation's elders at the cookhouse in 1998. The program also provided more than 1,000 home-delivered meals.
- *Health Center.* In 1998, the Nation's Health clinic received more than 11,800 outpatient visits. In addition, the Nation provides comprehensive health insurance for all Oneida Indian Nation Members no matter where they live.

STATEMENT OF JACOB LONETREE
PRESIDENT OF THE
HO-CHUNK NATION
ON S. 399,
THE INDIAN GAMING REGULATORY ACT AMENDMENTS
BEFORE THE
SENATE INDIAN AFFAIRS COMMITTEE

Mr. Chairman and members of the Committee. I am Jacob LoneTree, President of the Ho-Chunk Nation. I appreciate the opportunity to submit this testimony on behalf of the Nation with respect to S. 399, the Indian Gaming Regulatory Act Amendments.

I. The Ho-Chunk Nation Supports S. 399.

The Ho-Chunk Nation supports S. 399. Our support is based on two fundamental principles. First, the core policies underlying the Indian Gaming Regulatory Act – the promotion of tribal self-government, economic development and self-sufficiency – must be preserved. Second, effective regulation is of paramount importance in assuring the continuation and long term viability of Indian gaming. In our view, S. 399 promotes both of these principles – maintaining the basic structure of IGRA, while enhancing the federal regulatory role. By providing for defined federal standards for Indian gaming, S. 399 would afford a Congressional resolution to one of the issues that has been at the heart of the debate over Indian gaming, and would do so in a manner that would strengthen Indian gaming for the future.

S. 399 would require the adoption of minimum federal standards. These standards would cover background investigations, monitoring and regulation of gaming, and internal control systems. All Indian gaming would be required to be regulated in a manner that "meets or exceeds the minimum Federal standards..." Sec. 10(b). These federal standards would provide an effective benchmark against which to measure tribal regulation of Indian gaming. The Nation is confident that we are currently regulating Indian gaming in a manner that would meet or exceed whatever minimum standards are ultimately developed. We trust that most tribes are also regulating gaming at such a level. At the same time, minimum federal standards would provide a well defined, federally-sanctioned measure to assure the public that Indian gaming is strictly regulated. Such additional assurance, though perhaps unnecessary in light of the strength of current tribal regulation, as a practical matter would serve to solidify public confidence and enhance the public perception of Indian gaming.

A. Effective tribal regulation would be preserved under S. 399.

The key point we want to stress is that the Nation is committed to the effective regulation of tribal gaming. The Nation's own regulatory system was established pursuant to both our Gaming Ordinance and Gaming Compact with the State of Wisconsin, and provides for extensive regulation in all of the areas to be covered by the federal minimum standards. The Ho-Chunk Gaming

Commission, created by the Ordinance, monitors all of the Nation's gaming operations, financial reports and audits, issues gaming licenses, refers apparent violations of the Ordinance to the Nation's Department of Justice for investigation, and may impose penalties for violations of the Ordinance, its orders, or licenses.

Background investigations and licensing. The Ordinance requires background checks on all key employees. This includes not only the General Managers, but all employees that have any direct or indirect access to cash, accounting, gaming devices, or security, including pit bosses, dealers and all persons with incomes above $50,000. The results of the background checks are sent to the NIGC prior to the issuance of a license.

The Ordinance sets forth requirements for obtaining a gaming license as a precondition for employment. All owners or controlling persons, management officials and key employees must be licensed. All management personnel must pay fees to cover the cost of licensing.

Internal Controls. The Nation has state-of-the-art security, surveillance, on-line accounting, and audit controls. More than 500 of our approximately 2,000 casino employees work in the security, surveillance and accounting areas to insure the integrity of the games, to protect our customers, and to protect the Ho-Chunk Nation.

Security/Surveillance. All licensed premises are patrolled by the Nation's security force and local law enforcement agents, and are subject to inspection by authorized tribal officials. All electronic games of chance must be laboratory tested to ensure that they fulfill the requirements prescribed by the Compact. No electronic game may be installed in our casinos unless the manufacturer certifies that the machine has been approved by the laboratory and conforms to the standards set forth in the Compact. In the interests of enhancing security the Nation has committed $1.5 million to upgrade its surveillance system in the most recently completed fiscal year, imposing requirements that exceed those set out in the Nation's Compact.

Our Compact also requires the Nation to conduct security audits on at least a bi-annual basis. The security auditors examine the physical systems and policies and procedures that govern: (1) access to non-public areas, (2) handling cash and redemption of winning electronic game tickets or credit statements issued by electronic games of chance, (3) protection against theft, loss or destruction of property and records, (4) the randomness, and reliability of our games, and (5) the integrity of software used in connection with financial audits and gaming.

