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DISCUSSION DRAFT LEGISLATION REGARDING THE REGULATION OF CLASS III GAMING

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on June 28, 2007	1
Statement of Senator Dorgan	1
Statement of Senator Inouye	74
Statement of Senator Murkowski	3

WITNESSES

Allen, W. Ron, Chairman, Washington Indian Gaming Association and Chairman, Jamestown S'Klallam Tribe	54
Prepared statement with attachments	56
Hogen, Philip N., Chairman, National Indian Gaming Commission	5
Prepared statement with attachments	7
Pearson, Myra, Chairwoman, Great Plains Indian Gaming Association; Chairwoman, Spirit Lake Sioux Tribe; accompanied by Kurt Luger, Executive Director, Great Plains Indian Gaming Association	24
Prepared statement with attachments	27
Shelton, Dean, Chairman, California Gambling Control Commission; on behalf of Governor Arnold Schwarzenegger	22
Prepared statement	23
Welsh-Tahbo, Valerie, Council Member, Colorado River Indian Tribes Tribal Council	65
Prepared statement	67

APPENDIX

Burris, Tracy, Gaming Commissioner of the Chickasaw Nation, prepared statement	79
Crooks, Stanley R., Chairman of the Shakopee Mdewakanton Sioux Community, prepared statement	81

DISCUSSION DRAFT LEGISLATION REGARDING THE REGULATION OF CLASS III GAMING

THURSDAY, JUNE 28, 2007

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

The Committee met, pursuant to notice, at 9:30 a.m. in room 485, Senate Russell Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. I will call the hearing to order. This is a hearing of the Indian Affairs Committee on a draft piece of legislation regarding the regulation of Class III gaming.

I want to begin on time. We will have a vote somewhere around 10:45 a.m. to 11 a.m., and we may have to break at that point, but I want to begin on time and see how long this will consume this morning.

We are going to hold a hearing today to hear views on draft legislation to regulate Class III Indian gaming. Let me make clear that you have seen from the array of hearings that we have held in this Committee, the principal and great concerns that I have on Indian issues deal with Indian education, health care, housing, law enforcement, methamphetamine, teen suicide, and similar issues. That will remain our consuming ambition on this Committee, to address those issues as a primary responsibility.

I am holding a hearing today on a draft piece of legislation dealing with the issue of regulation of Class III gaming. Let me make a few early points. Last year, a Federal court held that the Indian Gaming Regulatory Act did not provide the National Indian Gaming Commission with the authority to regulate day to day operations of Class III Indian gaming. Specifically, the court held that the commission could not enforce minimum internal control standards on tribes' Class III gaming operations. These are the standards that were designed to regulate the day to day operations of a gaming facility, including how cash is handled, surveillance, customer credit, and many other aspects of a gaming operation's daily activities.

Indian gaming has been a great success for many tribes, literally bringing tribes a substantial additional stream of revenue with which to address many of their social problems and with which to

provide needed investment in areas that are of interest and concern to tribes and tribal members. The industry has come a great distance from when the Regulatory Act was first passed by Congress, a great distance from the Cabazon decision by the Supreme Court.

Last year, the gaming industry for Native Americans generated over $25 billion. Ninety percent of this revenue was generated from Class III gaming, the category of Indian gaming that includes slot machines, house banked card games, and so on. This is the category of gaming that the Federal court ruled that the National Indian Gaming Commission lacked authority to regulate on a day to day basis.

Now, I believe that the regulation of Indian gaming, including adequate internal controls within a gaming facility, is critical to the preservation, integrity and success of Indian gaming. I think all stakeholders in this industry agree with that statement. I also believe that some entity separate from the gaming facility owner should have regulatory oversight over the facility.

That doesn't mean that we should over-regulate the industry, but there should be two layers, in my judgment, of regulation. The first layer should be the Tribal Gaming Commission and the second should be the Federal Government or State Government providing effective oversight and regulation.

Now, I have offered a draft piece of legislation. We have not introduced it. I have made it a discussion draft for a very specific reason. I am holding a hearing on the discussion draft. We have invited select witnesses to testify and we would invite anyone else who wishes to submit testimony on that draft to submit it within 2 weeks of this hearing, and we will consider that as well.

The draft proposal is a proposal that would provide a different approach. As you know, a proposal during the last Congress was offered. It was much broader than the draft discussion proposal I have offered here. But the discussion and decision about where we will move to address this will depend on what we learn at these hearings and what we hear from the stakeholders.

I do make the point that I understand the Colorado River Indian Tribe's intention in bringing their lawsuit to clarify the authority of the National Indian Gaming Commission. The tribe had every right to do that. The result of the case I think has created some gaps in the regulation of Indian gaming, and those gaps are of concern to me.

The purpose of this hearing and draft legislation and the discussion of this is not to imply or suggest in any way that there is a systemic problem with respect to Indian gaming. I don't believe that exists. I certainly don't ever want it to exist, and the discussions about how we make certain there is effective regulation in every area here is to make certain that we don't have a problem in the future.

As I indicated when I started, the priorities of this Committee will remain priorities dealing with healthcare, housing, education, teen suicide, methamphetamine, law enforcement and the range of issues that we have spent a great deal of time working on. But I did want to continue a discussion about the issue of the regulatory

authority with respect to the Colorado decision and its impact on Indian gaming, and that is the purpose of this hearing.

We don't know what we will do following this hearing because it will take some time to digest and try to understand and think through the comments that we will hear today.

I am pleased that the Acting Vice Chair, Senator Murkowski, is with us, and I would call on her for any opening comments.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate your comments in laying out the priorities here as the Chairman of this Committee.

Since the days of President Nixon, it has been this Nation's policy to encourage Indian tribes to take control of their own destiny. President Nixon ushered in the Federal policy of self-determination over 30 years ago, and that legacy of self-determination is not limited to the compacting and contracting of government programs. It has also led many tribes to take control of their economic destinies, to find ways to stimulate economic development within Indian Country.

Some of these economic development efforts have succeeded. Others have failed. And we all know that this isn't surprising since the odds against success of any new business venture are pretty high. But I am told that no single industry has succeeded in Indian Country as well as gaming, conducted under the regulatory framework of the Indian Gaming Regulatory Act. More than 24.5 million Americans have visited tribal gaming establishments and we know that that number is growing.

The National Indian Gaming Association reports that 225 tribes in 28 States are involved in Indian gaming activities. These enterprises have created 670,000 jobs, generated $8.6 billion in Federal taxes, $2.4 billion in State payments, and more than $100 million in payments to local governments. The data strongly suggests that Indian gaming is the dominant driver of economic opportunity in many corners of Indian Country.

The issue before the Committee today, in my view, is whether the current system for protecting the integrity of Indian gaming is adequate. Is it adequate to ensure the integrity of the tribal gaming enterprise? Is it adequate to ensure that tribal casinos do not fall vulnerable to organized crime and money laundering? And is it adequate to ensure that Indian gaming operations maintain the level of public confidence that brings more than 24.5 million Americans to their doors?

The current regulatory system has been profoundly influenced by the Colorado River Indian Tribe's decision. That decision does not permit the National Indian Gaming Commission to require that Class III gaming establishments adhere to the commission's standards of minimum internal controls. Now, I understand that some who will testify today think that that is a good thing. They say that the existing two-tiered system of tribal regulation and State enforcement of tribal State compacts adequately protect the interests of the tribe and the public.

I have heard concerns that the National Indian Gaming Commission, if given a mandate to regulate Class III gaming, will see the opportunity to impose broader, more proscriptive controls on the tribes over and above those in the minimum internal control standards, and pass those costs along to the regulated entity.

But I have also heard concerns that uniformity in the regulation of gaming is important to maintain that public confidence and to allow the tribes to continue to grow their enterprises. We have been asked to consider the possibility that in some instances, reliance on State tribal compacts for regulatory oversight may not be adequate. Ideally, the tribes, the States and the NIGC would reach consensus on a regulatory scheme, a regulatory scheme that ensures compliance with applicable laws and that maintains public confidence in tribes and their enterprises.

I don't know whether this is possible, but I do commend you, Mr. Chairman, for bringing a very diverse group of voices to the table to pursue that question. I am approaching the hearing this morning with an open mind. I look forward to the testimony and to the opportunity to question the witnesses.

The CHAIRMAN. Senator Murkowski, thank you very much. I appreciate your service as Acting Vice Chair. As we have said previously, all of us continue to miss and will miss our late colleague, Senator Craig Thomas, the former Vice Chair, but I am very pleased that we have an Acting Vice Chair that has a background on Native American issues and she has a very special interest with respect to Alaska Natives. So I think this will be a real contribution to our Committee as well.

Because we have a vote that will occur about 11 o'clock, and if we break then, it will be a rather lengthy break because this is a consequential vote that is going to go on for some while, what I am going to do is ask the witnesses to adhere to the 5-minute limit. What we do, as you know, for our Committee witnesses as a routine matter at every hearing is say that your entire statement will be made a part of the record, and we ask that you summarize.

I am going to ask the first two witnesses, the Honorable Philip Hogen, Chairman of the National Indian Gaming Commission, and Dean Shelton, Chairman of the California Gambling Control Commission, who is testifying on behalf of Governor Arnold Schwarzenegger, I am going to ask you to testify first.

Then before we ask questions, with the permission of Senator Murkowski, I am going to ask the three additional witnesses, and one of our four witnesses has canceled because of an airplane problem, to come forward and provide their testimony, following which I would like to have all five at the table so that we may ask questions of all of the witnesses. Perhaps we will complete the hearing by 11 o'clock. My hope is that that will be the case.

We have trap doors under the witness chairs, and I have a button.

[Laughter.]

The CHAIRMAN. I have a button that I am able to push after 5 minutes. Mr. Hogen if you will keep that in mind.

[Laughter.]

The CHAIRMAN. Let me be serious and thank you for your chairmanship of the National Indian Gaming Commission. We appre-

ciate that you have testified here a good number of times. We appreciate your coming today. You may proceed.

STATEMENT OF PHILIP N. HOGEN, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

Mr. HOGEN. Good morning and thank you, Chairman Dorgan and Senator Murkowski. I bring you greetings on behalf of the National Indian Gaming Commission. Commissioner Choney is out in Oklahoma today. Commissioner DesRosiers is meeting with our Tribal Advisory Committee working on minimum internal control standards out at a meeting in Dallas. So they can't be here today.

For the most part, I think regulators, like children, ought to be seen and not heard. But nevertheless, I am here again and I may be sounding like a broken record because I have been here a number of times talking about a similar concern, but it may be a little more shrill today and a little more urgent.

I think much of what I want to say will be echoed by the tribes. That is, while IGRA, the Indian Gaming Regulatory Act, was an intrusion into tribal sovereignty, that tribal sovereignty for the most part is still intact, and tribes ought to fight to protect that and ward off needless intrusions into sovereignty.

IGRA intended that the tribes be the primary regulators of Indian gaming, and they are. They are spending significant dollars providing for this regulation, not just the regulation they do, but reimbursing States for the role they play under compacts and being the sole funder of the National Indian Gaming Commission.

Most tribes are desperate for dollars to fund their programs and meet the needs of their tribal members. And so tribal gaming regulation that they pay for needs to be efficient, and we will strive to help them do that. I think overall the quality of tribal gaming regulation is very good. I think where I may differ from some of my tribal counterparts is whether and to what extent the overall integrity of regulation or tribal gaming is enhanced by having an outside, perhaps more objective party, participate in that regulation.

When there is unity between the ownership and the regulation of a gambling operation, I think there is some cause for concern. When the Indian Gaming Regulatory Act was written back in 1988, Bingo was the primary vehicle. NIGC was given a role with respect to the regulation of it. But as it turned out, what developed in terms of the Indian gaming industry is most of it is now casino gaming, Class III gaming. There is a role pursuant to the compact process for State participation in that regulation.

However, that State participation is very uneven. That is, there are places where States intensely participate, spend a lot of money, the tribes' money, participating in the regulation pursuant to the compacts, and other places where the States really didn't show up. There are a number of reasons for that. I think primarily the reason is when it got started, the States really had no experience in the regulation of casino gaming. There were places they did, in Nevada and New Jersey, but back in 1988, most States didn't have casino gaming.

Now, that has changed over the years, but the State regulatory role has not caught up and in many cases those tribal-State com-

pacts are carved in stone. Some of them are written in perpetuity and the State can't change their role.

So it was in that environment back in the 1990s when there was this tremendous growth of Indian gaming, that the National Indian Gaming Commission saw fit to draft minimum internal control standards, which we have done. They gave us the yardstick with which to measure the performance in the regulation of tribal gaming in Class II and Class III, and a rulebook the tribes could play by. Under that structure, Indian gaming grew to over a $25 billion a year industry, as the numbers were reported last year.

So I think there is still a need for a strong uniform set of Federal standards to govern or help govern this major part of tribal gaming regulation. The Colorado River Indian Tribes, the CRIT decision, took that tool away from the National Indian Gaming Commission, and I think we need it back. I don't think the system was broken. I don't disagree that the court made a wise decision, but the thing is, what was kind of on the drawing board I think changed.

Now, we have a huge Class III casino gaming industry out there, and in many cases the States are not equipped or are not inclined to participate, and it is useful to have somebody else, to wit, the National Indian Gaming Commission, there to give validity to that good job that the tribal gaming commissions do.

When we find ourselves in different models, we tailor our involvement. That is, in Arizona and Washington State, where there is great intensive State participation in the regulation, we are less involved in those kinds of things.

Now, it is said that there are three levels of regulation and there are. This chart that we have over here, and maybe Joe you can put that up, shows the dollars that tribes spend on this. You can see that of course the vast majority of the $400 million the tribes spend to regulate is for their own primary tribal regulation. And then they spend about $70 million reimbursing States for what they do. We are there on the top, $12 million in the year that that was reported. So we are hardly big enough to be dangerous, but we do play a significant role. We just validate that good job, and where there are soft spots, where there are weaknesses, we step in and play that role.

So if a tribe is doing a great job, and the State is helping, that is great. But if down the street in the next State, some scandal occurs, it is going to affect all of the Indian gaming and that is where we give them some insurance. Now, section two of the draft legislation would in effect restore what we were doing from 1999 to 2006, and we are very supportive of section two.

Section three would create this Committee to, in effect, permit States and tribes to opt out if they have an arrangement that would satisfactorily address that, but I think there are some concerns about the way it is written. We already tailor our role with respect to the State involvement. We have a lot of other Class III duties like approving ordinances, monitoring use of gaming revenue. We don't know how this section would affect that. We don't really know what that committee would write. Would they write their own minimum internal control standards or what?

So we think we need that authority back. The industry will be stronger if we get it. But in terms of having that committee there,

we would like an opportunity to discuss that. Tribal sovereignty is the strongest today as it has been in 100 years, primarily because of Indian gaming. We have been part of the reason that occurred because of the confidence the public has in the gaming, and we want to keep it that way if we can.

Thank you.

[The prepared statement of Mr. Hogen follows:]

PREPARED STATEMENT OF PHILIP N. HOGEN, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

Good morning Chairman Dorgan and Members of the Committee.

My name is Philip Hogen, and I am a member of the Oglala Sioux Tribe from South Dakota. I have had the privilege of chairing the National Indian Gaming Commission (NIGC) since December of 2002.

Thank you for inviting me to discuss the draft legislation regarding the regulation of Class III gaming. I would like to offer some preliminary thoughts about it, and as you will see, those thoughts are informed by the role NIGC plays in the regulation of Class III gaming and the impact of the *Colorado River Indian Tribes* decision on NIGC's regulation of the Indian gaming industry.

The NIGC strongly supports Section 2 of the bill, which clarifies NIGC's regulatory authority over Class III gaming. In addition, NIGC has some concerns about Section 3 of the bill, which sets up a new mechanism for the regulation of Class III gaming. I must emphasize that those concerns are preliminary as the Commission is still reviewing and analyzing the draft. We stand ready to work with the Committee and the Committee staff to further review this concept and to best produce an effective structure to insure the continued integrity of the Indian gaming industry and its regulation.

The Draft Legislation

The draft legislation contains three short sections. The first simply names the act. The second section is what we have come, internally, to call a "CRIT fix." This refers to a recent decision by the United States Court of Appeals for the District of Columbia Circuit in *Colorado River Indian Tribes v. National Indian Gaming Commission,* 466 F.3d 134 (D.C. Dir. 2006). The second section would clarify that NIGC generally has the same oversight authority over Class III gaming that it has over Class II gaming and specifically that it has authority to issue and enforce MICS for Class III gaming operations.

The third and final section of the proposed legislation provides an alternative to NIGC regulation over some parts of Class III gaming. A "Regulatory Committee" appointed by the Secretary of the Interior would draft "minimum standards" for the regulation of Class III gaming. If NIGC then certifies that the regulatory standards in a tribal-state gaming compact meet or exceed those "minimum standards," this "shall preempt the regulation of Class III gaming by the Commission" at the operation that is the subject of the compact.

As to Section 3, the Commission has not yet fully analyzed its provisions, but I have a few preliminary observations. We will send you a further and more complete analysis shortly.

I am aware of the appropriate concern that tribes and states may have regarding how far NIGC might extend its oversight into Class III gaming activities if the changes proposed in Sections 1 and 2 of the draft legislation are enacted. I believe that the "Class III Regulatory Committee" created by Section 3 of the draft legislation is there, in part, to address this concern. The Committee would identify criteria that tribal-state compacts could meet and thus preclude NIGC's further participation in the oversight of that tribe's Class III gaming.

First, I think that history and past practice demonstrates that NIGC has always been careful to tailor its oversight of compacted gaming to complement, not duplicate, the regulation that compacts provide. As noted above, there is much diversity among compacts, and no doubt as future compacts are written, they too will vary from those now in effect.

NIGC is a relatively small organization, and the depth and breadth of Indian gaming already tax its resources. Thus, where adequate oversight arrangements are addressed and implemented by compact, the Commission is careful not to replicate them. This practice saves budget dollars for the Commission and of course saves dollars for the tribes whose fees ultimately fund the Commission's efforts.

Second, history has revealed that in a number of instances, what is provided for in the compacts (in many cases in permissive rather than mandatory form) by way of a State oversight role is implemented only minimally, if at all. In those instances, NIGC has found it appropriate to be more engaged than it otherwise would. Were Section 3 of the proposed legislation enacted, it is possible that standards written by the Regulatory Committee could be met in approved compact language, but if those standards are not implemented, a serious regulatory oversight vacuum would develop, thereby impairing the integrity of the compacted operation.

Third and finally, IGRA tasks NIGC with many regulatory tasks for Class III gaming that are wholly independent from the NIGC MICS. These include:

- Approve and enforce provisions of Class III gaming ordinances.
- Approve and ensure compliance with Class III management contracts.
- Ensure that Class III gaming is conducted in conformance with a compact.
- Ensure that Class III gaming is occurring on Indian lands.
- Ensure that net gaming revenues are used for the purposes outlined in IGRA.
- Ensure that tribal revenue allocation plans are followed.
- Ensure that tribes have the sole proprietary interest in their gaming activity.
- Ensure that tribes provide annual audits to the NIGC.
- Ensure that tribes issue facility licenses for their gaming facilities.
- Ensure that gaming facilities are constructed and operated in a manner that adequately protects the environment, public health and safety.
- Ensure that background investigations are conducted on primary management officials and key employees of gaming operations.

Presumably there is not an intention in the draft legislation to displace NIGC in those areas, but if the concept of a Regulatory Committee remains in the legislation, clarity should be brought to this area.

Draft Legislation § 2, CRIT fix

As to Section 2, the need for a CRIT solution is paramount for the NIGC. I have testified to the facts and figures many times before your Committee. Recently, I testified before the California General Assembly Government Organization Committee on the need for MICS in an effective regulatory regime.

The battle in California over the need for MICS in their new compacts highlights the importance of the Federal role in a balanced approach to the regulation of Indian gaming.

IGRA envisioned a three legged stool, where balance depended upon all three legs. With the NIGC leg now off the stool, the imbalance has the very real prospect of upsetting the gains gaming has made for Indian people.

In my view, what is at stake is the integrity of Indian gaming. This is not meant to criticize either the tribes or the states. Rather, it is a statement of the obvious. Gaming depends on the public perception and belief in the integrity of operations they choose to patronize. A balanced regulatory approach includes: (1) tribes as the primary regulator with the day-to-day responsibilities and heavy lifting; (2) states having whatever role is provided in the tribal-state compact, usually oversight insuring state policy and applicable laws are adhered to as well as assuring that any revenue sharing payments agreed to are properly calculated and made; and (3) NIGC having the role of making sure that the overall regulation is consistent and fair. Consistent, fair and stable regulation and oversight will continue to foster the growth of Indian gaming.