Accounting and Audits. Pursuant to our Ordinance, the General Manager of each gaming operation must submit a monthly financial report to the Nation's Gaming Commission and the Nation's Treasurer and Legislature. These reports include itemized statements of the operation's gross receipts and all expenditures, including amounts paid for salaries and benefits, supplies, and equipment. The Nation must also maintain a variety of records, pursuant to our Compact, including records of daily cash transactions for class III games at each location and analytic reports that reflect the actual and theoretical hold percentages for electronic games of chance. An independent nationally

reputed accounting firm conducts all gaming audits and financial reports required under tribal, state and federal law for the Nation. Each of the Nation's electronic games of chance is connected to an on-line monitoring system. Each gaming related contractor providing supplies, services, or concessions in excess of $10,000 per year must be certified by the State after a background investigation. To better protect the honesty and integrity of the facilities' contracting activities, the Nation has expanded its own vendor licensing requirements to include a wider range of transactions than those covered by the Compact provisions

Our regulatory system shows that tribal governments have the capability to regulate gaming effectively on tribal lands. S. 399 would recognize this and permit our regulatory mechanisms to continue in place, while enhancing the federal backup role.

B. The economic benefits of tribal gaming would be preserved under S. 399.

The Nation also supports S. 399 because it would enable tribes to continue with the gains that have been made possible under IGRA – and would reject unfounded calls for Indian gaming to be destroyed by the imposition of state law on the tribes. Although most tribes do not conduct gaming, tribal gaming is the only vehicle by which many tribes and large numbers of Indians have been able to attain a significant measure of economic self-sufficiency. S. 399 would protect the extensive investment of tribes and non-Indians in the development and operation of the Indian gaming industry, and would preserve the tens of thousands of Indian gaming industry jobs that are spread through every area of the country. And, S. 399 would permit tribes to continue their fledgling efforts to use their own governmental revenues from gaming to provide better education, health care and other services so desperately needed to improve the lives of their people.

At Ho-Chunk, the gains we have seen through our gaming operations have been dramatic. Our once impoverished, struggling Indian community has grown tremendously in five years. Our gaming enterprises have created many new job opportunities for Nation members as well as non-Indians. The Nation now employs more than 2,800 people. Of these, approximately 25% are Nation members, 6% are Indians from other tribes, and the remaining 69% are non-Indians. In addition, as a result of the revenues generated by gaming, the Nation has been able to establish other business enterprises, including a construction company, a credit union, two motels, and three convenience stores, each of which has increased the number of job opportunities available to Nation members and others. The Ho-Chunk Nation is the largest employer in Jackson and Sauk Counties, where two of our casinos are located, and our employees live in and contribute to the local economies in communities scattered over more than 36 counties in Wisconsin.

Our ability to provide significant numbers of jobs has had a major impact on the local economy. For example, since opening our casinos, Jackson and Sauk Counties have seen reductions in their unemployment rates by nearly fifty percent (50%). Specifically, Jackson County's 8.3% unemployment rate in 1991 declined to 4.7% in 1996, while Sauk County's 1991 unemployment rate of 6.5% dropped to 3.6% in 1996.

The State of Wisconsin has seen other benefits from Indian gaming. For example, statewide expenditures for Wisconsin's Relief to Needy Indian Program saw a steady decline from $240,000 per month in January 1991 to approximately $130,000 per month in January 1994, and the elimination of the program entirely in 1995. The ability to provide jobs to those who previously had none is one of the greatest measures of the success of Indian gaming.

In addition, the revenues the Nation has received from its gaming enterprises has made it possible to provide much needed governmental services to our people. The most dramatic has been in the area of housing. Funded exclusively by gaming revenues, the Nation has established a Home Ownership Program that focuses on households with children and elders, and provides financing for home acquisition. Through this program the Nation has, in only 3½ years, assisted more than 300 Ho-Chunk households to obtain adequate housing. The Nation has also used gaming revenues to fund a Small Business Development Fund, providing loans to Indian entrepreneurs, promoting economic diversification and further decreasing the welfare rolls.

In addition, the Nation has used its gaming revenues to provide a wide range of health, education and social services to the Nation's members – work that has been complicated by the fact that the Nation's land base and its more than 5780 enrolled members are scattered over a 14-county area in Wisconsin and throughout the United States. The Nation's gaming revenues have allowed the Nation to construct and renovate 6 Head Start centers, and to build and operate a child care facility. Two additional child care facilities are in the planning and development stages. The Nation has also used gaming revenues to establish and operate three community centers for the elderly. These centers provide a place for elders not only to socialize, but also to receive nutritious meals and health care services. Gaming revenues have further enabled the Nation's Tribal Aging Unit to transport elders to health care services, to make their homes handicap accessible, and to plow their driveways in winter.

With gaming revenues, the Nation is also able to offer educational programs and opportunities. The Nation established and maintains ten Study Centers which provide computer training and other study skills to Nation youth. Gaming revenues fund education programs offered to adults by the Nation's Department of Labor, including its Job Skills Bank, Adult Basic Education Program, and vocation/technical training.

Gaming revenues have also been essential to providing health care and social services. For example, gaming revenues fund counseling services provided by the Nation's mental health program and in-patient care through the Nation's ADOA (Alcohol and Other Drug Abuse) treatment program. A Wellness Center, which will provide fitness and health care services to supplement the Nation's existing Health Clinic and area health offices, is near completion. In addition, the Nation has used its gaming revenues to fund a health insurance program for its elders and to pay for direct patient care not covered by the Nation's clinic, as well as health insurance premiums, pharmacy and medical supplies.

Gaming revenues have enabled the Nation to improve infrastructure serving not only Ho-Chunk communities, but also the nearby non-Indian communities. For example, the Ho-Chunk Nation has established and maintains a series of community wells and wastewater treatment facilities. One of these, the Wazee Wastewater Treatment Plant near Black River Falls was developed as part of an intergovernmental agreement with the State of Wisconsin's Department of Corrections and serves the new Jackson County Correctional Institution, as well as the Nation's communities and enterprises. The Nation is currently constructing two new wastewater treatment facilities. The Nation has also used its gaming revenues to rebuild and repair roads, and since 1992 has donated a substantial sum of money to local communities in connection with schools, fire rescue, and disaster relief.

At the same time, while gaming has brought significant benefits, it must be remembered how difficult our circumstances were prior to gaming and how much more remains to be done. Despite our recent gains, by whatever measure – income, housing, crime, health, education – the standard of living for Indians remains drastically below what it should be, and far below what other Americans enjoy. As Senator McCain has stated:

> Indian families live below the poverty line at rates nearly three times the national average. Nearly one of every three Native Americans lives below the poverty line. One-half of all Indian children on reservations under the age of 6 are living in poverty.
>
> On average Indian families earn less than two thirds the incomes of non-Indian families. As these statistics indicate, poverty in Indian country is an everyday reality that pervades every aspect of Indian life. In this country we pride ourselves on our ability to provide homes for our loved ones. But in Indian country a good, safe home is a rare commodity.
>
> There are approximately 90,000 Indian families in Indian country who are homeless or underhoused. Nearly one in five Indian homes on the reservation are classified as severely overcrowded. One third are overcrowded. One out of every five Indian homes lacks adequate plumbing facilities. Simple conveniences that the rest of us take for granted remain out of the grasp of many Indian families.
>
> Indians suffer from diabetes at 2 ½ times the national rate. Indian children suffer the awful effects of fetal alcohol syndrome at rates far exceeding the national average. Perhaps most shocking of all, Indian youth between the age of 5 and 14 years of age commit suicide at twice the national rate. The suicide rate for Indians betwee the ages of 15 and 24 is nearly three times the national rate.

141 Cong. Rec. S11881 (August 8, 1995)(Statement of Sen. McCain).

These problems continue to exist for Ho-Chunk Nation members. While the Nation has made significant strides towards the improvement of the lives of its people, the Nation continues to confront a legacy of problems in the areas of housing, employment, education and health. For example, although the Nation enterprises have created job opportunities, the embedded conditions of poverty including lack of education and poor health have resulted in continuing high levels of unemployment among Nation members. According to a Tribal census taken of 76% of the Ho-Chunk Nation's households, as of August 1995 31% of Ho-Chunk heads-of-household were unemployed or employed in only seasonal work, and 64% of Ho-Chunk households had incomes less than 50% of the median county income.

Housing continues to be a critical need for the Nation. Even with what we have accomplished, our Home Ownership Program still consistently has a waiting list of over 1000 families. And according to the Ho-Chunk Nation's 1995 census, 24% of the respondents identified themselves as homeless – that is living with extended families or in available shelters – and an additional 17% reported living in overcrowded housing.