The model envisioned by IGRA worked for 18 years producing $25 billion in gaming revenue in 2006. The NIGC has the advantage of seeing Indian gaming all over the country enabling it to spot trends and react to negatives in ways that tribes and states are not usually equipped to do. Further, the NIGC provides a clearinghouse for vital information sharing between the three parties and other stakeholders, such as law enforcement and public safety agencies.

It is the combination of the three that provides the balanced approach that has allowed Indian gaming to succeed and thrive. The proposed legislation in Section 2 addresses this concern by clearly giving the NIGC authority to promulgate and enforce MICS for Class III gaming.

As background about the CRIT case, in early 2001, NIGC attempted to audit a Class II and III gaming operation owned by the Colorado River Indian Tribes (CRIT). NIGC was looking to check compliance with minimum internal control standards or "MICS," 25. C.F.R. Part 542.

The MICS provide, in considerable detail, minimum standards that tribes must follow when conducting Class II and III gaming. They are intended to embody ac-

cepted practices of the gaming industry. To choose a few of many possible examples, the MICS prescribe methods for removing money from gaming machines and gaming tables and counting it so as best to prevent theft; they prescribe methods for the storage and use of playing cards so as best to prevent fraud and cheating; and they prescribe minimum resolutions and floor area coverage for casino surveillance cameras. Attached as Exhibit 1 is a copy of the MICS table of contents, which provides a more detailed overview of their comprehensive scope. More than this, though, the MICS attempt to embody overall controls that reasonably assure gaming transactions are appropriately authorized, recognized and recorded. They thereby assure the integrity of games and safeguard tribal assets, and they do so without displacing internal control requirements that tribes and states have negotiated into their compacts. In the event of a direct conflict between the terms of a compact and the MICS, the MICS specifically state that it is the compact terms that prevail and bind the operation.

In any event, CRIT refused to give NIGC access to its Class III gaming records. The NIGC Chairman responded with a notice of violation and civil fine. CRIT appealed to the full Commission, which upheld the Chairman's actions. On appeal, the District Court for the District of Columbia granted summary judgment in favor of CRIT, finding that IGRA does not confer upon NIGC the authority to issue or enforce MICS for Class III gaming. The District Court found that while IGRA grants NIGC authority over certain aspects of Class III gaming, MICS are not among them.

On October 20, 2006, the U.S. Court of Appeals for the District of Columbia affirmed the District Court. Though some read the CRIT decision to say that the NIGC has no authority over Class III gaming, the actual holding was narrow: Congress did not give the NIGC the authority to promulgate minimum internal control standards for Class III gaming.

Background

I would like to attempt to explain, in somewhat more detail, my position through the history of the development and implementation of the regulation of this segment of the Indian gaming industry; the tools NIGC has developed and used over the years in which Class III gaming has grown to its present size; how the aforementioned court ruling has had a significant impact on this regulation; and how I think legislation might help insure that the integrity in the operation and regulation of Class III gaming, which has permitted it to become so successful, might be best maintained. As NIGC recently reported, in 2006, tribal gaming generated over $25 billion in gross gaming revenues. While precise numbers are not required in this connection, NIGC and those who closely watch the Indian gaming industry estimate that nearly 90 percent of this revenue is generated by compacted, Class III gaming—far and away the dominant means by which tribes generate gaming revenues.

History of IGRA

It is the NIGC's belief that in IGRA, Congress intended that the Federal entity established to provide oversight of Indian gaming would have an oversight role with respect to the dominant form of gaming in the industry, whether bingo in 1988 or Class III gaming now. If the NIGC's role with respect to its minimum internal control standards and Class III gaming is not clarified by the courts or legislation, most tribes will continue to operate first-rate, well-regulated facilities, and their tribal gaming regulatory entities will perform effectively. Others likely will not.

When the NIGC came on the scene in October 1988, it believed—and still believes—that its mission was to provide effective oversight of tribal gaming. IGRA states that it established the NIGC as an independent Federal regulatory authority over Indian gaming in order to address Congressional concerns about gaming and to advance IGRA's overriding purposes. These are to ensure that tribal gaming promotes tribal economic development, self-sufficiency and strong tribal governments; to shield gaming from organized crime and other corrupting influences; to ensure that the tribes are the primary beneficiaries of their gaming operations; and to ensure that gaming is conducted fairly and honestly by both the tribal gaming operations and its customers. IGRA therefore authorizes the Chairman to penalize, by fine or closure, violations of the Act, the NIGC's own regulations, and approved tribal gaming ordinances.

Historically, casino gaming has been a target for illicit influences. Nevada's experience provides a classic case study of the evolution of strong, effective regulation. It was not until Nevada established a strong regulatory structure—independent from the ownership and operation of the casinos themselves—and developed techniques such as full-time surveillance of the gaming operations that most potentialities for criminal involvement were eliminated from the gaming industry

there. All jurisdictions that have subsequently legalized gaming have looked to Nevada's experience to help guide their own regulation and oversight.

Regulation of Tribal Gaming

IGRA mandates that tribes may conduct Class III gaming only in states where such activity is permissible under state law and where the tribes enter into compacts with states relating to this activity, which compacts require approval of the Secretary of the Interior. Compacts *might* include specific regulatory structures and give regulatory responsibility to the tribe, to the state, or to both in some combination of responsibilities. Since the passage of IGRA, 232 tribes have executed 249 Class III compacts with 22 states, and the allocation of regulatory responsibility, if addressed at all, is as diverse as the states and tribes that have negotiated them.

In 1987, the Supreme Court decided the *Cabazon* case and clarified that tribes had the right to regulate gambling on their reservations, provided that the states wherein they were located did not criminally prohibit that activity. At that time, large-scale casino gaming operations existed only in Nevada and New Jersey. The Indian Gaming Regulatory Act was passed in 1988 and established the framework for the regulation of tribal gaming. That same year, Florida became the first state in the southeastern United States, and the 25th overall, to create a state lottery. In 1989, South Dakota legalized gambling in the historic gold mining town of Deadwood, and Iowa and Illinois legalized riverboat gambling. The following year, Colorado legalized gambling in some of its old mining towns, and in 1991, Missouri legalized riverboat gambling. By that time, 32 states operated lotteries, while tribes ran 58 gaming operations. Thus, not just in Indian country but throughout the United States there was at that time a manifest social and political acceptance of gambling as a source of governmental revenue. What is also evident is that when IGRA was adopted in 1988, very few states had experience in the regulation of casino gaming.

When IGRA was enacted, those tribes then engaged in gaming were primarily offering bingo. While there may have been an expectation in Congress that there would be a dramatic change in the games tribes would offer, I think it is reasonable to assume many expected tribal gaming would continue to be primarily Class II, or non-compacted, gaming. After 1988, when tribes began negotiating compacts for casinos with slot machines and banked card games, most of the states they negotiated with had little or no experience in regulating full-time casino operations. Michigan, for example, first compacted with Tribes in 1993 but didn't create its own Gaming Control Board or authorize commercial gaming until the end of 1996. Minnesota began compacting with tribes in 1990 and to this day has no non-Indian casinos within its borders.

A review of compacts approved since 1989 shows that the more recent compacts often address the mechanics of the oversight and regulation of the gaming quite specifically but those earlier compacts, some of which were entered into in perpetuity, do not. Further, the dispute resolution provisions to resolve issues identified by a State's oversight authority in the compacts often employ cumbersome and time-consuming procedures like mediation or arbitration that do not necessarily foster effective regulation. For example, in the 22 states with Class III gaming, 12 provide for some form of mediation or arbitration with varying degrees of specificity and enforceability. Attached as Exhibit 2 is a chart summarizing the internal control and dispute resolution provisions of the compacts in these 22 states.

Typically, the regulatory role a particular state undertakes in its compact was taken from and modeled on that state's experience with the regulation of its own legalized gaming at the time the compact was negotiated. Where such states develop effective regulatory programs, the need for NIGC oversight is greatly reduced. For example, in states where the tribal-state compacts call for regular state oversight, institute technical standards and testing protocols for gaming machines and establish internal control requirements, the NIGC's oversight role will be limited. This is the case, for example, in Arizona. Some states such as Michigan and North Dakota, however, have assumed a minimal regulatory role. In some cases, compacts have become little more than a revenue sharing agreement between the state and the tribe. Consequently, under circumstances where the states do not have a significant regulatory presence, the NIGC must be in place to undertake a broader range of oversight and enforcement activities.

The History of MICS

The diversity of tribal gaming operations is great. Both rural weekly bingo games and the largest casinos in the world are operated by Indian tribes under IGRA. As the industry grew from its modest beginnings, NIGC needed the appropriate tools to implement its oversight responsibilities. What the Commission lacked was a rule

book for the conduct of professional gaming operations and a yardstick by which the operation and regulation of tribal gaming could be measured. During the early stages of the dramatic growth of the Indian gaming industry, some in Congress expressed concerns that uniform minimum internal control standards, which were common in other established gaming jurisdictions, were lacking in tribal gaming. The industry itself was sensitive and responsive to those concerns and a joint National Indian Gaming Association—National Congress of American Indians task force recommended a model set of internal control standards.

Using this model as a starting point, in 1996, the NIGC assembled a tribal advisory committee to assist us in drafting minimum internal control standards applicable to Class II and Class III gaming. These were first proposed on August 11, 1998, and eventually became effective on February 4, 1999. With the adoption of the NIGC's MICS, all tribes were required to meet or exceed the standards therein, and the vast majority of the tribes acted to do so. NIGC's approach during that time was to assist and educate tribes in this regard, not to cite violations and penalize. When shortcomings were encountered by NIGC at tribal operations, NIGC's assistance was offered and grace periods were established to permit compliance.

I served as an Associate Commissioner on the NIGC from 1995 through mid-1999, and I participated in the decision to adopt and implement the MICS. I have now served as the Chairman since December of 2002. It is my confirmed view that the Minimum Internal Control Standards—given the tribes' strong effort to meet and exceed them and the inspections and audits that NIGC conducts to ensure compliance—have been the single most effective tool that our Federal oversight body has had to utilize to ensure professionalism and integrity in tribal gaming. The NIGC MICS were embraced by state regulators, several of whom adopted or incorporated NIGC MICS, or compliance therewith, in their compacts.

For 6 years, NIGC oversight of Class II and Class III gaming with the use of minimum internal control standards went quite smoothly. When necessary, NIGC revised its MICS, and it employed the assistance of tribal advisory committees in doing so. At the time of adoption, of course, many tribal gaming operations and tribal regulatory authorities were already far ahead of the minimums set forth in the MICS. Other tribes, however, had no such standards, and for the first time they had the necessary rule book by which to operate.

NIGC Enforcement of MICS

NIGC employed three methods of monitoring tribal compliance with its MICS. First, the MICS required the tribe to engage an independent Certified Pubic Accountant to perform what are called *"agreed upon procedures"* to evaluate the gaming operation's compliance with the regulations. The NIGC recommended testing criteria to be used by the external accountant. The results were provided to the tribe and NIGC within 120 days of the gaming operation's fiscal year end. Next, on a regular basis, NIGC investigators and auditors made site visits to tribal gaming facilities and spot checked tribal compliance. Finally, NIGC auditors conducted a comprehensive MICS audit of a number of tribal facilities each year. Typically those audits identified instances wherein tribes are not in compliance with specific minimum internal control standards. Almost always, the non-compliance was then successfully resolved by the tribe. As a result, NIGC was pleased that tribes have a stronger regulatory structure, and tribes were pleased that they have plugged gaps that might have permitted a drain on tribal assets and revenues. Although there have been instances where the non-compliance with the MICS was not resolved, in those instances the tribes were persuaded to voluntarily close their facilities until the shortcomings were rectified. NIGC has never issued a closure order or taken an enforcement action resulting in a fine for tribal non-compliance with NIGC MICS. It is worth noting that the NIGC recognizes that its success in ensuring tribal gaming operations function in a manner sufficient to safeguard the interests of the stakeholders depends upon the tribes' voluntary compliance. Consequently, the ultimate objective of our audits was to persuade.

Although drawing conclusions based solely on the number of MICS compliance exceptions detected in an audit can be misleading, a look at some of our numbers in this regard can be instructive. Audit reports have reflected as few as ten findings and others over a hundred. However, of the 51 comprehensive audits conducted, only a few have not revealed material internal control weakness. Attached as Exhibit 3 is a table summarizing the number and kinds of MICS violations found from January 2001 through February 2006. Attached as well are representative MICS compliance audit reports.

MICS Compliance

The oversight responsibilities of the NIGC give it a unique view from which to report the variety of challenges confronting Indian gaming in terms of regulatory violations and enforcement actions taken. As said above, the primary responsibility for meeting these challenges is and ought to be on the shoulders of the tribes. The NIGC encourages strong tribal regulation and applauds the resources that Indian gaming currently applies to regulation and other oversight activities. As Indian gaming continues to grow and the sophistication of operations expands and as the levels of the revenues increase accordingly, regulation must stay ahead of this growth if the integrity of the industry is to be protected. I have attached as Exhibits 4 and 5 a timeline and growth chart depicting the growth of tribal gaming operations and revenues, the growth of the National Indian Gaming Commission's staff, and some of the benchmark developments that have occurred during this history. It is in this context that the following examples of the numbers and types of MICS violations the NIGC has uncovered are offered.

The NIGC has compiled the following review of Minimum Internal Control Standards ("MICS") Compliance Audits—January 2000 to May 2007. The number of tribal gaming operations is taken from those reporting financial information to NIGC.

Gaming Operations	Number of NIGC Audits	Total MICS Violations	Average MICS Violations
367	51	3,335	65

Findings common to most compliance audits:

- Lack of statistical game analysis;
- Ineffective key control procedures;
- Failure to secure gaming machine jackpot/fill system;
- Failure to effectively investigate cash variances/missing supporting documentation for the cage accountability/failure to reconcile cage accountability to general ledger on a monthly basis;
- Inadequate segregation of duties and authorization of player tracking system account adjustments;
- Ineffective internal audit department audit programs, testing procedures, report writing and/or follow-up;
- Deficient surveillance coverage and recordings;
- Noncompliance with Internal Revenue Service regulation 31 CFR Part 103;
- Failure to exercise technical oversight or control over the computerized gaming machine systems, including the maintenance requirements for personnel access;
- Failure to properly document receipt and withdrawal transactions involving pari-mutuel patrons' funds and a lack of a comprehensive audit procedures of all pari-mutuel transactions;
- Failure to adequately secure and account for sensitive inventory items, including playing cards, dice, bingo paper and keno/bingo balls; and
- Failure to adopt appropriate overall information technology controls specific to hardware and software access to ensure gambling games and related functions are adequately protected.

Although exact data is not available regarding losses to tribal gaming operations resulting from the above control deficiencies, based on the past experience of commercial gaming, we can conclude the amount to be in the millions each year. These violations show that certain tribes are not adequately protecting their gaming assets.

In California, for example, between 2002 and 2006, the NIGC conducted 8 audits that produced findings indicating that one gaming operation possessed an exemplary system of internal controls, four were reasonably effective but had multiple material control weaknesses and three had a system of internal controls considered to be dysfunctional.

Breakdown in Tribal Regulation

Beyond the MICS, the NIGC oversight has uncovered serious breakdowns in regulation at Class II and Class III tribal gaming operations throughout the country. This is true even where there is apparent adequate tribal regulation and control in place.

Examples of instances where tribal gaming operational and regulatory efforts have been found deficient include the following:

- During the course of investigations and MICS compliance audits, NIGC investigators and auditors discovered that an extraordinary amount of money was flowing through two Class III off track betting (OTB) operations on two reservations. The amount of money was so high in comparison to the amount that could reasonably flow through such OTB operations that our investigators immediately *suspected money laundering* or similar activities. These two operations were the first referrals to the FBI's working group in which we participate. The FBI investigations found that these operations were part of a wide spread network of such operations with organized crime links and several Federal criminal law violations. Unfortunately, the tribes' gaming management allowed them to gain access and operate as part of their Class III tribal gaming operations, and the tribes' gaming regulators completely failed to take any action against these illegal OTB operations.
- There are also examples where tribes continued to operate, without modification or correction, a gaming facility that permitted gaming activities to be conducted by companies owned by individuals with known criminal associations; distributed large amounts of gaming revenues without requisite approved revenue allocation plans or the financial controls necessary to account for them; knowingly operated gaming machines that were plainly illegal; and appointed gaming commissioners and regulatory employees and licensed and employed gaming employees whose criminal histories indicated that they were unsuitable and serious risks to the tribes' gaming enterprise. An accurate assessment of Indian gaming regulation must also reflect the unfortunate examples of tribes that are so politically divided that they are unable to adequately regulate their gaming activities, as well as instances where tribal officials have personally benefited from gaming revenues at the expense of the tribe itself. In addition, there have been many instances where apparent conflicts of interest have undermined the integrity and effectiveness of tribal gaming regulation. In all of these troubling situations, it was necessary for the NIGC to step in to address the problems. The above examples illustrate that Indian gaming has many regulatory challenges that without comprehensive, well informed oversight and enforcement the integrity of the industry would be in jeopardy.

The NIGC has compiled a list of potential risks to Indian gaming if strong oversight is not maintained:

- Risk of not detecting employee embezzlement;
- Risk of not detecting manipulations and/or theft from gaming machines;
- Risk of not detecting criminal activity or the presence of organized crime influence;
- Risk of not detecting misuse of gaming revenues by tribal officials;
- Inability to effectively determine whether third parties are managing the gaming facility without an approved contract;
- Inability to effectively determine whether imminent jeopardy exists with regard to the safety of employees and patrons of the gaming establishment;
- Inability to effectively determine whether individuals other than the recognized tribal government are asserting authority over the gaming operation;
- Inability to effectively determine whether outside investors have unduly influenced tribal decision-making or made improper payments to tribal officials;
- Inability to effectively perform operational audits, which track the movement of money throughout the casino;
- Risk that tribal surveillance and gaming commission funding could decrease rapidly, as these are expensive and are not seen as increasing the casino bottom line.

Potential Impact of CRIT Decision

Finally, I would like once again to return the significance of the CRIT decision and the importance that NIGC places upon a CRIT fix. IGRA, in effect, anticipated the wide range of regulatory structures in the various tribal-state compacts through the establishment of the NIGC as an independent Federal regulatory authority for gaming on Indian lands. With respect to NIGC's regulatory oversight responsibilities, IGRA authorized the Commission to penalize violations of the Act, violations of the Commission's own regulations, and violations of the Commission-approved

tribal gaming ordinances by the way of imposition of civil fines and orders for closure of tribal gaming facilities.

A luxury that tribal gaming regulators have, when contrasted to the NIGC and state regulators, is that ordinarily their regulatory responsibility is confined to one, or in some cases several, tribal gaming facilities. The laser-focus this permits undoubtedly has advantages. However, states, and NIGC, have an advantage not permitted in such an arrangement, and that is ability to look at a broad range of gaming operations, permitting them to contrast and compare methodologies and trends, and perhaps thereby identifying issues that would not be apparent to a regulator with primary exposure to only one operation. (Such operation being owned by the entity which controls the purse strings for the tribal regulatory body itself.) Thus, the combined approach—tribes having the heavy lifting—the all day, every day responsibility and the NIGC and the states having a less immediate but independent oversight perspective, seeing multiple operations, affords an important perspective which would otherwise not be available. In an arrangement where states do not bring this perspective to the arrangement—or where NIGC cannot bring it, this synergy envisioned by the authors of IGRA is lost.

More specifically, since the *Colorado River Indian Tribes* decision, the NIGC has discontinued the practice of Class III gaming reviews conducted by our auditors. There will be temptations, generated by demands for per capita payments or other tribal needs, to pare down tribal regulatory efforts and bring more dollars to the bottom line. There will be no Federal standard that will stand in tribes' way should this occur. For the most part, the NIGC will become an advisory commission rather than a regulatory commission for the vast majority of tribal gaming. The very integrity of the now-smoothly-operating regulatory system, shared by tribal, state and Federal regulators, will be disrupted. If there is one imperative change that needs to be made in the Indian Gaming Regulatory Act, in the view of this NIGC Chairman and consistent with the legislative proposal that the NIGC sent to this Congress in May of 2007, it is the clarification that NIGC has a role in the regulation of Class III gaming.

Not everyone agrees, of course. Some tribes argue that the CRIT decision should be read broadly to eliminate any NIGC authority over Class III gaming. This interpretation may impact on the ability ofthe NIGC to enforce its regulations as follows:

Activity	Impact
Bingo	Unchanged
Pull-Tabs	Unchanged
Card Games	Unchanged
Keno	No enforcement authority
Pari-Mutuel Wagering	No enforcement authority
Table Games	No enforcement authority
Gaming Machines	No enforcement authority
Cage	Scope limited—Bingo/Pull—Tab/Card Game Inventory Items
Credit	Scope limited—Bingo/Pull—Tab/Card Game Inventory Items
Information Technology	Scope limited—Bingo/Pull—Tab/Card Game Related Software and Hardware
Complimentary Services and Items	Scope limited—Bingo/Pull—Tab/Card Game Transactions
Drop and Count	Scope limited—Bingo/Pull—Tab/Card Game Cash, Cash Equivalents and Documents
Surveillance	Scope limited—Bingo/Pull—Tab/Card Game Areas
Internal Audit	Scope limited—Bingo/Pull—Tab/Card Game Transactions

One of the daunting challenges facing the NIGC is answering the question: "Where does the Class II end and the Class III begin?" In most Indian gaming establishments there is no segregation of internal controls between Class II and Class III. We can audit Class II games without auditing Class III, for instance bingo versus blackjack. However, when it comes to comps and surveillance and other more general areas it gets tricky. In most instances, the proceeds are combined or commingled and auditors then can't look at one revenue stream without observing the other. This gray area has the potential to hinder our mission.

The above examples illustrate that the regulation of Indian gaming is a complicated matter. At the tribal level it can often be impacted by political discord that may lead to uneven enforcement or at times little effect regulation regardless of

overall intention. It is nevertheless clear that tribes have a very strong interest in assuring that their operations are adequately regulated.

Challenges to the Independence of Tribal Regulation

That said, some gaming commissions are not sufficiently independent of the tribal governments or the managers that operate the gaming operation. In this connection, the history of Nevada's regulatory structure may be instructive. Effective gaming regulatory authority in Nevada was a process that evolved over a forty year period and is continuing to improve and respond to change today. Only after creation of a separate gaming regulatory authority did oversight of the industry have an effective champion. Beginning in the late 70s, significant progress was made into the identification and removal of individuals and entities intent upon exploitation and corruption. Although many factors contributed to corruptive influences in Nevada, one aspect stood out. At the time gaming was legalized in Nevada, the state and local governments were in a rather deprived financial position therefore the governmental agencies charged with regulatory oversight were also dependent, albeit desperate, for the potential revenues this growing industry could provide. The Nevada experience demonstrates a critical policy question when gaming regulations are considered: that as the government charged with regulation becomes increasingly dependent upon the profitability of the industry being regulated, the effectiveness of the regulatory effort may diminish.

Generally, in tribal gaming, the tribal council is the ultimate governmental authority responsible for ensuring the gaming operation generates the greatest return on investment and that, in doing so, is effectively regulated. Such an organizational structure has challenges because the motivations lack congruity. Inevitably, from time to time, one objective may be foregone in pursuit of the other and, many times it is the oversight function. Although some tribes have recognized the organizational weakness and have installed procedures to counteract its effect, others have not and, as a result, the effectiveness of their regulatory processes is significantly diminished.

In sum, the result of the CRIT decision is that Class III gaming is left with tribal-state compacts as the remaining vehicle for oversight and enforcement. The information I have attempted to present here shows, I believe, many of the structural weaknesses of that situation. While NIGC has no role, compacts are lacking in the area of enforcement. Compacts *might* include specific regulatory structures and give regulatory responsibility to the tribe, to the state, or to both in some combination of responsibilities. In two states, Arizona and Washington, the tribal-state compacts call for regular state oversight, institute technical standards and testing protocols for gaming machines, and establish internal control requirements. Most states, however, have assumed a minimal regulatory role. In many cases, compacts have become little more than a revenue sharing agreement between the state and the Tribe. The absence of the NIGC in the regulation of Class III gaming removes an essential component of oversight and enforcement.

- Exhibit # 1 PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Section Contents

§ 542.1 What does this part cover?

§ 542.2 What are the definitions for this part?

§ 542.3 How do I comply with this part?

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

§ 542.5 How do these regulations affect state jurisdiction?

§ 542.6 Does this part apply to small and charitable gaming operations?

§ 542.7 What are the minimum internal control standards for bingo?

§ 542.8 What are the minimum internal control standards for pull tabs?

§ 542.9 What are the minimum internal control standards for card games?

§ 542.10 What are the minimum internal control standards for keno?

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

§ 542.12 What are the minimum internal control standards for table games?

§ 542.13 What are the minimum internal control standards for gaming machines?

§ 542.14 What are the minimum internal control standards for the cage?

§ 542.15 What are the minimum internal control standards for credit?

§ 542.16 What are the minimum internal control standards for information technology?

§ 542.17 What are the minimum internal control standards for complimentary services or items?

§ 542.18 How does a gaming operation apply for a variance from the standards of the part?

§ 542.20 What is a Tier A gaming operation?

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

§ 542.30 What is a Tier B gaming operation?

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

§ 542.40 What is a Tier C gaming operation?

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

§ 542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

Tribal-State Compact MICS and Dispute Resolution Provisions
as of 9/21/05

State	MICS Provisions	Remedy for Compact Violation	Expiration Date
Arizona	All Arizona compacts adopt NIGC MICS	Non-binding mediation; binding arbitration; injunctive relief.	2013, 2014, and 2018
California 1999 Compacts	1) Tribes must record all incidents in a special log; 2) Tribes must maintain a list of barred persons; 3) Tribes must post the rules and regulations of table games. Gaming devices transported off Tribe's land subject to seizure.	Tribal gaming agency investigates, requires correction; if none, fines or sanctions. Disputes: Tribe and State meet and confer, then arbitration with judicial review. No Class III gaming if Tribe 2 quarterly contributions overdue.	2020
California 2004 amended Compacts	Requires testing of gaming devices.	No change.	2025, 2030
Colorado	Tribal TICS with State review.	Arbitration for breach of contract provisions.	None. In effect until termination by both parties.
Connecticut	Extensive, comprehensive MICS	Mashantucket Pequot - procedure for appeal by Tribe to State Sup. Ct. of assessments levied by State. If non-compliance with Compact, US Dist. Ct. or petition NIGC. Mohegan - none.	None. Termination by written agreement of parties.
Idaho	Three of the four compacts include fairly general MICS. One of the compacts (Shoshone Bannock) includes only very general control language.	Three of the four compacts provide for meet-and-confer, then binding arbitration with no judicial review. One of the compacts (Shoshone Bannock) allows actions in federal district court after the arbitration	Until renegotiated or replaced.
Iowa	NIGC MICS adopted for accounting and cash control. Equivalent surveillance standards adopted in compacts. Semi-annual audit required to determine compliance with compact and all applicable laws.	If Tribe fails to comply, Compact may be suspended. If State fails to comply, Tribe may seek any remedy.	2006, 2012, 2019
Kansas	All Kansas compacts have MICS that cover cage operations, drop and count, fill and credit, and surveillance, but are not as comprehensive as NIGC minimums. Other areas not covered.	State and Tribe will report violations to each other. Arbitration and/or judicial resolution in federal court. Limited to equitable remedies and costs for state oversight.	None
Louisiana	Minimal MICS; limited surveillance procedures for cashier's cash and cash control management in Appendix.	Informal resolution for at least 45 days. If none, then formal mediation. If no resolution, then binding arbitration.	2007 and 2008
Michigan	None.	Tribe and State to meet. State has right to notify Tribe to stop playing game. Tribe can stop or go to arbitration.	2013 and 2019
Minnesota	Some compacts have none. Others have minimal surveillance regulations for blackjack tables.	Tribe may contest allegation of non-compliant game through inspection by independent gaming laboratory or in Federal court, before NIGC, or in State court, respectively, if prior forum declines jurisdiction.	None
Mississippi	No MICS in Compact, but limited MICS for slot machines in gaming ordinance.	1) informal dispute resolution; 2) if no resolution, then arbitration, with decision of arbitrator final and non-reviewable.	None. Termination by mutual consent of the parties.

State	MICS Provisions	Remedy for Compact Violation	Expiration Date
Montana	None	State or Tribe can terminate compact on 90 days notice if violation not cured. Efficacy of cure may be adjudicated in Federal Court.	Variously none, 2006, 2007, 2008 and until another compact signed.
Nevada	Two compacts require following Nevada MICS, four compacts require adopting MICS at least as stringent as Nevada MICS.	Four have dispute resolution with judicial remedies thereafter. Two have none.	Varied - either "until gaming ceases on property" or 4-year terms and can be terminated by mutual consent.
New Mexico	None	Compact provides an arbitration provision for dispute resolutions or compact compliance. The result of the arbitration is final and binding, and may be enforceable by any court of competent jurisdiction.	2015
New York	Comprehensive MICS, similar to NIGC's.	Informal dispute resolution. If no resolution, then binding arbitration. Cessation of tribal payments to state if breach of exclusivity provisions (two of three tribes).	None & 2016
North Carolina	Very limited MICS. Transactions in machines recorded and stored with software; rules of play displayed.	Internal dispute resolution process (notice, 30 days to try to resolve). If not resolved, any legal remedy available or by mutual agreement, mediation, arbitration or other alternative method.	2031 with authomatic 5 year extensions if no non-renewal notice from either party.
North Dakota	MICS are NIGC's MICS.	Meet to discuss. Subsequently, Tribe may go to arbitration over State violation. State may go to arbitration or Federal Court over Tribe violation. Issues of non-compliant Class III games are to be resolved through examination by independent testing laboratory.	2008, 2012 and subsequent renewals.
Oklahoma	Model compact: Tribal internal control standards must equal or exceed NIGC MICS.	Model compact: Arbitration for enforcement of compact provisions. Federal court de novo review of arbitration award, subject to appeal to Circuit Court.	2020, automatic 15 year renewals.
Oregon	Comprehensive Tribal/State MICS (set forth in compacts)	Meet-and-confer, then federal district court or state court if the federal court lacks jurisdiction.	None
South Dakota	South Dakota State MICS incorporated by reference.	Termination on breach, action in Federal Court available for interpretation of compact. For non-compliant machines, arbitration.	2005, 2006, 2007, 2008, and subsequent renewals.
Washington	Comprehensive MICS (set forth in compact)	Some slight variation among the 27 compacts, but State may always seek injunctions in federal district court. Either binding or non-binding arbitration provisions also incorporated.	Termination by written agreement of the parties.
Wisconsin	Tribe to use MICS at least as restrictive as NIGC's.	In order, negotiation, mediation, arbitration, action in Federal court (certain provisions may be sued upon immediately).	None or 2009

Exhibit # 3 MICS Compliance Audits – February 2000 to May 2007

Region	Gaming Operations	Number of Audits	Total MICS Violations	Average MICS Violations
1 – Portland	44	10	635	64
2 – Sacramento	52	6	410	68
3 – Phoenix	43	8	297	37
4 – St. Paul	117	7	546	78
5 – Tulsa	84	4	356	89
6 – DC	27	2	111	56
Totals	**367***	**51**	**3335**	**65**

* - number from audited financials

* 7 MICS Compliance audits per year on average
* In the past year 11 MICS Audits delivered with 559 Violations

- Findings common to most MICS compliance audits:
  - Lack of statistical game analysis;
  - Ineffective key control procedures;
  - Failure to secure gaming machine jackpot/fill system;
  - Failure to effectively investigate cash variances/missing supporting documentation for the cage accountability/failure to reconcile cage accountability to general ledger on a monthly basis;
  - Inadequate segregation of duties and authorization of players tracking system account adjustments;
  - Ineffective internal audit department audit programs, testing procedures, report writing and/or follow-up;
  - Deficient surveillance coverage and recordings;
  - Noncompliance with Internal Revenue Service Regulation 31 CFR Part 103;
  - Failure to exercise technical oversight or control over the computerized gaming machine systems, including the maintenance requirements for personnel access;
  - Failure to properly document receipt and withdrawal transactions involving pari-mutuel patrons' funds and a lack of a comprehensive audit procedures of all pari-mutuel transactions;
  - Failure to adequately secure and account for sensitive inventory items, including playing cards, dice, bingo paper and keno/bingo balls; and
  - Failure to adopt appropriate overall information technology controls specific to hardware and software access to ensure gambling games and related functions are adequately protected.

Exhibit # 4

Growth in Tribal Gaming

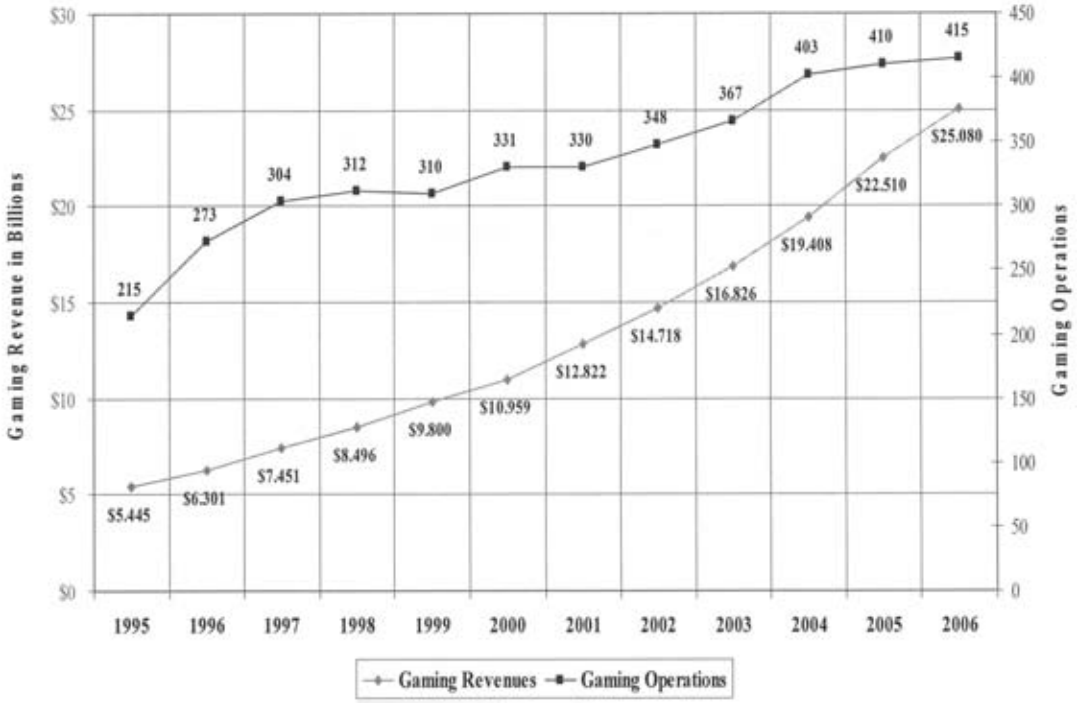

Exhibit # 5
2006 Tribal Gaming Revenues

	Number of	Revenues	Percentage of		Mean	Median
Gaming Revenue Range	**Operations**	**(in thousands)**	**Operations**	**Revenues**	**(in thousands)**	**(in thousands)**
$250 million and over	23	11,214,822	5.9%	44.7%	487,601	414,840
$100 million to $250 million	40	6,730,419	10.3%	26.8%	168,261	157,987
$50 million to $100 million	45	3,186,109	11.6%	12.7%	70,802	67,211
$25 million to $50 million	64	2,241,013	16.5%	8.9%	35,016	32,652
$10 million to $25 million	72	1,229,246	18.6%	4.9%	17,073	17,413
$3 million to $10 million	66	412,702	17.1%	1.6%	6,253	6,458
Under $3 million	77	61,518	19.9%	0.2%	799	286
Total	**387**	**25,075,829**				

The CHAIRMAN. Chairman Hogen, thank you very much for summarizing. We appreciate your testimony.

Next, we will hear from the Chairman of the California Gambling Control Commission, Mr. Dean Shelton, who is appearing, as I understand it, on behalf of Governor Arnold Schwarzenegger.

STATEMENT OF DEAN SHELTON, CHAIRMAN, CALIFORNIA GAMBLING CONTROL COMMISSION; ON BEHALF OF GOVERNOR ARNOLD SCHWARZENEGGER

Mr. SHELTON. Yes. I will read a short statement. I am sure we will follow it up with a lengthier written statement in the 2-week period.

Good morning, Mr. Chairman and Vice Chairperson, my name is Dean Shelton. I am the Chairman of the California Gambling Control Commission. Governor Arnold Schwarzenegger has requested I appear on his behalf in support of language in the draft bill that clarifies the National Indian Gaming Commission's authority over Class III minimum control standards.

California is unique in that it has 107 federally recognized Indian tribes. At present, 66 of those tribes have tribal-State gaming compacts. There are 57 tribal casinos in operation in California and several more casinos are in the planning and development stage.

The Gambling Control Commission has responsibility of oversight of tribal casinos to the extent authorized under the tribal–State gaming compacts and performs fiduciary and audit responsibilities associated with tribal gaming. Given the number of gaming tribes and the scale of the tribal gaming industry in California, this draft bill has a potential to significantly impact our State.

Governor Schwarzenegger believes that NIGC should be authorized to formally inspect and enforce the MICS, as they have done in the past. His position is based on the belief that strong State, Federal and tribal regulation and oversight of Class III gaming best serves the public interest and serves the goals of the Indian Gaming Regulatory Act. This three- prong approach has worked well in our State, creating a good balance among the three sovereign responsibilities for regulation and oversight of tribal gaming. We would encourage and support enhanced coordination and open lines of communication among all of these regulators.

I personally have enjoyed a professional relationship with Chairman Hogen. He has been most cooperative. His agency has assisted us. We coordinate our activities and we don't trample on one another. While we support language in the draft bill that clarifies NIGC's authority with respect to Class III gaming, we believe that section three of the proposed bill is unnecessary. As we understand it, the proposed language would authorize the commission to determine whether it should be preempted from regulatory Class III gaming in the State based on its review of regulatory activity under a tribal-State compact.

This review would be based on the standards to be established by a newly created Class III Regulatory Committee. The Committee also would develop minimum standards for regulations of Class III gaming. We see no need to develop this additional layer of bureaucracy. We believe the NIGC has the expertise to carry out

its responsibilities and creation of the committee is unnecessary at this time.

Additionally, given the number of gaming tribes in the State of California, we believe there is more than enough room for both Federal and State oversight of Class III gaming and that preemption also is unnecessary. Our approach in California has been to complement NIGC's activities, rather than duplicate them.

We will continue that approach, and according to this position, only section one and two of the draft bills should be created at this time.

This is a short statement, and I will be available for questions later as you have asked.

[The prepared statement of Mr. Shelton follows:]

PREPARED STATEMENT OF DEAN SHELTON, CHAIRMAN, CALIFORNIA GAMBLING CONTROL COMMISSION; ON BEHALF OF GOVERNOR ARNOLD SCHWARZENEGGER

Good morning Mr. Chairman and Members of the Committee. My name is Dean Shelton and I am the Chairman of the California Gambling Control Commission.

Governor Arnold Schwarzenegger has requested that I appear on his behalf in support of language in the draft bill that clarifies the National Indian Gaming Commission's authority over the Class III Minimum Internal Control Standards or MICS.

California is unique in that it has 107 federally-recognized Indian tribes. At present, 66 of those tribes have tribal-state gaming compacts. There are 57 tribal casinos in operation in California and several more casinos are in the planning and development stage. The Gambling Control Commission has the responsibility of oversight of tribal casinos to the extent authorized under the tribal-state gaming compacts, and performs fiduciary and audit responsibilities associated with tribal gaming.

Given the number of gaming tribes and the scale of the tribal gaming industry in California, this draft bill has the potential to significantly impact our state. Governor Schwarzenegger believes that NICG should be authorized to formally inspect and enforce the MICS as they have done in the past. His position is based on his belief that strong state, Federal, and tribal regulation and oversight of class III gaming best serves the public interest and furthers the goals of the Indian Gaming Regulatory Act. This three-pronged approach has worked well in our state, creating a good balance among the three sovereigns responsible for regulation and oversight of tribal gaming. We would encourage and support enhanced coordination and open lines of communication among all of these regulators.

I personally have enjoyed a professional relationship with NIGC and find Chairman Phil Hogan and his staff to be open and cooperative with our commission. We believe that the past work of NIGC has helped promote, and increase public confidence in, the integrity of gambling on Indian land.

While we support language in the draft bill that clarifies NIGC's authority with respect to Class III gaming, we believe that section 3 of the proposed bill is unnecessary. As we understand it, the proposed language would authorize the Commission to determine whether it should be preempted from regulating Class III gaming in a state based on its review of the regulatory activity required under tribal-state compacts. This review would be based on standards to be established by a newly created Class III Regulatory Committee. The Committee also would develop minimum standards for the regulation of Class III gaming.