Tribal education levels, although on the increase, remain significantly below state and national averages. For example, according to the Nation's census, in 1990 the tribal-wide high school drop out rate was 30.7%. As of 1995, only 68% of Tribal heads of households were high school graduates. Nation members also suffer from significantly high rates of chronic disease. For example, a 1990 study conducted by the University of California, Berkeley, School of Public Health, of 99 Nation members over age 20 tested, 22% were diabetic. Of those over age 40, 39% were diabetic. In contrast, the prevalence of diabetes nationwide was only 6.6%.

The few years of gaming revenues that we have experienced have not come close to eliminating the problems that have plagued us through two centuries of failed federal policies toward tribes. For this reason, it is vitally important that gaming – the one activity that has provided us with some measure of hope for a brighter economic future – not be taken away from us. S. 399 recognizes the need to preserve the basic legal framework of Indian gaming contained in IGRA, as a mechanism to provide the tribes with continued opportunities to achieve some economic advancement and to improve the quality of life in Indian country. For this reason, as well, we support S. 399.

II. The compacting process and the 10th and 11th Amendments.

While supporting S. 399, the Nation also urges inclusion of a provision that would establish a process to resolve impasses that may arise over gaming compacts. Such an amendment would further what we see as the key features of the bill – that it reaffirms the overall policy and promise of IGRA as originally enacted, while enhancing the federal regulatory role, without undercutting the primary role of the tribes.

As the Committee has recognized, "IGRA reflected a compromise." S. Rep. No. 241, 104th Cong., 2d Sess. at 7 (1996). In IGRA tribes lost their sovereign right absolutely to control gaming on Indian lands – a right that the Supreme Court had confirmed in the Cabazon case. Under the

IGRA compromise, the tribes obtained the right to undertake Class III gaming on Indian lands only when conducted pursuant to a tribal-state compact. The requirement that tribes negotiate with states to undertake Class III gaming was balanced with a right to bring suit in federal court against states that defy the Act by refusing to negotiate in good faith. But, under the Supreme Court's decision in the Seminole case, tribes have been stripped of the benefit of the bargain that Congress struck in IGRA, since the remedy Congress provided to protect against unfair action by a state blocking Indian gaming is only available if a state agrees to it. In short, Seminole invites states to sabotage the carefully balanced compacting process contained in IGRA. This is a result that Congress clearly did not intend in enacting IGRA, and it is one that is manifestly unfair to tribes.

To be sure, in many states the IGRA process has worked, and tribes and states have entered compacts. Last year, the Ho-Chunk Nation renegotiated our compact with the State of Wisconsin. While the negotiations were concluded and the Nation was able to continue our gaming operations, the negotiations were done in environment where the Nation was severely hampered by our lack of opportunity to challenge the State's insistence that the Compact negotiations include issues unrelated to gaming. This was exactly the scenario that Congress intended to avoid when it enacted IGRA.

In this regard, we share Vice-Chairman Inouye's frustration with the states' intractable opposition to any proposal that would provide tribes an opportunity to challenge a state's unreasonable demands. Instead of proposing any resolution to this issue, which would seem to be in the states' and tribes' interest, the states are insisting that a myriad of unrelated issues be addressed first. In his latest letter to Chairman Allen and Mr. Hill, Governor Dean of Vermont insists that in order to engage in a tribal-state dialogue to resolve issues of concern related to gaming, that tribes must agree to negotiate on matters wholly unrelated to gaming, including trust land issues, the collection of state taxes, and federal recognition of tribes. It is unfair to hold the tribes' rights under IGRA hostage to state concerns in unrelated areas.

We urge the Committee to address this matter and provide a mechanism for enabling tribes to exercise their rights under IGRA in circumstances where the tribe and state can not come to agreement by means of a compact within a reasonable time. An amendment to correct the 10th and 11th Amendment problem would be consistent with IGRA's original formulation that tribes and states should have the opportunity to find common ground on Indian gaming, but that if agreement could not be achieved, the Secretary of the Interior would be authorized to act.

We would also support Vice-Chairman Inouye's proposal that as a condition to entering into the compacting process states and tribes would be required to waive their governmental immunity to enable federal courts to resolve impasses arising out of compact negotiations. As we understand the Vice-Chairman's proposal, if a state failed to waive its immunity at the outset, then the state would no longer have the right to participate in the compacting process. Tribes could then seek to implement a compact with a neutral third party. We would support the Secretary of the Interior, or some other appropriate entity being the neutral party.

Conclusion

We thank the Committee, and in particular Senators Campbell, McCain and Inouye, for their outstanding leadership and perseverance in dealing with the complex issues surrounding Indian gaming. We support the enactment of S. 399, which protects the integrity of IGRA and provides a beneficial framework for enhancing the regulation of Indian gaming.

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