We see no need to develop this additional layer of bureaucracy. We believe NIGC has the expertise to carry out its responsibilities and that creation of the committee is unnecessary. Additionally, given the number of gaming tribes in the State of California, we believe there is more than enough room for both Federal and state oversight of Class III gaming and that preemption also is unnecessary. Our approach in California has been to complement NIGC's activities, rather than duplicate them, and we will continue to follow that approach. Accordingly, it is our position that only sections 1 and 2 of the draft bill should be enacted.

Thank you for the opportunity to speak today on this important matter. I would be pleased to answer any questions you may have.

The CHAIRMAN. Mr. Shelton, thank you very much for coming from California to give us your views.

Mr. SHELTON. Our pleasure.

The CHAIRMAN. What I would like to do now is to call the additional witnesses to the table. Chairman Hogen and Chairman Shelton, if you would remain available, then I would have you come back and we will have questions for all of the witnesses.

The next panel will be the Honorable Myra Pearson, the Chairman of the Great Plains Indian Gaming Association, the Chair of the Spirit Lake Tribe in Fort Totten, North Dakota, accompanied by Kurt Luger, Executive Director of the Great Plains Indian Gaming Association, Bismarck, North Dakota; the Honorable W. Ron Allen, Chairman, Washington Indian Gaming Association, and Chairman of the Jamestown S'Klallam Tribe in the State of Washington; the Honorable Valerie Welsh-Tahbo, Council Member of the Colorado River Indian Tribal Council at Parker, Arizona.

I appreciate very much all of you being here. I did mention that Tracy Burris, who is the Commissioner of the Chickasaw Nation Gaming Commission in Norman, Oklahoma had an airplane problem this morning and is not able to be here for this testimony.

We have been joined by our colleague from Hawaii, the former Chairman of this Committee for many, many years, Senator Inouye. Senator Inouye, would you like to make any comments?

Senator INOUYE. No, thank you, Mr. Chairman.

The CHAIRMAN. I think everyone understands the contribution Senator Inouye has made over so many decades on this Committee, and we appreciate very much your being here, Senator.

Why don't we begin with you, Myra Pearson, who is the Chairman of the Great Plains Indian Gaming Association. Welcome and why don't you proceed? We would ask what we have asked of the previous panel, if you would be willing to summarize in about 5 minutes. We have all had the opportunity to read the entire statement and all of the entire statement will be part of the permanent record.

STATEMENT OF MYRA PEARSON, CHAIRWOMAN, GREAT PLAINS INDIAN GAMING ASSOCIATION; CHAIRWOMAN, SPIRIT LAKE SIOUX TRIBE; ACCOMPANIED BY KURT LUGER, EXECUTIVE DIRECTOR, GREAT PLAINS INDIAN GAMING ASSOCIATION

Ms. PEARSON. Thank you and good morning, Chairman Dorgan, Vice Chairwoman Murkowski, and Members of the Committee.

My name is Myra Pearson and I am Chairwoman for the Spirit Lake Sioux Tribe in North Dakota, and I am also the Chairperson for the Great Plains Indian Gaming Association, which includes 28 Indian nations from North and South Dakota, Nebraska, Iowa and Kansas. Accompanying me this morning is Kurt Luger, Executive Director of the Great Plains Indian Gaming Association, and a member of the Cheyenne River Sioux Tribe, who has a family home on the Standing Rock Indian Reservation in North Dakota.

Before I begin my comments, I would like to take a few seconds to recognize the troops and their families in the war, who are currently fighting for our freedom. I want to express my gratitude, and that comes from Indian Country, Senator. Thank you for that.

The CHAIRMAN. Thank you very much.

Ms. PEARSON. This morning, I am here to comment on the discussion draft of a bill to amend IGRA. Before I comment on the draft, I would first like to talk about Indian gaming and what it is doing for the citizens of North Dakota. There is no question that Indian gaming has had a significant and positive impact on all the citizens of North Dakota. Tribal governments have created 2,400 direct jobs through Indian gaming. These jobs help families on reservations that face greater than 80 percent unemployment rates. While the majority of these jobs go to tribal citizens, many help employ non–Indians living near the reservations.

Tribal government payrolls contribute $121 million annually to the North Dakota economy. Tribal government gaming operations purchased over $40 million in goods and services in North Dakota. Without these sales, the State of North Dakota would lose $70 million of economic activity each year. The total economic impact of the Indian gaming in the State since 1997 exceeds $1.2 billion.

These are only some of the reasons why the tribes of North Dakota and throughout the Great Plains are opposed to amending the Indian Gaming Regulatory Act. Now, I understand that the primary purpose of this hearing is to address concerns with the regulation of Indian gaming in light of the recent Colorado River Indian Tribes decision.

Mr. Chairman, I want you to know that Indian tribes in North Dakota and throughout the Nation are fully committed to strong regulation. Our tribal leaders understand that we need solid regulation to protect the government revenue that Indian gaming provides. As you know, we run relatively modest operations. However, in 2006 alone, tribal governments spent $7.4 million on tribal and State regulation and employed more than 325 tribal regulators and staff.

Our tribal regulators work hand in hand with State Attorney Generals' offices to address Class III gaming regulatory issues. Our compacts provide for a strong partnership between the tribes and the States. Our tribe expressly adopted minimum internal control standards through our tribal–State compacts, which incorporate the NIGC MICS by reference.

The tribes in North Dakota have worked very hard to preserve the relationship with the State and the State, for its part, has worked in good faith with the tribes. As you will see in our submitted testimony, Attorney General Stenjhem has complimented the tribal governments on our record of strong regulation and has cooperated with the tribal regulatory agencies to apprehend and prosecute those who attempt to cheat our casinos.

From our point of view, we don't see a need to amend IGRA. Nothing changed after the CRIT decision with regard to regulating Indian gaming in North Dakota. Regulation of Indian gaming remains as strong as ever, not only in North Dakota, but throughout the Great Plains region.

We believe that the Act is working as intended. However, when we heard that the Committee was considering amending IGRA to address the CRIT decision, we put it to a vote of our 28 member tribes. The Great Plains Indian Gaming Association met in May of this year. The association passed a resolution opposing any amend-

ments to IGRA. We think that any NIGC issues can be addressed through model tribal ordinance provisions under existing law.

If this Committee moves forward, we will oppose any legislation unless several conditions are met. Congress should respect the existing framework of IGRA, tribal-State compacts, and tribal ordinances established in regulatory rules for Class III gaming, not Federal regulation. NIGC oversees tribal enforcement of tribal ordinances, so any substantive standards should be included in tribal ordinances.

Congress must guarantee protection of the integrity of IGRA, and commit to moving legislation through regular order. IGRA amendments must include provisions to address the Seminole decision. We also request a provision to affirm Class II technological aids and Congress should require NIGC to work with tribes on a basis of government-to-government relations and use negotiated rulemaking.

Finally, any amendments should grandfather existing tribal-State compacts.

While we appreciate that the Committee has offered the bill as a draft, in our view the bill does not promote strong tribal government as IGRA does, because it relies on Federal rulemaking and ignores tribal lawmaking. The existing tribal ordinance process should be respected. NIGC approves our tribal ordinances process as consistent with minimum Federal statutory standards and retains authority to enforce against any violations of IGRA, proper NIGC regulations, and tribal ordinances.

Furthermore, the provision to address the Seminole case falls far short of what is needed to restore the balance to the compacting process. The discussion draft bill overturns the existing tribal-State compact process by giving NIGC blanket unchecked authority over all aspects of Class III gaming. This unchecked authority will endanger the future of Indian gaming under NIGC leadership. That doesn't honor the existing tribal–State compact process and tribal ordinance process.

My second point in opposition to the draft is that it will feed the Federal bureaucracy at the expense of local tribe and State decisionmaking. The bill would create a new compact committee within the Department of Interior and grant the NIGC authority to approve regulatory provisions in tribal-State compacts. This will further complicate the already burdensome compacting process and it permits the NIGC to judge the reach of its own jurisdiction. Under the provisions of the bill, NIGC would never cede authority to State regulators and tribal gaming commissions. It would keep its new Federal authority across the board.

No other form of gaming in North Dakota is subject to Federal agency regulation. Indian gaming is fully regulated. Chairman Hogen testified before the California Assembly that even in light of the CRIT decision, the NIGC has the authority to regulate Class III gaming.

We ask that the Committee help us to look for opportunities short of legislation to address NIGC concerns, and we are willing to work cooperatively on model tribal ordinance provisions that respects the existing statutory framework of IGRA and honors the se-

rious commitment that both States and tribal governments have vested in the tribal-State compact process.

In other words, please look to address any concerns within the existing framework of IGRA. Congress could simply call upon our tribal governments to maintain MICS in our tribal ordinances. Indeed, we can do this on a voluntary government-to-government basis. This would preserve tribal law-making authority, create an objective statutory standard, and ensure that tribal governments are not subjected to the whims of a bureaucracy.

The CHAIRMAN. Are you nearly done? I have to ask that you summarize.

Ms. PEARSON. OK. I am going to jump right down to the bottom.

In conclusion, I want to say that Indian gaming is doing well. It is working and Indian gaming in North Dakota and throughout the Great Plains is beginning to rebuild their economies. It is doing something great for the Indian people and we hope that we can see that continue.

Thank you very much for this opportunity, Senator Dorgan.

[The prepared statement of Ms. Pearson follows:]

PREPARED STATEMENT OF MYRA PEARSON, CHAIRWOMAN, GREAT PLAINS INDIAN GAMING ASSOCIATION; CHAIRWOMAN, SPIRIT LAKE SIOUX TRIBE; ACCOMPANIED BY KURT LUGER, EXECUTIVE DIRECTOR, GREAT PLAINS INDIAN GAMING ASSOCIATION

Introduction

Good Morning. Chairman Dorgan and Members of the Committee thank you for inviting me to testify today concerning the regulation of Indian gaming and the authority of NIGC to regulate Class III gaming.

My name is Myra Pearson and I am Chairwoman of the Spirit Lake Sioux Tribe in North Dakota. I also serve as Chair of the Great Plains Indian Gaming Association, which includes 28 Indian nations from North and South Dakota, Nebraska, Iowa, and Kansas. We work closely with both the National Indian Gaming Association and other regional Indian gaming associations, including the Minnesota Indian Gaming Association.

I am accompanied by Kurt Luger, Executive Director of the Great Plains Indian Gaming Association. Kurt is a member of the Cheyenne River Sioux Tribe but he and his family maintain their home and ranch on the Standing Rock Sioux Reservation in North Dakota. At Great Plains Indian Gaming Association, his job is to work with our Member Tribes to address challenges that we face in Indian gaming and to provide training and technical assistance to our tribal government officials, tribal gaming commissioners, gaming management and staff.

At the outset, let me say that Indian gaming is working in rural areas of America. Indian tribes that faced 50, 60, and even 70 percent unemployment are now generating jobs not only for their own tribal members, but for neighboring non-Indians as well. I live and work in North Dakota so I will use the North Dakota Tribes as a representative example.

In North Dakota, Indian gaming has a significant economic impact. Our tribal government gaming operations provide employment, essential tribal government revenue that funds essential services and community infrastructure, and generates much needed revenue for communities statewide through the economic multiplier effect. Our Tribes have created 2,400 direct, full-time jobs with pension and health care benefits. The payroll from the gaming operations exceeds $39 million, and approximately $30 million of that payroll goes to tribal members who live in rural North Dakota. More than 70 percent of our gaming employees are Native Americans and 40 percent of our employees were formerly unemployed and survived on welfare.

Our tribal government payroll contributes $121 million annually to the total economy of the state. Tribal government gaming operations purchased over $40 million in goods and services within North Dakota. Purchases were made in 93 communities throughout the state. Without these sales, the state would lose $70 million of economic activity in cities throughout the state. We have estimated our total economic impact in the state since 1997 to have exceeded $1.2 billion.

In short, we believe that it is not necessary to give the NIGC a new role under IGRA. They merely want to expand their agency authority, when our tribal governments have already adopted either the MICS standards through tribal ordinance, negotiated Tribal-State Compacts to address these issues, or both. We believe the NIGC should sit down with us and work out issues they have through model tribal ordinance provisions because that is what the existing framework of IGRA calls for. It is wrong to ask us to both negotiate a regulatory framework with the state, which equals or exceeds state law requirements for gaming, and then to add on a new layer of Federal bureaucracy on top of that. We take our Tribal-State Compact requirements seriously and they are working.

Indian Tribes in North Dakota

In North Dakota, 5 tribal governments operate Indian gaming facilities: the Three Affiliated Tribes of Fort Berthold—Mandan, Hidatsa, and Arikara; the Spirit Lake Sioux Tribe, the Turtle Mountain Chippewa Tribe, the Standing Rock Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe. Both the Standing Rock Sioux Tribe's reservation and the Sisseton-Wahpeton Sioux Tribe's reservation straddle the border with South Dakota.

Three Affiliated Tribes. The Three Affiliated Tribes, Mandan, Hidatsa, and Arikara, operate as a unified tribal government. These Tribes have occupied the Missouri valley for hundreds and thousands of years, planted corn, squash, and beans on the fertile flood plains, and hunted buffalo and wild game. Living in stockaded villages, the Three Affiliated Tribes were devastated by smallpox epidemics in 1792, 1836, and 1837.

Early on, the Three Affiliated Tribes established friendly relationships with the United States. They welcomed the Lewis and Clark expedition into their villages and assisted them on their journey. In 1825, the Mandan, Hidatsa, and Arikara Tribes entered into Treaties of Friendship and Trade with the United States, which states:

> Henceforth, there shall be a firm and lasting peace between the United States and the [Mandan, Hidatsa, and Arikara Tribes] . . .. The United States . . . receive the [Tribes] into their friendship and under their protection.

The United States' treaty pledges of protection forms the basis for the Federal Indian trust responsibility. The traditional lands of the Mandan, Hidatsa, and Arikara encompassed an area of 12 million acres from eastern North Dakota to Montana and as far south as Nebraska and Wyoming. The Fort Laramie Treaty of 1851, congressional acts and executive orders reduced the Tribes' lands to 1,000,000 acres in western North Dakota.

In the early 1950s, the Three Affiliated Tribes were asked to undertake a tremendous sacrifice by allowing the United States to dam the Missouri River and flood their reservation. The original tribal headquarters was flooded and families were moved away from the fertile Missouri River flood plain up on to the high prairie. When Lake Sakakawea was formed by the dam, the new lake divided the reservation into three parts. The Tribes suffered an enormous loss of natural resources, including the most fertile land on the reservation, their community was divided and the small village life that many had known along the Missouri River was gone. The tribal headquarters were relocated four miles away in New Town, North Dakota. Today, the tribal population is about 10,000 with about 5,000 living on the reservation.

Spirit Lake Sioux Tribe. The Spirit Lake Sioux Tribe is composed of the Sisseton-Wahpeton and Yankton bands of the Dakota or Sioux Nation. Originally residing in Minnesota and eastern North Dakota, the Spirit Lake Sioux Reservation was established by the Treaty of 1867 with the United States. The Treaty of 1867 provides that: "The . . . Sioux Indians, represented in council, will continue . . . friendly relations with the Government and people of the United States . . .." The Treaty recognizes the Spirit Lake Sioux Reservation as the "permanent" reservation of the Tribe.

The Tribe has worked to develop jobs through manufacturing, providing Kevlar helmets and military vests to the Pentagon through Sioux Manufacturing Corporation, yet with a reservation population of over 6,000 people, the Tribe has struggled with 59 percent unemployment as the Defense Department budget was cut in the 1990s. The Spirit Lake Reservation encompasses 405 square miles north of the Sheyenne River in northeastern North Dakota.

Turtle Mountain Chippewa Tribe. The Chippewa or Ojibwe people originally inhabited the Great Lakes Region and began to hunt and trade in North Dakota in the late 18th and early 19th Centuries. Historically, the Chippewa and the Dakota

fought wars with each other, but they settled their differences through the Treaty of Sweet Corn in 1858.

In 1882, Congress set aside a 32 mile tract in Northeastern North Dakota for the Turtle Mountain Band of Chippewa 11 miles from the Canadian border. With the passing of the great buffalo herds, the Chippewa turned to agriculture and ranching, and faced many difficulties due to encroachment by settlers. Today, almost 20,000 tribal members live on the 6×12 mile Turtle Mountain reservation, and Belcourt, North Dakota has become the 5th largest city in the state.

Standing Rock Sioux Tribe. The Standing Rock Sioux Tribe is composed of Sitting Bull's Band, the Hunkpapa, and the Yanktonai, with some Black Foot Sioux on the South Dakota side. In the Fort Laramie Treaty of 1868, the United States pledged that: "The Government of the United States desires peace and its honor is hereby pledged to keep it." The Treaty also provides that the Great Sioux Reservation was to serve as the "permanent home" of the Sioux Nation.

Yet, in 1876, General Custer and the 7th Cavalry came out to Sioux country to force the Sioux tribes on to diminished reservations. In 1889, the Federal Government once again called on the Sioux Nation to cede millions more acres of reservation lands, and the Standing Rock Sioux Reservation was established by the Act of March 2, 1889. Sitting Bull had opposed the land cession and in 1890, he was murdered by BIA police acting in concert with the U.S. Cavalry.

The Standing Rock Sioux Reservation is composed of 2.3 million acres of land lying across the North and South Dakota border in the central area of the state. Like the Three Affiliated Tribes, the Standing Rock Sioux Tribe was asked to make a substantial sacrifice for flood control and ceded almost 56,000 acres of the best reservation land for Lake Sakakawea. Tribal members were removed from their traditional homes along the Missouri River flood plain and relocated well up above the river. Today, the population of resident tribal members is almost 10,000.

Sisseton-Wahpeton Sioux Tribe. Located in Southeastern North Dakota and Northeastern South Dakota, the Sisseton-Wahpeton Sioux Tribe has a total enrollment of over 10,000 tribal members and a resident population of about 5,000 tribal members. The Tribe was originally located in Minnesota, but pressure from white settlers pushed the Tribe westward. The Treaty of 1858 with the United States established the Sisseton-Wahpeton Sioux Reservation, which today has approximately 250,000 acres in North and South Dakota.

Indian Gaming in North Dakota

Since the beginning of tribal gaming in North Dakota, the primary function has been to provide employment and economic development opportunities. Indian gaming has also provided vital funding for tribal government infrastructure, essential services including police and fire protection, education, and water and sewer services, and tribal programs, such as health care, elderly nutrition, and child care.

There are five Indian gaming facilities in the state—Four Bears Casino & Lodge (Three Affiliated Tribes), Sky Dancer Casino & Lodge (Turtle Mountain), Spirit Lake Casino (Spirit Lake Sioux), Dakota Magic Casino (Sisseton-Wahpeton), and Prairie Knights Casino & Lodge (Standing Rock).

The Tribal-State Compact Process in North Dakota

In North Dakota, tribal governments have worked hard to maintain our sovereign authority and territorial integrity, so that we can provide a life for our people on our own homelands. The Indian Gaming Regulatory Act acknowledges the governmental status of Indian tribes and seeks to promote "tribal economic development, self-sufficiency, and strong tribal governments."

Historically, state law does not apply to Indian tribes or Indians on Indian lands in the absence of an express congressional delegation of authority. That means that under general principles of Indian sovereignty, Indian tribes are able to conduct gaming under tribal law, not state law. Yet, through the Indian Gaming Regulatory Act, Congress made a compromise between tribal interests and state interests and established the Tribal-State Compact process for the regulation of Class III gaming. The Senate Committee Report explains:

> It is a long and well-established principle of Federal Indian law as expressed in the United States Constitution . . . that unless authorized by act of Congress, the jurisdiction of State governments and the application of state laws do not extend to Indian lands . . .. [U]nless a tribe affirmatively elects to have State laws and State jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow State jurisdiction on Indian lands for the regulation of Indian gaming activities. The mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the . . . application of state laws . . . is a Tribal-State Compact.

The Administration Expressly Rejected a Primary Federal Regulatory Role

Recognizing that the extension of State jurisdiction on Indian lands has traditionally been inimical to Indian interests, some have suggested the creation of a Federal Regulatory Agency to regulate Class II and Class III gaming activities on Indian lands. Justice Department officials were opposed to this approach, arguing that the expertise to regulate gaming activities and to enforce laws related to gaming could be found in state agencies, and thus there was no need to duplicate those mechanisms on a Federal level.

Senate Report No. 100–497 at 5–7 (1988)

Accordingly, when tribal governments conduct Class III gaming, IGRA first requires three things: (1) a tribal gaming regulatory ordinance that meets minimum statutory standards, approved by the NIGC; (2) the Tribe is located in a state where Class III gaming is allowed for any purpose by any person, entity or organization; and (3) a Tribal-State Compact. The Tribal-State Compact provides the rules for Class III gaming:

(i) the application of the criminal and civil laws of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in such amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) other subjects that are directly related to the operation of gaming activities.

25 U.S.C. sec. 2710(d)(3)

Tribal gaming regulatory ordinances support the Tribal-State Compact provisions. Tribal gaming ordinances must include: (1) the tribe has sole ownership of the gaming facility; (2) net revenues are used first and foremost for essential government purposes and tribal infrastructure; (3) annual audits are provided to NIGC (including independent review of contracts in excess of $25,000); (4) standards for construction and maintenance of the facility; and (5) a background check and licensing system for management and key employees. The tribal ordinance process is intended to provide a measure of respect for tribal law-making authority, so the NIGC can only disapprove of a tribal ordinance if it does not meet the statutory criteria.

North Dakota Tribal-State Relations

In North Dakota, both our Tribes and the States have taken the Tribal-State Compact very seriously. Our first Tribal-State Compacts were approved in 1992 and they were renewed in 1999. We follow a broad, inclusive process of negotiation where all 5 Tribes work together and we negotiate with the Executive Branch, including the Governor's office and the Attorney General. The State Senate Majority and Minority Leaders and the State House Majority and Minority Leaders are invited to sit in on our compact negotiation meetings. The Tribes participate in six public hearings throughout the state to gather public input. Then our Tribal-State Compacts are approved through the normal legislative process, including committee hearings and approval by a vote of the State Legislature.

All of the North Dakota tribes have worked to maintain positive government-to-government relationships with the State of North Dakota. We meet every 2 years with the same group of state officials that negotiate Tribal-State Compacts to review tribal progress and any regulatory or implementation issues that may arise.

Our Tribes expressly adopted Minimum Internal Control Standards through our Tribal-State Compacts—which incorporate the NIGC MICS by reference:

Minimum Internal Control Standards

"Tribes shall abide with such Minimum Internal Control Standards as are adopted, published, and finalized by the National Indian Gaming Commission and as may be in current effect."

The State Attorney General is vested with authority to regulate gaming under state law, so Attorney General has expertise in this area:

The State Attorney General regulates the State Lottery, horse-racing and charitable gaming, alcoholic beverages, tobacco retailers, enforces consumer protection laws, and operates the Bureau of Criminal Investigations. The Attorney General's Gaming Division regulates, enforces and administers charitable gaming in North Dakota. The division provides training, performs audits and investigations of gaming organizations; reviews gaming tax returns; issues administrative complaints; conducts criminal history record checks of gaming employees and Indian casino employees; and ensures compliance with tribal-state casino gaming compacts.

The Attorney General's office works with our tribal gaming commissions to address any significant issues that arise in Class III gaming conducted pursuant to our compacts. Our compacts provide: (1) GAAP and IGRA standards for accounting; (2) regulation, testing and reporting for electronic machines to the state; (3) regulation for table games; (4) background checks conducted by the State Attorney General's office and licensing standards for our tribal gaming commissions; and (5) random inspections by the State Attorney General's office and tribal gaming commissions. The Tribes in North Dakota have worked very hard to preserve a strong relationship with the State, and the State for, its part, has worked in good faith with the Tribes.

In North Dakota, tribal governments employ more than 325 tribal regulators and staff. In 2006, tribal governments spent $7.4 million on tribal and state regulation of Indian gaming in North Dakota. That's $1.48 million per tribal government and we run relatively modest operations. We just had our biennial meeting with state officials and no regulatory issues or deficiencies were identified by any party. The Attorney General has said that his office is comfortable that we have achieved our original intention to create a safe, secure and effective tribal-state regulatory system.

Attorney General Stenjhem has complimented the tribal governments on our record of strong regulation and has cooperated with the tribal regulatory agencies to apprehend and prosecute those who attempt to cheat our casinos. The Attorney General has recognized that Indian gaming has created important jobs and generated vital revenue for tribal self-government. He made it clear that he is proud that the State has not asked for revenue sharing. State officials in North Dakota know that tribal governments have many unmet needs and it helps the whole state, when tribal governments have a way to create jobs and generate essential governmental revenue.

Summary of the Discussion Draft

Senator Dorgan's bill would amend IGRA to grant the NIGC the following authority over Class III gaming:

1. To monitor Class III gaming conducted on Indian lands on a continuing basis;
2. To inspect and examine all premises located on Indian lands on which Class III gaming is conducted; and
3. To demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of Class III gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter.

By granting the NIGC this new authority, Senator Dorgan's bill would overturn the Federal Court's decision in *Colorado River Indian Tribes,* which reflects the correct understanding of existing law. As a result, NIGC would then argue that its rulemaking authority for Class III gaming has increased.

The bill also calls for the establishment of a new Class III Regulatory Committee made up of regulators with either 1 year experience in regulating Class III gaming or at least 3 years experience at a tribal gaming operation. This Committee will be tasked with developing "minimum standards for the regulation of Class III gaming," which could cover anything including scope of games, bet and wager limits, hours of operation, etc. In other words, this new Federal regulatory authority—although couched as "minimum standards"—would actually completely duplicate the issues already covered under our Tribal-State Compacts required by existing law.

The bill requires the NIGC to then establish a process for certifying that tribes meet the minimum standards developed by this new committee. The draft bill also provides tribes with the ability to "opt-out" of the scheme if NIGC "certifies that the regulatory activity required under the Tribal-State compact meets the standards established by the Class III Regulatory Committee." Actual experience shows that the NIGC would not cede jurisdiction willingly. For almost 20 years, the NIGC has not done so for Class II gaming under the self-regulation provisions.

Finally, the Senator's proposed bill appears to provide for a "Seminole fix." However, the proposal does not address the States' 11th Amendment immunity to suit and is far short of the remedy needed to truly address the imbalance in Tribal-State compact negotiations.

Problems With the Discussion Draft

First, we are concerned that the NIGC itself has failed to comply with the NIGC Accountability Act of 2006, enacted by Congress last year as part of Public Law No. 109–221 (2006). That Act increases NIGC authority to impose regulatory fees on tribal governments of .080 percent of gross Indian gaming revenues and requires NIGC to establish a 5 year plan, including a technical assistance and training program, in consultation with tribal governments. The NIGC is using its increased fee authority to raise fees to increase its personnel levels, yet the NIGC has not begun the consultations mandated by the statute. Before new legislation is introduced, we believe that Congress should ensure that NIGC has fulfilled the mandate of Public Law No. 109–221. Proper implementation of Federal technical assistance could minimize or eliminate the need for legislation.

Second and most importantly, IGRA Amendments are not necessary at this time. As our example from North Dakota shows, Tribes already have strong regulatory rules in place through Tribal-State Compacts and tribal ordinances. We have worked hard to develop a working relationship with the state and our compacts include reference to state law and practice as well as the NIGC MICS. In North Dakota, the Tribal-State Compact negotiation process works well, without the intervention of new Federal rules or agencies.

The NIGC does not need new authority to work with us in North Dakota. We already have tribal gaming regulatory ordinances that meet IGRA's minimum statutory standards and have the approval of the NIGC. (Our Tribal-State Compacts also require that our tribal gaming ordinance be at least as stringent as the compacts.) Under IGRA, 25 U.S.C. sec. 2713, the NIGC has authority to come to our facilities and meet with the tribal gaming commission to ensure that our tribal ordinances are enforced. Section 2713 provides:

> [T]he Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian gaming or a management contractor engaged in gaming for any violation of this chapter, any regulation prescribed by the Commission . . . or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

If a Civil fine is not sufficient, the Chairman may issue a temporary closure order. If the problem is not resolved, the Chairman may then issue a permanent closure order. There has never been a permanent closure order issued in the Great Plains because Tribes have always worked with the NIGC on the rare occasion when a temporary closure order was issued.

Our tribal gaming ordinances are incorporated by reference into our compacts, so the State Attorney General also has enforcement authority for violations of our tribal regulatory ordinance. We work cooperatively with the Attorney General, so generally our tribal gaming commissions have an opportunity to resolve the issue after notifying the Attorney General. Then we notify the Attorney General of the resolution.

It would complicate our Tribal-State Compact negotiations if the NIGC were given new authority to issue Federal regulations for Class III Indian gaming. That would happen if the NIGC were given authority to "monitor" Class III gaming on a "continuing basis," as the draft bill recommends, because it would overturn the *Colorado River Indian Tribes* decision and trigger the NIGC's existing rulemaking power. Adding in a new Department of Interior Committee to develop MICS regulations would just be a duplication of existing efforts and promotes wasteful bureaucracy. Furthermore, the bill would leave the NIGC to judge the reach of its own jurisdiction, and it is not likely to give deference to our Tribal-State system since the Interior Committee will be developing new standards.

If the Senate Committee wants to give the NIGC authority to regulate Class III Indian gaming, then it should *do away with the Tribal-State Compact process and take the State out of the picture.* Our guess is that the Committee does not want to do that because our State Governor, Attorney General, and State Legislature have invested a lot of time and effort under the current Tribal-State Compact system.

Another question arises. NIGC seems to be seeking expanded authority for Class III gaming—is the Senate going to treat all gaming fairly and adopt a policy of Federal oversight for other gaming. Working with the North Dakota Attorney General

we have at least as good a system as any state licensed gaming, so why should we be required to have more Federal regulation than state licensees?

Alternative Legislative Provisions

If the Committee decides to go forward despite our objections, then we strongly believe that it should avoid new Federal rulemaking that would interfere with Tribal-State Compacts. Instead, Congress should simply call upon our tribal governments to maintain MICS in our tribal ordinances. This would preserve tribal law-making authority, create an objective statutory standard and ensure that tribal governments are not subjected to the whims of a, sometimes, arbitrary bureaucracy. At times, it seems as though the NIGC writes new rules just to keep busy.

If the Committee goes forward with legislation requiring Tribes to call upon tribal governments to maintain MICS in our tribal ordinances, then it should also address the following issues that Tribes are concerned about:

- Seminole Fix—Provide access to secretarial procedures in lieu of compact when a state raises and 11th Amendment defense to good faith negotiation. While the proposed bill appears to provide for a "Seminole fix," the proposal does not address the States' 11th Amendment immunity to suit. This is far short of the remedy needed to restore the imbalance in Tribal-State compact negotiations;
- Class II Technologic Aids—Affirm the IGRA and Federal Court of Appeals decisions that allow the use of technologic aids for Class II gaming;
- Grandfather existing Tribal-State Compacts and Grandfather Tribal Ordinances that already address the MICS; and
- Require NIGC to work with Tribes on a government-to-government basis, including negotiated rulemaking with tribal governments.

Conclusion

Instead of looking to Congress to legislatively overturn this decision, the NIGC should rely on its ability to provide technical assistance to Tribal regulators to fulfill any perceived gaps in its authority. Increased technical assistance and consultation by the NIGC will avoid the need for any amendments to the Indian Gaming Regulatory Act.

Naturally, if legislation goes forward, we ask that the Senate Committee on Indian Affairs defend its jurisdiction to prevent "legislative riders" on Appropriations bills. We are firmly opposed to such riders because historically they have done much mischief in Indian country. Indeed, it was an Appropriations "rider" that ended treaty-making with Indian tribes in 1871. Thereafter, we were relegated to congressional agreements. This is not asking too much, since Congress has pledged to do so under its procedural reform efforts. We also ask that the Committee proceed in a deliberative manner, with hearings after any bill is introduced, and such a bill should move as a technical bill through regular order on the unanimous consent calendar. IGRA should not be subject to amendments in an "ad hoc" manner on the floor of the Senate.

Moreover, any legislation to amend IGRA must respect the existing Tribal-State Class III regulatory framework and tribal law-making authority. We have worked too hard to fulfill IGRA's mandates to see the existing framework of the Act overturned. The Federal Court ruling in *CRIT* simply held that the NIGC may not draw up new Federal standards for the operation of Class III Indian gaming over and above Tribal-State Compacts. The Federal Court left in place the original understanding of IGRA and that understanding should be maintained. Any amendments can rest on tribal ordinances, which respect tribal law-making. We reject Federal regulatory mandates to be imposed on sovereigns who have worked in "good faith" to fulfill congressional purposes.

Thank you for considering our views. We look forward to working with you to preserve the existing framework of the Indian Gaming Regulatory Act. Pidamaya.

Attachments

STATE OF NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
Bismarck, ND, September 18, 2006

Hon. BYRON L. DORGAN,
Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Senator Dorgan:

Provisions of S. 2078 fail to recognize that some tribal/state gaming compacts and some tribal/state relationships adequately address problems the bill seeks to solve.

In particular, the bill significantly expands the National Indian Gaming Commission's (NIGC) authority to regulate Class III gaming.

I cannot comment on the effectiveness of gaming oversight in other states, and whether there is a need for added regulation, but I do know about the efforts my office undertakes in working with tribal casinos here in North Dakota. North Dakota gaming compacts provide for considerable regulation of Class III gaming. Another regulatory layer is questionable, at least in North Dakota.

The Senate Report 109–261 that accompanies S. 2078 states that "many Indian tribes and states developed sophisticated regulatory frameworks to oversee tribal gaming operations," and describes such frameworks as "effective." North Dakota has developed an effective regulatory regime overseeing Class III gaming. Furthermore, and of equal importance, when regulatory issues arise, North Dakota tribes cooperate with state officials. In my experience, issues are routinely resolved promptly and effectively.

If the Senate finds a need to expand NIGC's regulatory authority, I suggest an exception should be considered for those tribes being adequately regulated under their gaming compacts. If not, the bill will burden an agency with unnecessary work, subject well-run casinos to unnecessary oversight, and compromise tribal self-government and the compact process.

I also question provisions in the S. 2078 giving NIGC authority to review "gaming related contracts" that tribes may wish to enter. The paternalism of these provisions expresses a policy long ago abandoned by the Federal Government. In my discussions and negotiations with tribal officials on a variety of matters, they bring sophisticated, talented resources to the table. They are able to negotiate contracts without Federal oversight.

I appreciate an opportunity to offer some thoughts on efforts in Congress to strengthen oversights of Indian gaming.

Sincerely,

AMENDED GAMING COMPACT
BETWEEN THE
STANDING ROCK SIOUX TRIBE
AND THE
STATE OF NORTH DAKOTA

This Amended Gaming Compact ("Amended Compact") is made and entered into this 29th day September, 1999, by and between the Standing Rock Sioux Tribe, (hereinafter referred to as the "Tribe") and the State of North Dakota (hereinafter referred to as the "State").

I. RECITALS.

The Tribe is a federally recognized Indian Tribe, organized pursuant to the Constitution and By-Laws of the Standing Rock Sioux Tribe, approved by the Secretary of the Interior on October 15, 1984, as amended thereafter, with its headquarters at Fort Yates, North Dakota. Pursuant to Article IV of the Tribal Constitution, the Tribal Council is the governing body of the Tribe with constitutional and federal statutory authority to negotiate with state and local governments.

The State, through constitutional provisions and legislative acts, has authorized games of chance and other gaming activities, and the Congress of the United States, through the Indian Gaming Regulatory Act, Public Law 100-407, 102 Stat. 2426, 25 U.S.C. §2701 et seq. (1988) (hereinafter referred to as the "IGRA"), has authorized the Tribe to operate Class III gaming pursuant to a tribal gaming ordinance approved by the National Indian Gaming Commission and a Compact entered into with the State for that purpose. Pursuant to its inherent sovereign authority and the IGRA, the Tribe intends to continue presenting Class III gaming, and the Tribe and State negotiated a Compact under the provisions of the IGRA to authorize and provide for the operation of such gaming. Said Compact was executed on August 31,1992, by the then serving Tribal Chairman on behalf of the Tribe and the then serving Governor on behalf of the State and became effective when thereafter approved by the United States Secretary of Interior and publicized in the Federal Register. Said Compact provides for Amendment upon agreement by both parties. The parties believe that amendment at this time would be appropriate.

NOW THEREFORE, in consideration of the covenants and agreements of the parties herein below, the Tribe and the State agree as follows:

II. POLICY AND PURPOSE.

The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe and to the region of the State adjacent to Tribal lands, and the Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected. In the spirit of cooperation, the Tribe and the State hereby agree to carry out the terms of the IGRA regarding tribal Class III gaming.

The Tribal Gaming Code and regulations of the Tribal Gaming Commission (hereinafter referred to collectively as "Tribal Law"), this Compact, and the IGRA shall govern all Class III gaming activities, as defined in the IGRA. The purpose of this Compact is to provide the Tribe with the opportunity to license and regulate Class III gaming to benefit the Tribe economically.

III. AUTHORIZED CLASS III GAMING.

3.1 **Kinds of Gaming Authorized.** The Tribe shall have the right to operate upon Tribal trust lands within the exterior boundaries of the Standing Rock Sioux Reservation, and the lands identified in Section XXXIII below, the following Class III games during the term of this Compact, pursuant to Tribal Law and Federal Law, but subject to limitations set forth within this Compact.

A. Electronic games of chance with video facsimile displays. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

B. Electronic games of chance with mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence or lack thereof, of a winning combination and pay out, if any. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

C. Blackjack; and similar banking card games;

D. Poker; including Pai Gai Poker and Caribbean Stud Poker;

E. Pari-mutuel and simulcast betting pursuant to the separate pari-mutuel horse racing addendum to Gaming Compact between the parties executed on (NOT APPLICABLE), and thereafter approved by the United States Secretary of Interior. This amended compact shall control any inconsistencies between the addendum and this compact;

F. Sports and Calcutta pools on professional sporting events as defined by North Dakota law, except as to bet limits and except that play may be conducted utilizing electronic projections or reproductions of a sports pool board;

G. Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;

H. Pull-tabs or break-open tickets when not played at the same location where bingo is being played, subject to the limitations set forth at Section 3.4, below;

I. Raffles;

J. Keno;

K. Punchboards and jars;

L. Paddlewheels;

M. Craps and Indian Dice;

N. All games of chance and/or skill, other than those subject to Section 3.3 of this Compact, authorized to be conducted by any group or individual under any circumstances within the State of North Dakota, rules of play to be negotiated in good faith by the parties hereto;

O. Roulette, and similar games, whether played conventionally or electronically; and

P. Slot Tournaments, whether or not a fee is charged, in which players use designated electronic games of chance machines, whether equipped with video facsimile displays or mechanical rotating reels, that are equipped with special tournament EPROM chips, and are set to not receive coins during tournament play and which do not make printed tabulations during tournament play, in which the player competes against other players for a specified prize or prizes based on accumulated points as determined by the machine. The Tribe shall adequately account for slot tournament revenues.

3.2 **Limits of Wagers.** The Tribe shall have the right to operate and/or conduct authorized Class III gaming with individual bet maximum wagers to be set at the discretion of the Tribe, except that maximum wagers shall not exceed those set forth herein.

A. Wagers on blackjack may not exceed One hundred and no/100 dollars ($100.00) per individual bet. However, the Tribe may designate no more than two (2) tables on which wagers may not exceed Two Hundred Fifty and no/100 dollars ($250.00) per individual bet. Such tables shall be physically segregated, separately identified, and concurrently operative no more than twelve (12) hours per day.

B. Wagers on poker shall not exceed Fifty and no/100 dollars ($50.00) per individual bet per round, with a three raise maximum per round.

C. Bets on paddlewheels, whether individual or multiple, shall not exceed Fifty and no/100 dollars ($50.00) by any individual player per spin of the wheel.

D. Individual bets placed during the play of craps shall not exceed Sixty and no/100 dollars ($60.00) per bet. A player may lay "true odds on don't bets" to win no more than monies placed into play by the player during an individual game. Each game shall be attended by at least a two-person team, and normally by a three-person team, and overseen by at least one other non-participant supervisor who may oversee more than one game. Surveillance cameras shall not be considered a member of the three-person team.

E. The aggregate bets placed during the play of Indian dice shall not exceed an amount equal to One hundred and no/100 dollars ($100.00) multiplied by the number of players. Each game shall be attended by at least a two-person team, and normally by a three-person team, and overseen by at least one other non-participant supervisor who may oversee more than one game.

F. Electronic games of chance may not process individual bets in excess of Twenty-five and no/100 dollars ($25.00) per bet. However, play may be conducted upon individual machines which process simultaneously any number of bets, so long as the total of all bets does not exceed Twenty-five and no/100 dollars ($25.00).

G. Bets on Roulette shall not exceed Fifty and no/100 dollars ($50.00) where a player places a single bet per spin of the wheel. Players may, however, place a series of non-duplicate individual bets of no more than Five and no/100 dollars ($5.00) each per spin of the wheel.

3.3 **Availability of Additional Games and Bet Limits Legally Conducted by Other Tribes.** All games and/or increased wager limits which any other Indian Tribe may legally conduct, or utilize, on trust lands located within North Dakota, whether by compact with the State, or through action by the United States Secretary of Interior, or determination of any court maintaining jurisdiction, shall be available for play by Tribe subject to the following: The State may condition play upon the provision by Tribe of consideration similar or equivalent to that provided by another compacting Tribe. Upon identification by Tribe of any such game, and written notice to State, the parties shall within fourteen (14) days commence good faith negotiations as to the inclusion of such additional game or games, consideration by the Tribe, if applicable, rules of play and presentation thereof. Such negotiations shall proceed with deliberate speed and attention.

3.4 **Limits on Conduct of Pull-Tabs.** Pull tabs and/or break-open tickets when conducted as Class III gaming shall be conducted in accordance with standards and limitations then currently established under North Dakota State Law for the conduct of similar games, within the State of North Dakota. This Compact, as to pull-tabs and break-open games only, shall be deemed to be revised simultaneously with any revisions of North Dakota law as to the conduct of pull-tabs or break-open tickets to incorporate within the Compact, as applicable to Tribe, any such revisions.

Further, and in addition to the limitations set forth above, pull-tabs shall be dispensed only by machines that incorporate devices to tabulate machine activity.

The Tribe shall voluntarily comply with the above criteria in its conduct of all pull-tabs and break-open games. Should it not do so, it is agreed by the parties that the Tribe under the terms of this Agreement shall not be authorized to conduct any Class III pull-tabs or break-open ticket sales and shall not do so.

3.5 **No Machine or Table Limit.** There shall be no limit on the number of machines, tables, or other gaming devices which the Tribe may operate pursuant to this Compact, nor shall there be a limit as to number of sites on trust lands upon which gaming may be offered.

3.6 **Technology Advancements.** It is the desire of Tribe and of State to permit games authorized at Section 3.1 above to be conducted at the Tribe's option in a manner incorporating such advancement of technology as may be available. At the request of either party, State and Tribe shall meet to discuss such application.

3.7 **New Games.** At the request of either party, Tribe and State shall meet to discuss introduction of new games and appropriate rules of play along with the appropriateness and/or necessity of the Amendment of this Compact to permit such play.

3.8 **Inflation or Deflation.** At the request of either party, the Tribe and the State shall meet to discuss adjustment of betting limits to address economic inflation or deflation.

IV. TRIBAL LAW.

4.1 **Gaming Code.** The Tribe has adopted a Tribal Code, entitled "Gaming", and shall adopt regulations of the Tribal Gaming Commission pursuant thereto. Such Tribal Law shall be, and shall remain after any amendment thereto, at least as stringent as those specified in the Indian Gaming Regulatory Act and this Compact, and, with the exception of wagering limits and banking card games, those statutes and administrative rules adopted by the State of North Dakota to regulate those games of chance as may be authorized for play within the State of North Dakota, generally. The Tribe shall furnish the State with copies of such Tribal Law, including all amendments thereto.

4.2 **Incorporation.** The Gaming Code of the Tribe, as it may be from time-to-time amended, is incorporated by reference into this Compact.

V. TRIBAL REGULATION OF CLASS III GAMING.

5.1 **Tribal Council to Regulate Gaming.** The Tribal Council of the Tribe ("the Council") shall license, operate and regulate all Class III gaming activities pursuant to Tribal Law, this Compact, and the IGRA, including, but not limited to, the licensing of consultants, primary management officials and key employees of each Class III gaming activity or operation, and the inspection and regulation of all gaming devices. Any discrepancies in any gaming activity or operation and any violation of Tribal Law, this Compact or IGRA shall be corrected immediately by the Tribe pursuant to Tribal Law and this Compact.

5.2 **Tribal Gaming Commission.** The Tribal Gaming Commission, appointed pursuant to the Tribal Law and Order Code (hereinafter referred to as the "Tribal Commission"), shall have primary responsibility for the day-to-day regulation of all tribal gaming activities of operations, pursuant to delegation of authority by the Council, including licensing of all gaming employees.

5.3 **Regulatory Requirements.** The following regulatory requirements shall apply to the conduct of Class III gaming. The Tribe shall maintain as part of its lawfully enacted ordinances, at all times in which it conducts any Class III gaming, requirements at least as stringent as those set forth herein.

A. Odds and Prize Structure. The Tribe shall publish the odds and prize structure of each Class III game, and shall prominently display such throughout every gaming facility maintained by the Tribe.

B. No credit extended. All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated within the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not restrict the right of the Tribe or any other person or entity authorized by the Tribe to offer check cashing or to install or accept bank card, or credit card or automatic teller machine transactions in the same manner as would be normally permitted at any retail business within the State. The Tribe shall adopt check-cashing policies and advise the State of such policies.

C. Age Restrictions.

(i) No person under the age of 21, except for military personnel with military identification, may purchase a ticket, other than a raffle ticket, make a wager, or otherwise participate in any Class III game; provided that this section shall not prohibit a person 21 years old or older from giving a ticket or share to a person under the age of 21 as a gift.

(ii) No person under the age of 21, except employees performing job-related duties, shall be permitted on the premises where any component of Class III gaming is conducted, unless accompanied by a parent, guardian, spouse, grandparent, or great-grandparent over the age of 21, sibling over the age of 21, or other person over the age of 21 with the permission of the minor's parent or guardian; provided that this subsection shall not apply to locations at which sale of tickets is the only component of Class III gaming. This section shall not limit the presence of individuals under the age of 21 within areas of gaming facilities conducting only Class II gaming, or exclusively providing activities other than Class III gaming such as food service, concerts, and gift items.

D. Player Disputes. The Tribe shall provide and publish procedures for impartial resolution of a player dispute concerning the conduct of a game, which shall be made available to customers upon request.

VI. COMPLIANCE.

6.1 **Report of Suspected Violation by Parties.** The parties hereto, shall immediately report any suspected violation of Tribal Law, this Compact, or the IGRA to the Tribal Gaming Commission and to such State official as the State may designate. If the Commission concludes that a violation has occurred, the violation will be addressed by the Commission within five (5) days after receipt of such notice. The Commission shall notify the State promptly as to such resolution.

6.2 **Response to Complaints by Third Parties.** The Tribe shall through its Gaming Commission arrange for reasonable and accessible procedures to address consumer complaints. The Commission shall submit to such State official as the State may designate, a summary of any written Complaint received which addresses a suspected violation of Tribal law, this Compact, or the IGRA, along with specification as to any action or resolution deemed warranted and/or undertaken.

6.3 **Non-Complying Class III Games.** The following are declared to be non-complying Class III Games:

A. All Class III games to which the agents of the State have been denied access for inspection purposes; and

B. All Class III games operated in violation of this Compact.

6.4 **Demand for Remedies for Non-Complying Games of Chance.** Class III games believed to be non-complying shall be so designated, in writing, by the agents of the State. Within five (5) days of receipt of such written designation, the Tribe shall either:

A. Accept the finding of non-compliance, remove the Class III games from play, and take appropriate action to ensure that the manufacturer, distributor, or other responsible party cures the problem; or

B. Contest the finding of non-compliance by so notifying the agents of the State, in writing, and arrange for the inspection of the contested game, by an independent gaming test laboratory as provided within ten (10) days or the receipt of the finding of non-compliance. If the independent laboratory finds that the Class III game or related equipment is non-complying, the non-complying Class III game and related equipment shall be permanently removed from play unless modified to meet the requirements of this Compact.

VII. DESIGNATED USAGE OF FUNDS.

7.1 The Tribal Council of the Tribe has determined that it is in the interest of the Tribe that designated portions of revenue derived from gaming operations be guaranteed for usage within Tribal programs for economic development, other than gaming, and social welfare. In accordance therewith, at least ten (10%) percent of Net Revenues from Class III gaming operations must be directed to, and utilized within, economic development programs of the Tribe. Net Revenues shall be determined pursuant to the definition set forth within Section 4(9) of the Indian Gaming Regulatory Act according to Generally Accepted Accounting Principles (GAAP) as recognized by the American Institute of certified Public Accountants.

7.2 The parties intend that set aside funds as described herein shall be used for the long-term benefit and improvement of the Tribe and its members and be directed towards long-term economic development activities that will produce lasting returns on usage of these funds.

7.3 Economic development funds shall be used consistent with the following criteria:

(i) Purchase of supplies for the Tribes economic development programs.

(ii) Purchase of equipment of fixtures for the economic development programs.

(iii) Purchase, lease, or improvement of real estate for economic development operations or specific economic development projects.

(iv) Capitalization for economic development projects being pursued by the Tribe.

(v) Improvements to, or purchase towards tribal infrastructure (such as roads, buildings, water supply, waste water treatment, and similar efforts.)

(vi) Funds shall not be used for salaries, or day-to-day operations, or for gaming activities, whether of debt service or otherwise.

(vii) Planning and development of tribal businesses and other economic development activities.

(viii) Economic development grants to tribal members.

7.4 Any member of the Tribe may inspect, during normal business hours, how economic development funds under this section have been used by the Tribe and to inspect annual audits. Such information shall be periodically distributed to the representative body of each District.

VIII. LICENSING.

8.1 **Tribal License.** All personnel employed or contractors engaged by the Tribe, and/or by any Management Agent under contract with the Tribe, whose responsibilities include the operation or management of Class III games of chance shall be licensed by the Tribe.

8.2 **State License.** All personnel employed or contractors engaged by the Tribe and/or by any Management Agent under contract with the Tribe, other and apart from Members of the Tribe, whose responsibilities include the operation or management of Class III games of chance, shall be licensed by the State, should the State maintain applicable licensure requirements.

IX. BACKGROUND INVESTIGATION.

9.1 **Information Gathering.** The Tribe, prior to hiring a prospective employee or engaging a contractor whose responsibilities include the operation or management of Class III gaming activities, shall obtain sufficient information and identification from the applicant to permit the conduct of a background investigation of the applicant.

9.2 **Authorization of Background Investigation.** Any person who applies for a tribal license pursuant to this Compact and Tribal law shall first submit an application to the Tribe which includes a written release by the applicant authorizing the Tribe to conduct a background investigation of the applicant and shall be accompanied by an appropriate fee for such investigation as determined by the Commission pursuant to Tribal law and this Compact.

9.3 **Background Investigation by the Tribe.** Upon receipt of the application and fee, the Commission shall investigate the applicant within thirty (30) days of the receipt of the application or as soon thereafter as is practical. The Commission shall utilize the North Dakota Bureau of Criminal Investigations (BCI) to assist in background investigations, but may utilize any other resource the Tribe determines appropriate.

9.4 **Background Investigations by State Prior to Employment.** The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of games of chance, shall obtain a release and other information from the applicant to permit the State to conduct a background check on the applicant. This information, along with the standard fee, shall be provided in writing to the state which shall report to the Tribe regarding each applicant within thirty (30) days of receipt of the request or as soon thereafter as is practical. The Tribe may employ any person who represents, in writing, that he or she meets the standards set forth in this section, but must not retain any person who is subsequently revealed to be disqualified. Criminal history data compiled by the State on prospective employees shall, subject to applicable state to federal law, be released to the Tribe as part of the reporting regarding each applicant. The background check of employees and contractors to be conducted pursuant to this paragraph shall be independent of any similar federal requirements.

9.5 **Background Investigations of Employees During Employment.** Each person whose responsibilities include the operation or management of Class III games shall be subject to periodic review by the Gaming Commission comparable to that required for initial employment. This review shall take place at least every two years, commencing with the date of employment. Employees found to have committed disqualifying violations shall be dismissed.

9.6 **State Processing of Tribal Requests.** The State shall process background investigation requests by the Tribe with equal priority as to that afforded requests for background investigations by State Agencies.

9.7 **Investigation Fees.** The applicant shall reimburse the State for any and all reasonable expenses for background investigations required with this Compact.

X. PROHIBITIONS IN HIRING EMPLOYMENT AND CONTRACTING.

10.1 **Prohibitions.** The Tribe may not hire, employ or enter into a contract relating to Class III gaming with any person or entity which includes the provision of services by any person who:

A. Is under the age of 18;

B. Has, within the immediate preceding ten (10) years, been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time; any felony, any gambling related offense, any fraud or misrepresentation offense; unless the person has been pardoned or the Tribe has made a determination that the person has been sufficiently rehabilitated.

C. Is determined to have poor moral character or to have participated in organized crime or unlawful gambling, or whose prior activities, criminal record, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming, or as to the business and financial arrangements incidental to the conduct of gaming. Determinations specified above will be disqualifying as to employment and/or contracting should such, be made by the Tribal Gaming Commission.

10.2 **Dispensing of Alcoholic Beverages.** Tribal employees will comply with State liquor laws with respect to the dispensing of alcoholic beverages.

XI. EMPLOYEES.

11.1 **Procedural Manual.** The Tribe shall publish and maintain a procedural manual for all personnel, which includes disciplinary standards for breach of the procedures.

11.2 **Limitation of Participation in Games by Employees.** The Tribe may not employ or pay any person to participate in any game, (including, but not limited to, any shill or proposition player); except that an employee may participate, as necessary, to conduct a game as a dealer or bank.

XII. MANAGEMENT AGREEMENTS.

12.1 **Option for Tribe.** The Tribe in its discretion may, but in no manner shall be required to enter into a management contract for the operation and management of a Class III gaming activity permitted under this Compact.

12.2 **Receipt of Information by Tribe.** Before approving such contract, the Tribe shall receive and consider the following information:

A. The name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) five (5%) percent or more of its issued and outstanding stock;

B. A description of any previous experience that each person listed has had with other gaming contracts with Indian Tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency which has issued the person a license or permit relating to gaming or with which such person has had a contract relating to gaming; and

C. A complete financial statement of each person listed.

12.3 **Provisions of Management Agreement.** The Tribe shall not enter a management contract unless the contract provides, at least, for the following:

A. Adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Tribe on a monthly basis;

B. Access to the daily operations of the gaming activities to appropriate officials of the Tribe, who shall also have a right to verify the daily gross revenues and income made from any such Tribal gaming activity;

C. A minimum guaranteed payment to the Tribe, that has preference over the retirement of development and construction costs;

D. An agreed ceiling for the repayment of development and construction costs;

E. A contract term not to exceed five (5) years, except that the Tribe may approve a contract term that exceeds five (5) years but does not exceed seven (7) years if, the Tribe is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time;

F. A complete, detailed specification of all compensation to the Contractor under the contract;

G. Provisions for an early Tribal buy out of the rights of the Management Agent; and

H. Grounds and mechanisms for terminating such contract.

I. At least ten (10%) percent of net revenues, from Class III gaming operations shall be directed to, and utilized within, economic development programs of the Tribe other than gaming. Net Revenues shall be determined according to Generally Accepted Accounting Principles (GAAP).

12.4 **Fee.** The Tribe may approve a management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity, which shall not exceed thirty (30%) percent, unless the Tribe, determines that the capital investment required, and income projections, for such gaming activity, require an additional fee, which in no event shall exceed forty (40%) percent of net revenues of such gaming activity. A contract providing for a fee based upon a percentage of net revenues shall include a provision describing in detail how net revenues will be determined.

12.5 **Background Check.**

A. Prior to hiring a Management Agent for Tribal Class III games, the Tribal Gaming Commission shall obtain release and other information sufficient from the proposed Management Agent and/or its principals to permit the State to conduct a background check. All information requested will be provided in writing to the State which shall conduct the background check and provide a written report to the Tribe regarding each Manager applicant and/or its principals within thirty (30) days of receipt of the request or as soon thereafter as is practical. The background check to be conducted pursuant to this paragraph shall be in addition to any similar federal requirements.

B. The Tribe shall not employ a Management Agent for the Class III games if the State Gaming Commission determines that the Management Agent applicant and/or its principals are in violation of the standards set forth in Section X of this Compact.

XIII. ACCOUNTING AND AUDIT PROCEDURES.

13.1 **Accounting Standards.** The Tribe shall adopt accounting standards, which meet or exceed those standards established in the IGRA.

13.2 **Systems.** All accounting records must be maintained according to Generally Accepted Accounting Principals (GAAP).

13.3 **Audits.** The Tribe shall conduct or cause to be conducted independent audits of every Class III gaming activity or operation. Audits will be conducted at least annually with copies all annual audits to be furnished to the State by the Tribe at no charge.

XIV. TRIBAL RECORD KEEPING.

14.1 **Record Maintenance.** The Tribe shall maintain the following records related to its gaming operations for at least three (3) years.

A. Revenues, expenses, assets, liabilities and equity for each location at which any component of Class III gaming is conducted;

B. Daily cash transactions for each game at each location at which Class III gaming is conducted including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

C. Individual and statistical game records to reflect statistical drop, statistical win, the statistical drop by table for each game, and the individual and statistical game records reflecting similar information for all other games;

D. Records of all tribal enforcement activities;

E. All audits prepared by or on behalf of the Tribe;

F. All returned checks which remain uncollected, bold checks or other similar credit instruments; and

G. Personnel information on all Class III gaming employees or agents, including time sheets, employee profiles and background checks.

14.2 **Accounting Records and Audits Concerning Class III Gaming by Tribe.** The Tribe shall provide a copy to the State of any independent audit report upon written request of the State. Any costs incidental to providing copies to the State will be borne by the Tribe.

XV. ACCESS TO RECORDS.

15.1 The Tribe shall permit reasonable access to and review by the State of Tribal accounting and audit records associated with gaming conducted under this Compact. The State may copy such documents as it desires subject to the confidentiality provisions set forth herein below. Any costs incidental to such an inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

15.2 The Tribe requires that its gaming records be confidential. Any Tribal records or documents submitted to the State, or of which the State has retained copies in the course of its gaming oversight and enforcement, will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of this Compact, or except as may be required for law enforcement or tax assessment purposes. Such disclosure, however, shall be conditional upon the recipient making no further disclosure absent authorization by the Tribe or under Court Order. This Compact is provided for by Federal law and therefore supersedes State records law to the contrary.

15.3 The Tribe shall have the right to inspect and copy all State records concerning the Tribe's Class III gaming unless such disclosure would compromise the integrity of an ongoing investigation.

XVI. TAX REPORTING MATTERS.

Whenever required by federal law to issue Internal Revenue Service Form W2G, the Tribe shall also provide a copy of the same to the State. In addition, the Tribe shall comply with employee income withholding requirements for all non-Indian employees and all Indian employees not living on the Reservation, who are not members of the Tribe.

XVII. JURISDICTION, ENFORCEMENT AND APPLICABLE LAW.

17.1 **Criminal Enforcement.** Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such criminal jurisdiction as each may enjoy under applicable law. Nothing in this Compact shall be interpreted as extending the criminal jurisdiction of the State of North Dakota or the Tribe.

17.2 **Civil Enforcement.** Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this Compact shall be interpreted as extending the civil jurisdiction of the State of North Dakota or the Tribe.

XVIII. SOVEREIGN IMMUNITY.

18.1 **Tribe.**

A. Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the Tribe.

B. Sovereign immunity must be asserted by the Tribe itself and may not be asserted by insurers or agents. The Tribe waives sovereign immunity for personal injury arising out of its gaming activities, but only to the extent of its liability insurance coverage limits.

18.2 **State.** Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the State.

XIX. QUALIFICATIONS OF PROVIDERS OF CLASS III GAMING EQUIPMENT OR SUPPLIES.

19.1 **Purchase of Equipment and Supplies.**

A. No Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe unless the Class III equipment or supplies are purchased, leased or acquired from a manufacturer or distributor licensed by the Tribe to sell, lease, or distribute Class III gaming equipment or supplies, and further unless the gaming manufacturer is licensed to do business in one or more of the following states; Nevada, New Jersey, South Dakota, Colorado, and Mississippi. Should the Tribe wish to purchase equipment on supplies from a business not shown to be licensed to do business in one or more of the above mentioned States, the Tribe may petition the Office of the Attorney General for the State of North Dakota for review and approval of said manufacturer or supplier.

B. Should the State of North Dakota commence a comprehensive program of licensing the sale, lease, and/or distribution of Class III games of chance, gaming equipment, or supplies, no Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe, after one year subsequent to the date of such enactment, except from a manufacturer or distributor licensed both by the Tribe and the State of North Dakota to sell, lease or distribute Class III gaming equipment or supplies, unless a manufacturer or distributor was licensed to do business in one of the States specified within Section 19.1.A., prior to the date of commencement of such licensing by the State of North Dakota.

19.2 **Required Information.** Prior to entering into any lease or purchase agreement for Class III gaming equipment or supplies, the Tribe's Gaming Commission shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribal Gaming Commission to conduct a background check on those persons.

19.3 **No Business Dealings with Disqualified Parties.** The Tribe shall not enter into any lease or purchase agreement for Class III gaming equipment or supplies with any person or entity if the Tribal Gaming Commission or the State determines that the lessor or seller, or any manager or person holding a direct or indirect financial interest in the lessor/seller or the proposed lease/purchase agreement, has been convicted of a felony or any gambling related crime or whose gaming license has been suspended or revoked because of misconduct through administrative action in any other state or jurisdiction, within the previous five (5) years, or who is determined to have participated in or have involvement with organized crime.

19.4 **Receipt of Gaming Equipment.** All sellers, lessors, manufacturers and/or distributors shall provide, assemble and install all Class III games of chance, gaming equipment and supplies in a manner approved and licensed by the Tribe.

XX. REGULATION AND PLAY OF AN ELECTRONIC GAME.

20.1 **Electronic Game - Definition.** "Electronic Game" means a microprocessor-controlled device that allows a player to play games of chance, which the outcome may or may not be affected by the player's skill. A game is activated by inserting a token, coin, currency, or other object, or use of a credit, and which awards credit, cash, tokens, replays, or a written statement of the player's accumulated credits and that is redeemable for cash.

20.2 **Display.** Game play may be displayed by video facsimile, or mechanical rotating reels that stop in positions that display the presence, or lack of, a winning combination and pay out and which are predetermined by the software of the game.

20.3 **Testing.**

A. Designation of a Gaming Test Laboratory. A Tribe may not operate an electronic game, including a bill acceptor, unless the game (or prototype) and bill acceptor have been tested and approved or certified by a gaming test laboratory as meeting the requirements and standards of this Compact. A gaming test laboratory is a laboratory agreed to and designated in writing by the State and Tribe as competent and qualified to conduct scientific tests and evaluations of electronic games and related equipment. A laboratory operated by or under contract with any State of the United States to test electronic games may be designated.

B. Providing Documentation and Model of an Electronic Game (or Prototype). As requested by a gaming test laboratory, a manufacturer shall provide the laboratory with a copy of an electronic game's (or prototype's) illustrations, schematics, block diagrams, circuit analyses, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base-16 format), and any other information. As requested by the laboratory, the manufacturer shall transport one or more working models of the electronic game (or prototype) and related equipment to a location designated by the laboratory. The manufacturer shall pay for all costs of transporting, testing, and analyzing the model. As requested by the laboratory, the manufacturer shall provide specialized equipment or the services of an independent technical expert to assist the laboratory.

C. Report of Test Results. At the end of each test, the gaming test laboratory shall provide the State and Tribe a report containing the findings, conclusions, and a determination that the electronic game (or prototype) and related equipment conforms or does not conform to the hardware and software requirements of this Compact. If the electronic game (or prototype) or related equipment can be modified so it can conform, the report may contain recommended modifications. If the laboratory determines that an electronic game (or prototype) conforms, that determination will apply for all Tribes under this Compact.

D. Modification of an Approved Electronic Game. A Tribe may not modify the assembly or operational functions of an electronic game or related equipment, including logic control components, after testing and installation, unless a gaming test laboratory certifies to the State and Tribe that the modification conforms to the requirements and standards of this Compact.

E. Conformity to Technical Standards. A manufacturer or distributor shall certify, in writing, to the State and Tribe that, upon installation, each electronic game (or prototype): 1) conforms to the exact specifications of the electronic game (or prototype) tested and approved by the gaming test laboratory; and 2) operates and plays according to the technical standards prescribed in this section.

F. Identification. A non-removable plate(s) must be affixed to the outside of each electronic game. The plate must contain the machine's serial number, manufacturer, and a unique identification number assigned by the Tribe and date this number was assigned.

20.4 Tribal Reports to the State.

A. Installation of Electronic Game. At least forty-eight (48) hours before installing an electronic game at a gaming site, the Tribe shall report this information to the State for each game:

(i) Type of game;

(ii) Serial number;

(iii) Manufacturer;

(iv) Source from whom the game was acquired, how the game was transported into the State, and name and street address of the common carrier or person that transported the game;

(v) Certification;

(vi) Unique identification number and date assigned by the Tribe;

(vii) Logic control component identification number;

(vii) Gaming site where the game will be placed; and

(ix) Date of installation.

B. Removal of Electronic Game. Upon removal of an electronic game from a gaming site, the Tribe shall provide the State, in writing:

(i) Information for items i, ii, and iii of subsection A;

(ii) Date on which it was removed;

(iii) Destination of the game; and

(iv) Name of the person to whom the game is to be transferred, including the person's street address, business and home telephone numbers, how the game is to be transported, and name and street address of the common carrier or person transporting the game.

20.5 Hardware Requirements.

A. Physical Hazard. Electrical and mechanical parts and design principles may not subject a player to physical hazards.

B. Surge Protector. A surge protector must be installed on the line that feeds electrical current to the electronic game.

C. Battery Backup. A battery backup or an equivalent must be installed on an electronic game for the game's electronic meters. It must be capable of maintaining the accuracy of all information required by this Compact for one hundred eighty (180) days after electrical current is discontinued. The backup device must be kept within the locked microprocessor compartment.

D. On/Off Switch. An on/off switch that controls the electrical current of an electronic game and any associated equipment must be located in a readily accessible place inside the machine.

E. Static Discharge. The operation of an electronic game should be protected from static discharge or other electromagnetic interference.

F. Management Information System.

(i) The electronic game must be interconnected to a central on-line computer management information system, approved by the gaming test laboratory, that records and maintains essential information on machine play. This information must be retained for thirty (30) days. The State may inspect such records.

(ii) An electronic game using a coin drop hopper is allowed, provided it is monitored by an on-line management information system, which has been appeoved by the gaming test laboratory. However, should the Tribe maintain individual or clusters of machines apart from a major casino location, all coin hoppers must be monitored by a computer. Data from the machines must be downloaded to the central on-line management information system daily. The system must generate, by machine, analytical reports of coins and currency in, coins out, actual hold and actual to theoretical hold percentages, and error conditions. The term "error conditions" includes any exterior or interior cabinet door openings, coin-in tilts, and hopper tilts. A Tribe shall prepare system reports at least on a monthly basis and retain the reports for at least three years. The State may inspect such records.

(iii) The Tribe shall maintain accurate and complete records of the identification number of each logic control component installed in each electronic game. The State may inspect such records.

G. Cabinet Security. The cabinet or interior area of an electronic game must be locked and not readily accessible.

H. Repairs and Service. An authorized agent or employee of the Tribe may open a cabinet to repair or service the game, but may do it only in the presence of another Tribal agent or employee, or when the access is recorded by a video surveillance system.

I. Microprocessor Compartment. Logic Boards and other logic control components must be located in a separate microprocessor compartment within the electronic game. This compartment must be sealed and locked with a key or combination different than the key or combination used for the main cabinet door and cash compartment. The microprocessor compartment may be opened only in the presence of a tribal official or security officer appointed by the Tribe. The key to the microprocessor compartment must be kept by the Tribe in a secure place. "Logic control components" means all types of program storage media used to maintain the executable program that causes the game to operate. Such devices include hard disk drives, PCMIA cards, EPROMs, EEPROMs, CD-ROMs and similar storage media.

(i) The storage media must be disabled from being able to be written to by a physical or hardware write disable feature when it is in the machine. It must be impossible to write any contents to the storage media at any time, from an internal or external source.

(ii) Sealing tape, or its equivalent, must be placed over areas that are access sensitive. The security tape must be numbered, physically secured, and available to only authorized personnel of the Tribe.

(iii) Logic control components must be able to be inspected in the field. The components must be able to be verified for authenticity by using signatures, hash codes, or other secure algorithm, and must be able to be compared on a bit for bit basis.

(iv) The supplier of an electronic game shall provide the State and Tribe with necessary field test equipment at no charge for carrying out tests required in (iii) above. Also, if requested by the State or Tribe, the supplier shall provide training on how to use the equipment.

J. Cash Compartment. The coin and currency compartment must be locked separately from the main cabinet area, and secured with a key or combination different than the key or combination used for the main cabinet door. However, a separate cash compartment is not required for coins that are necessary to pay prizes through a drop hopper. The keys must be kept in a secure location. Except as provided in this section, the compartment into which coins and bills are inserted must be locked. An employee or official of the Tribe may open the cash compartment to collect the cash and shall record the amount collected.

K. Hardware Switches. No hardware switch may be installed on an electronic game or associated equipment that may alter the game's pay table or payout percentage. Any other hardware switch must be approved by the State and Tribe.

L. Printing of Written Statement of Credits. For an electronic game that awards credits or replays, but not coins or tokens, a player, on completing play may prompt the game to print a written statement of credits. The game's interior printer must retain an exact, legible copy of the statement produced within the game.

M. Network. A Tribe may operate an electronic game as part of a network of games with an aggregate prize; provided:

(i) An electronic game capable of bi-directional communication with external associated equipment must use communication protocol, which ensures that erroneous data will not adversely affect the operation of the game. The local network must be approved a gaming test laboratory; and

(ii) If the network links the Tribe's progressive electronic games to another Tribe's progressive games that are located on the other Tribe's Indian reservation, each participating Tribe must have a Class III gaming compact that authorizes the Tribe's gaming to be operated as part of a multi-location network. All segments of the network must use security standards agreed to between the State and Tribe and which are as restrictive as those used by the Tribe for its on-line games.

20.6 Software Requirements.

A. Randomness Testing. Each electronic game must have a true random number generator that will determine the occurrence of a specific card, symbol, number, or stop position to be displayed on a video screen or by mechanical rotating reels. An occurrence will be considered random if it meets all requirements:

(i) Chi-Square Analysis. Each card, symbol, number, or stop position, which is wholly or partially determinative, satisfies the 99 percent confidence limit using the standard chi-square analysis.

(ii) Runs Test. Each card, symbol, number, or stop position does not, as a significant statistic, produce predictable patterns of game elements or occurrences. Each card, symbol, number, or stop position will be considered random if it meets the 99 percent confidence level with regard to the "runs test" or any generally accepted pattern testing statistic.

(iii) Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without regard to any other card, symbol, number or stop position, drawn within that game play. Each pair of card, symbol, number, or stop position is considered random if they meet the 99 percent confidence level using standard correlation analysis.

(iv) Serial Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without reference to the same card, number, or stop position in the previous game. Each card, number, or stop position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

(v) Live Game Correlation. An electronic game that represents a live game must fairly and accurately depict the play of the live game.

B. Software Requirements for Percentage Payout. Each electronic game must meet the following maximum and minimum theoretical percentage payouts. However, these percentages are not applicable to slot tournaments conducted pursuant to Section 3.1(d):

(i) Electronic games that are not affected by player skill must pay out a minimum of eighty (80%) percent and no more than one hundred percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory; and

(ii) Electronic games that are affected by player skill, such as draw poker and twenty-one, must pay out a minimum of eighty-three (83%) percent and no more than one hundred (100%) percent of the amount wagered. This standard is met when using a method of play that will provide the greatest return to the player over a period of continuous play. These percentages shall not be applicable to slot tournaments conducted pursuant to Section 3.1(d).

C. Minimum Probability Standard for Maximum Payout. Each electronic game must have a probability of obtaining the maximum payout, which is greater than 1 in 17,000,000 for each play.

D. Software Requirements for Continuation of Game After Malfunction. Each electronic game must be capable of continuing the current game with all the current game's features after a game malfunction is cleared. This provision does not apply if a game is rendered totally inoperable; however, the current wager and all player credits before the malfunction must be returned to the player.

E. Software Requirements for Play Transaction Records. Each electronic game must maintain an electronic, electro-mechanical, or computer system, approved by a gaming test laboratory, to generate external reports. The system must record and maintain essential information associated with machine play. This information must be retained for at least thirty days, regardless of whether the machine has electrical power.

F. No Automatic Clearing of Accounting Meters. No electronic game may have a mechanism by which an error will cause the electronic accounting meters to automatically clear.

G. Display of Information. The information displayed must be kept under glass or other transparent material. No sticker or other removable item may be placed on the machine face or cover game information.

H. Display of Rules. The machine must display: 1) the rules of the game before each game is played; 2) the maximum and minimum wagers, amount of credits which may be won for each winning hand or combination of numbers or symbols; and 3) the credits the player has accumulated. However, for an electronic game with a mechanical display, this information must be permanently affixed on the game in a conspicuous location.

XXI. AMENDMENTS TO REGULATORY AND TECHNICAL STANDARDS FOR ELECTRONIC GAMES OF CHANCE.

The State and the Tribe acknowledge the likelihood that technological advances or other changes will occur during the duration of this Compact that may make it necessary or desirable that the regulatory and technical standards set forth in Sections 20.5 and 20.6 for electronic games of chance be modified to take advantage of such advances or other changes in order to maintain or improve game security and integrity. Therefore any of the regulatory or technical standards set forth in Sections 20.5 and 20.6 may be modified for the purposes of maintaining or improving game security and integrity by mutual agreement of the North Dakota Attorney General and the Tribal Council or its Chairperson, upon the written recommendation and explanation of the need for such change made by either party.

XXII. REGULATION AND PLAY OF TABLE GAMES.

22.1 Gaming Table Bank. The Tribe shall maintain at each table a gaming table bank, which shall be used exclusively for the making of change or handling player buy-ins.

22.2 Drop Box. The Tribe shall maintain at each table a game drop box, which shall be used exclusively for rake-offs or other compensation received by the Tribe for maintaining the game. A separate game drop box shall be used for each shift.

22.3 Gaming Room Bank. The Tribe shall maintain, at each location at which table games are placed, a gaming room bank, which shall be used exclusively for the maintenance of gaming table banks and the purchase and redemption of chips by players.

22.4 Rules to be Posted. The rules of each game shall be posted and be clearly legible from each table and must designate:

A. The maximum rake-off percentage, time buy-in or other fee charged.

B. The number of raises allowed.

C. The monetary limit of each raise.

D. The amount of the ante.

E. Other rules as may be necessary.

XXIII. MINIMUM INTERNAL CONTROL STANDARDS

Tribe shall abide with such Minimum Internal Control Standards as are adopted, published, and finalized by the National Indian Gaming Commission and as may be in current effect.

XXIV. INSPECTION.

24.1 **Periodic Inspection and Testing.** Tribal officials, agents or employees shall be authorized to periodically inspect and test any tribally licensed electronic games of chance. Any such inspection and testing shall be carried out in a manner and at a time, which will cause minimal disruption of gaming activities. The Tribal Gaming Commission shall be notified immediately of all such inspection and testing and the results thereof.

24.2 **Receipt of Reports of Non-compliance.** The Tribe shall provide for the receipt of information by the State as to machines believed to not be in compliance with this Compact or not to be in proper repair. Upon its receipt of such information the Tribe shall reasonably inspect or arrange for the inspection of any identified machine and shall thereafter undertake and complete, or commission the undertaking and completion of such corrective action as may be appropriate.

24.3 **State Inspection of Operations.** Agents of the State of North Dakota, or their designated representatives, shall upon the presentation of appropriate identification, have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of games of chance, or the storage of games of chance or equipment related thereto, and may inspect all premises, equipment, daily records, documents, or items related to the operation of games of chance in order to verify compliance with the provisions of this Compact. Agents of the State making inspection shall be granted access to non-public areas for observations upon request. The Tribe reserves the right to accompany State inspectors within non-public areas. The Tribe shall cooperate as to such inspections. Inspections will be conducted, to the extent practicable, to avoid interrupting normal operations. Any costs associated with such inspection will be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

24.4 **Inspection of Electronic Games of Chance.** The State may cause any electronic game of chance in play by the Tribe to be inspected by a Qualified Gaming Test Laboratory or examiner. Inspections shall be conducted, to the extent practicable, to avoid interrupting normal operations. Any costs associated with inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact. The Tribe shall cooperate in such inspection. Upon completion of such testing, test results must be provided to both the State and the Tribe.

24.5 **Removal and Correction.** Any machine confirmed to be in non-compliance with this Compact shall be removed from play by the Tribe and brought into compliance before reintroduction.

XXV. ESCROW ACCOUNT FOR STATE EXPENSES.

25.1 **Escrow Fund.** The Tribe shall establish an escrow fund at a bank of their choosing with an initial contribution of Fifteen Thousand and no/100 dollars ($15,000.00) to reimburse the State for the expenses specifically names for reimbursement in this Compact and for participation in legal costs and fees incurred in defending, with the concurrence of the Tribe, third party challenges to this Compact. The Tribe shall replenish the said escrow account as necessary and agree that the balance in the said escrow account will not drop below the sum of seven thousand five hundred and no/100 dollars ($7,500.00).

25.2 **Procedure.** The payments referenced above shall be made to an escrow account from which the State may draw as hereinafter provided. The State shall bill the Tribe the reasonable, necessary, and actual costs related to obligations undertaken under this Compact. Unless unreasonable or unnecessary, the costs for such services shall be that established by state law. The State shall send invoices to the Tribe for these services and shall thereafter be permitted to withdraw the billed amounts from the escrow account under the circumstances provided in this section. The Tribe shall be advised in writing by the State of all withdrawals from the Escrow Account and as to the purpose of such withdrawal.

25.3 **Tribal Challenge.** Should the Tribe believe that any expenses for which the State has billed the Tribe under this section, or actions which the State proposes to undertake and charge the Tribe for, are unnecessary, unreasonable or beyond the scope authorized by this Compact, the Tribe may invoke any of the Dispute Resolution procedures specified in Section XXVIII below. In such event, the provisions set forth above shall remain in full force and effect pending resolution of the complaint of the Tribe. Should, however, it be determined that any expense charged against the Tribe is not necessary, not reasonable and/or is not within the scope of this Compact, the State shall reimburse the Tribe any monies withdrawn from escrow to meet such expense.

25.4 **Termination of Escrow.** Any monies that remain on deposit at the time this Compact, including all extensions thereof, concludes, shall be reimbursed to the Tribe.

XXVI. IGRA REMEDIES PRESERVED.

Nothing in this Compact shall be construed to limit the rights or remedies available to the parties hereto under the IGRA.

XXVII. WORKER'S COMPENSATION AND UNEMPLOYMENT INSURANCE

27.1 **Unemployment Insurance.** In order to provide protection to the employees of the Tribe from unemployment, the Tribe and the State agree that all employees engaged in gaming activities as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by the North Dakota Unemployment Insurance Fund, and to that extent, the Tribe agrees as an employer to participate in those funds as provided herein. The Tribe will pay premiums for such employees to the Fund as any other employer in the State of North Dakota. The Tribe and its employees that are employed in gaming activities shall have all rights and remedies as any employer or employee covered by the Fund. To that end, the Tribe and the State agree that any dispute with respect to the aforementioned funds, the coverage and benefits provided thereby, and premiums assessed and collected, shall be in the Courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

27.2 **Worker's Compensation.** In order to provide protection to the employees of the Tribe from injury, the Tribe and the State agree that all employees engaged in gaming activities, as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by worker's compensation insurance comparable to that provided under North Dakota state law to employees covered thereby. Tribe may elect to obtain coverage from the North Dakota Worker's Compensation Bureau or from one or more private insurers certified to provide insurance coverage for any purpose within the State of North Dakota.

Should Tribe elect to obtain coverage from the North Dakota Worker's Compensation Bureau, the Tribe will pay premiums for such employees to the Bureau as any other employer in the State of North Dakota, with the Tribe and its employees that are employed in gaming activities having all rights and remedies as any employer covered under North Dakota state law. To that end, the Tribe and the State agree that any dispute with respect to the coverage and benefits provided under North Dakota state law and premiums assessed and collected by the North Dakota Worker's Compensation Bureau shall be in the courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

XXVIII. DISPUTE RESOLUTION.

28.1 If either party believes that the other party has failed to comply with any requirement of this Compact, it shall invoke the following procedure:

A. The party asserting the non-compliance shall serve written notice on the other party. The notice shall identify the specific statutory, regulatory or Compact provision alleged to have been violated and shall specify the factual basis for the alleged non-compliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

B. If the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth, either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, including:

(i) Arbitration pursuant to the specifications set forth in this section.

(ii) Commencement of an action in the United States District Court for the District of North Dakota.

(iii) Any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact.

28.2 In the event an allegation by the State asserting that a particular gaming activity by the Tribe is not in compliance with this Compact, where such allegation is not resolved to the satisfaction of the State within ninety (90) days after service of notice, the State may serve upon the Tribe a notice to cease conduct of such gaming. Upon receipt of such notice, the Tribe may elect to stop the gaming activity specified in the notice or invoke one or more of the additional dispute resolution procedures set forth above and continue gaming pending final determination.

28.3 In the event an allegation by the Tribe is not resolved to the satisfaction of the Tribe within ninety (90) days after service of the notice set forth above, the Tribe may invoke arbitration as specified above.

28.4 Any arbitration under this authority shall be conducted under the rules of the American Arbitration Association, except that the arbitrators will be selected by the State picking one arbitrator, the Tribe a second arbitrator and the two so chosen shall pick a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is picked, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

28.5 Either party may initiate action in United States District Court to enforce an arbitration determination, or to pursue such relief as may be unavailable through arbitration.

XXIX. COOPERATION BY PARTIES

29.1 **Gambling Addiction Programs.** The parties hereto wish to proclaim their joint support of effective programs to address gambling addiction. Past donations in support of such efforts by Tribe are acknowledged. Tribe intends to continue such voluntary donations. State shall extend efforts to facilitate similar support from other gaming interests within North Dakota. The parties shall continue their joint efforts to most effectively support gambling addiction treatment, education and prevention programs, including completion of a study of gaming addiction in the State of North Dakota, to be completed by the start of the 2001 Legislative session.

29.2 **Government-to-Government Issues.** The parties acknowledge that there exist many Government-to-Government issues of concern between them and pledge to cooperate with each other in addressing such issues.

29.3 **Local Jurisdictions.** Tribe and Local Jurisdictions shall in good faith negotiate relative to the provision by the local jurisdiction of such services to the Tribe as may be requested by the Tribe, and as to a reasonable contribution from the Tribe for such services. Tribe and Local Jurisdictions shall in good faith negotiate as to a reasonable contribution from the Tribe for services by local jurisdictions necessitated by the presence of a Tribal casino.

XXX. CONSULTATION.

Tribe and State shall in good faith periodically inform each other of issues associated with the implementation of this Compact and at the request of either party shall meet and discuss matters of concern. A status review meeting shall be had at least bi-annually in even numbered years between Tribe, other compacting Tribes within the state of North Dakota and state officials, including, but not limited to representatives of the Governor, Attorney General and legislative leaders. The State and the Tribe are concerned about the long term impact to the people of North Dakota (tribal and non-tribal alike) and are committed to implementing this Compact, making every effort during the term thereof, to provide economic opportunities and deal appropriately with any consequences resulting from gambling.

XXXI. EFFECTIVE DATE.

This Amended Compact shall become effective, and shall supersede the terms of the parties initial Gaming Compact, upon execution by the Chairperson of the Tribe and the Governor of the State, approval by the Secretary of the Interior, and publication of such approval in the Federal Register pursuant to the IGRA.

XXXII. DURATION.

32.1 **Term.** This Compact shall be in effect, following its effective date, for a term consisting of the remaining period of the initial Class III Gaming Compact between Tribe and State (without any extensions) and thereafter for a period of ten (10) years.

32.2 **Initial Renewal.** This Compact shall, without action by either party, be extended for an additional five (5) year period beyond the term specified at Section 32.1 above, unless during the remaining period of the initial Class III Gaming Compact between Tribe and State or during a subsequent period of seven (7) years thereafter, either party, believes that the other has not been in substantial good faith compliance with the terms of this Compact and gives notice of non-compliance within the term herein specified. Such notice must be given in writing at least thirty (30) days prior to the conclusion of the above identified period ("Notice Date"). The Notice must be accompanied with specifications designating the manners the party is believed to have not been in good faith compliance. Failure by a party to give notice by the Notice Date as to activity by the other it views disfavor does not eliminate the ability of such party to arbitrate its concerns under Article XXVIII.

If an arbitration panel, upon consideration of conduct occurring between the Notice Date and the end of the term specified at Section 32.1, determines that the Tribe has been in substantial non-compliance, the Governor within thirty (30) days of the determination may vacate the five (5) year extension provided therein. The parties may thereafter negotiate for a Successor Compact.

32.3 **Automatic Extension.** The duration of this Compact shall thereafter be automatically extended for terms of five (5) years upon written notice of renewal by either party on the other party during the final year of the original term of this Compact, inclusive of the initial renewal as specified applying both Section 32.1 and Section 32.2 or any extension thereof, unless the Tribe or the Governor serves written notice of non-renewal within thirty (30) days thereafter, or unless the North Dakota Legislature directs notice of non-renewal, by Bill or Resolution, passed with two-third (2/3) majority in each house during the legislative session immediately prior to the expiration of the Compact.

32.4 **Operation.** The Tribe may operate Class III gaming only while this Compact, including any amendment or restatement thereof is in effect.

32.5 **Successor Compact.** In the event that written notice of non-renewal of this Compact is given by one of the parties above, the Tribe may, pursuant to the procedures of the Indian Gaming Regulatory Act, request the State to enter into negotiations for a successor compact governing the conduct of Class III gaming activities to become effective following the expiration of this Compact. Thereafter the State shall negotiate with the Tribe in good faith concerning the terms of a successor compact (see § 11(d)(3)(A) of the Act).

32.6 **Interim Operation.** If a Successor Compact is not concluded by the expiration date of this Compact, or any extension thereof, and should either party request negotiation of a successor compact, then this Compact shall remain in effect until the procedures set forth in Section 11(d)(7) of the Act are exhausted, including resolution of any appeal.

32.7 **Cessation of Class III Gaming.** In the event written notice of non-renewal is given by either party as set forth in this section, the Tribe shall cease all Class III gaming under this Compact upon the expiration date of this Compact, or upon the date the procedures specified above associated with a successor compact are concluded and a successor compact, if any, is in effect.

32.8 **Pari-Mutuel Horse Racing Addendum.** The duration specified above shall also be applicable to the pari-mutuel horse racing addendum to the Gaming Compact between Tribe and State pursuant to Section XVI of said Pari-mutuel Horse Racing Addendum that provides that the term of said Addendum shall be simultaneous with that of the Compact.

XXXIII. GEOGRAPHIC SCOPE OF COMPACT.

This compact shall only govern the conduct of Class III games by the Tribe on trust lands within the Standing Rock Sioux Reservation, all in compliance with Section 2719 of the Indian Gaming Regulatory Act. The execution of this Compact shall not in any manner be deemed to have waived the rights of the State pursuant to that section.

XXXIV. AMENDMENT.

The State or the Tribe may at any time and upon proper notification request amendment or negotiations for the amendment of this Compact. Both parties shall negotiate any requested amendment in good faith and reach a determination thereupon within ninety (90) days. Amendments to this Compact shall not become applicable until agreed to by both parties and, if necessary, approved by the United States Secretary of Interior.

XXXV. NOTICES.

Unless a party advises otherwise in writing, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first class certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Chairman, Tribal Council
Standing Rock Sioux Tribe
PO Box D
Fort Yates, ND 58538

Notice to the State shall be sent to:

Governor, State of North Dakota
Office of the Governor
600 East Boulevard Avenue
Bismarck, ND 58505

Attorney General, State of North Dakota
Office of the Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505

Each notice, payment, request, report, information or demand so given shall be deemed effective upon receipt, or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

XXXVI. ENTIRE AGREEMENT.

This Compact is the entire agreement between the parties and supersedes all prior agreements whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.

XXXVII. NO ASSIGNMENT.

Neither the State nor the Tribe may assign any of its respective right, title, or interest in this Compact, nor may either delegate any of its respective obligations and duties except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be void.

XXXVIII. SEVERABILITY.

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections and subsections of the Compact shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Compact to be executed as of the day and year first above written.

STATE OF NORTH DAKOTA

By: Edward T. Schafer
Governor

Dated this 29th day of September, 1999

STANDING ROCK SIOUX TRIBE

By: Charles Murphy
Chairman

Dated this 29th day of September, 1999

DEPARTMENT OF THE INTERIOR

BY: Kevin Gover
Assistant Secretary - Indian Affairs

DATED: NOV 1 1999, 1999

The CHAIRMAN. Thank you very much. We appreciate your testimony.

Next, we will hear from the Honorable Ron Allen, Chairman of the Washington Indian Gaming Association. Chairman Allen, you may proceed.

STATEMENT OF W. RON ALLEN, CHAIRMAN, WASHINGTON INDIAN GAMING ASSOCIATION AND CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Mr. ALLEN. Thank you, Mr. Chairman. It is always an honor to come before this Committee to testify on a variety of legislative issues that affect our tribes across the United States.

I am the Chair of the Jamestown S'Klallam Tribe up in Western Washington. I have been Chair for 30 years, and I have been very active in Indian Country on many levels. I do want to thank you and Senator Murkowski and Senator Inouye and the others who have been very strong champions for us over the years.

The question of the day here is, and you have our testimony that identifies some of the issues that concern us and that are in the testimony that we have identified with our colleagues in Washington State. But the question of the day is should IGRA be amended. Quite frankly, in my opinion, all legislation needs to be amended. There isn't any perfect legislation out there. There never was and never will be.

We come to you regularly talking about legislation that needs to be improved. The Health Care Improvement Act, you know of all the different provisions that we have talked about in that Act alone. The SDA, the Self–Determination Act, we improved with the self-governance legislation. And these pieces of legislation all are about empowering the tribes to exercise our sovereignty, our governmental authority, our jurisdiction as tribal governments so that we can control our destiny, as you and the Senator have advocated.

So with regard to gaming, the jury is already in with regard to its success. It is successful and you know it. You know it is true all across Indian Country. Are there blemishes and are there issues out there? Yes, there are issues out there, and you can say that everywhere. You can say that with regard to the gaming industry in Nevada. You can say it in New Jersey or Louisiana. You can say it everywhere.

So gaming has its challenges like any other industry. Is it being well regulated? The answer to that is yes. I think that it is a credit to our tribal governments. It is a credit to you in Congress who have empowered the tribes and have elevated our governmental capacity to be able to administer our responsibilities and regulate these affairs. We all care about the integrity of the gaming industry on our reservations, and we all care about it because no one is more beat on by the public or the general perception than Indian Country. Nobody is beat up by the general public and media more than we are.

And so we have a great interest in this legislation, in the integrity of our gaming, and our right to be able to advance its agenda. Nothing Congress or the State or anyone has ever done has made a difference in our community like gaming. So we want to protect our rights.

But we also want to be treated fairly, and we want to be treated fairly with respect to our ability to engage in regulatory oversight over the game. We are the primary regulators and we have done an absolutely fabulous job. Chairman Hogen has pointed out the hundreds of millions of dollars we spend on regulation at all levels.

So we are doing our job. The compacts that we are negotiating, not all compacts address this thing, but the majority of the compacts are addressing exactly what IGRA envisions. IGRA intended that the States would have a role. It was recognizing the sovereignty of the State and their responsibility with regard to their relationship with the tribes as it applies to this industry. So it envisioned this relationship and it envisioned that it would be addressing those internal controls. My testimony talks about how it is successful out in Washington State, and I know it is successful elsewhere as well.

So the bottom line is as we approach legislation, the issue is what should be corrected. How much power should NIGC have? We do not want to empower them with the provision that basically says that the tribes and the States have to come to this agency and say "mother may I." We do not want that kind of legislation, because they could go awry. We have examples where, quite frankly, we believe that they have misused their authority.

So the issue is what is their role. We have to be very careful when we design legislation that amends a regulatory oversight's authority and what that role should be so that it is not unnecessarily burden our industry. That is just reasonable. I think that with regard to this matter, are we doing the same thing to Nevada? Are we doing the same thing to New Jersey? No, we are not. I can tell you that we would need a bigger room if they were at the table with the same matter.

But the issue here, Senator, is what are we going to do about it. I think that your draft legislation poses some questions. I would remind you that Senator Inouye had proposed a couple of amendments in the last session with the same issue that was being raised with regard to the Seminole case, which has to be fixed so the States don't have the right to not in good faith negotiate with the tribes, so that they can exercise their rights. So that issue is out there to be corrected.

What are the conditions? You have a number of conditions that you have identified in some sections in your proposed bill that need to be thoroughly discussed in terms of how would it really act, how would it really function in the field at the tribes and/or the States interface with this agency with respect to the quality and the integrity of these internal controls.

So the bottom line here is are we supportive of amendments to the Act? Yes, but we have to be very careful. I will close with, it is not just being careful about the empowerment of NIGC; it is also being careful about all those other mischievous pieces of legislation that want to be attached to these proposed legislative amendments to put more tentacles around Indian Country, to continue to badger us with a historical paternalism that we have been experiencing.

We can't go down that road.

Thank you, Senator.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF W. RON ALLEN, CHAIRMAN, WASHINGTON INDIAN GAMING ASSOCIATION AND CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Senator Dorgan, Members of the Committee, my name is Ron Allen and I am Chairman of the Jamestown S'Klallam Tribe of Sequim, Washington and Chairman of the Washington Indian Gaming Association, an organization of 25 federally recognized tribes who have entered into gaming compacts with the State of Washington and one tribe currently in negotiations. I also serve on the Board of the National Congress of American Indians. I am here today, on very short notice, to discuss a discussion draft of amendments to the Indian Gaming Regulatory Act.

When the original IGRA legislation was being considered by Congress, Indian tribes fought very hard to preserve, to the greatest extent possible, our sovereign right of self-government and our right to regulate our own affairs. State governments fought very hard to include a regulatory role for themselves over gaming in Indian Country within their borders. The resulting Act was a compromise which established a regulatory framework between Tribal, State, and Federal governments.

IGRA clearly delineated Class II gaming regulation as a matter for Tribal gaming agencies and the National Indian Gaming Commission and reserved Class III gaming regulation as a matter for Tribal-State gaming compacts.

Nonetheless, we are here today because the D.C. Court of Appeals addressed something that states attorneys general and tribes thought they already knew—whether or not the Indian Gaming Regulatory Act gave the National Indian Gaming Commission authority to promulgate regulations establishing mandatory operating procedures for Class III gaming in tribal casinos. The court said it did not. We agree.

We do not disagree with NIGC over the importance of gaming control standards or regulations. We simply agree with the court—that Congress intended that the state-tribal compact process would govern the operation of Class III gaming and that is how the Indian Gaming Regulatory Act (IGRA) was constructed. Every gaming compact for a tribal casino in Washington requires minimum internal control standards which are negotiated between each Tribal gaming agency and the Washington State Gambling Commission. I have attached two exhibits to my testimony from the compacts which list the subject areas for operational standards for table games and the tribal lottery system (electronic games).[1,2] These cover all of the areas that NIGC is concerned about—accounting, audits, cash handling, security, surveillance, game standards, and player relations. These are just the Table of Contents—the actual documents are huge, and written specifically for each gaming facility.

In addition, each tribal gaming operation is subject to an annual audit by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

The bill under consideration today, "Indian Gaming Regulatory Act Amendments of 2007," would create a confusing, unnecessary, and ultimately conflicting construction of regulations between three government jurisdictions—Tribal, State, and Federal.

And it is completely unnecessary. NIGC has substantial existing authority: IGRA authorizes the NIGC to review and approve tribal gaming regulatory laws, review tribal background checks and gaming licenses, receive independent annual audits of tribal gaming facilities, approve management contracts, and work with tribal gaming regulatory agencies to promote tribal implementation of tribal gaming regulatory ordinances.

In *Colorado River Indian Tribes v. NIGC,* which has inspired this bill, the court held that IGRA does not authorize the NIGC to promulgate or enforce Minimum Internal Control Standards (MICS) over Class III Indian gaming. NIGC apparently believes that a national standard is necessary for every aspect of Indian gaming. Senator Dorgan, let me give you an example of NIGC's MICS cited by the court:

> "The regulations take up more than eighty pages in the Code of Federal Regulations. No operational detail is overlooked. The rules establish standards for individual games, *see, e.g.,* 25 C.F.R. § 542.7, .8, .10, customer credit, *id.* § 542.15, information technology, *id.* § 542.16, complimentary services, *id.* § 542.17, and many other aspects of gaming. To illustrate, tribes must establish "a reasonable time period" not to exceed 7 days for removing playing cards from play, but "if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and timeframe approved by the Tribal gaming regulatory authority." *Id.* § 542.9(d), (e).

We know that cleaning or replacing playing cards in order to prevent players from "marking" cards and thereby cheating is an important operating procedure, but is a national standard really necessary to address this? Why has NIGC established 7 days to replace cards? What if the tribal gaming agency and the state gaming agency said 10 days? We would be out of compliance. Why aren't we considering standards for all the commercial casinos as well? Wouldn't the Nevada Gaming Commission benefit from similar Federal oversight that this bill would place on the Washington State Gambling Commission and every tribal gaming commission in the state? Or would it be more reasonable to implement internal controls in a Tribal-State co-regulatory process that IGRA created? We think it would.

All of the operational areas that NIGC is concerned about are addressed in the internal control standards developed jointly between the Washington Tribal gaming agencies and the Washington State Gambling Commission. They are specific to the games and the gaming facilities. They are updated for changes in technology or new game play features, in a process that is continuous and ongoing. In fact, new internal controls are being written by our regulators as we discuss this, to accommodate new game features of the compact amendments for 27 tribes which were approved by the Department of Interior on May 30, 2007.

I would like to include for the record copies of letters written by the Chairman of Washington State Gambling Commission, Curtis Ludwig, and Washington Governor Christine Gregoire addressing this same issue (MICS), but in the context of S. 2078 introduced by Senator McCain last year[3,4,5] (attached).

Governor Gregoire (who is also a former three-term state attorney general) states in her March 28, 2006 letter to Sen. McCain,

> "[a]n additional level of enforcement will negatively impact our state's longstanding relationship with the tribes regarding Class III gaming, without providing any substantial benefit, and will interfere in our state's authority to regulate gambling activity."

Washington Gambling Commission Chairman Curtis Ludwig writes on January 13, 2006:

> "Pursuant to the compacts with Washington Tribes, Commission staff has been involved with Class III gaming regulation for more than 13 years. Our Tribal Gaming Unit has 19 agents, whose work is solely devoted to tribal gaming, and an Electronic Gambling Lab that tests and approves all Class III electronic games offered in tribal casinos.
>
> The Commission believes that an additional layer of regulation is unnecessary for Washington's Tribal casinos. Although the MICS provide a starting point for internal controls and should be available as a resource for states and Tribes, they are not specific to Washington gaming. Moreover, they do not provide regulations for some critical gaming activities, such as our State's electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact."

Senator Dorgan, the Washington State Gambling Commission says that the national standards in NIGC's MICS are not specific to Washington gaming and do not cover some critical gaming activities. However, the internal controls established by the Tribal gaming Agencies and the State gaming agency are specific and address all gaming activities.

And yes, Senator, I do understand that the draft language of this bill includes an "opt-out" clause giving NIGC the option of excusing from NIGC regulation, a tribe with a tribal-state compact which includes minimum standards that meets the standards established by NIGC. So, if you follow that circular reasoning, NIGC still sets the standards, regardless of the standards that the tribal and state regulators establish in the compacts. The only language that tribes would support is if the option to "opt-out" would be a decision of the tribe, not NIGC. As I said before, we believe that internal controls should be specific to games, technology, and facilities, and that can best be done by tribal and state regulators working together.

Finally, we have not seen any record established that shows that Indian tribes are incapable of regulating their own affairs. We have seen no record established that there is a crisis or scandal in Indian gaming operations. The amendments in this discussion draft are unnecessary. Thank you.

Attachments

1. Standards of Operation and Management for Class III Activities.
2. Rules Governing Tribal Lottery Systems.
3. Letter from Governor Gregoire to Sen. John McCain, March 28, 2006.

4. Letter to Governor Gregoire from Gambling Commission Chairman Curtis Ludwig, January 13, 2006.

5. Chart of Gaming Jurisdiction Subject areas by Washington State Gambling Commission, April 2006.

Appendix A—Confederated Tribes of The Chehalis Reservation (State of Washington)—Standards of Operation and Management for Class III Gaming

Section	Subject Matter	Page
1	Definitions	A–1
2	Accounting Records	A–3
3	System of Internal Control	A–3
4	Forms, Records, Documents and Retention	A–4
5	Annual Audit and Other Reports	A–5
6	Cosed Circuit Television System	A–6
7	Organization of the Tribal Operation	A–7
8	Personnel Assigned to the Operation and Conduct of Class III Gaming Activities	A–10
9	Cashier's Cage	A–11
10	Accounting Control Within the Cashier's Cage	A–12
11	Drop Boxes	A–13
12	Drop Boxes, Transportation To and From Gaming Stations and Storage in the Count Room	A–14
13	Procedure For Exchange of Checks Submitted by Gaming Patrons	A–14
14	Procedure For Depositing Checks Received From Gaming Patrons	A–16
15	Procedure For Collecting and Recording Checks Returned to the Gaming Operation After Deposit	A–16
16	Procedure For Accepting Cash at Gaming Stations	A–17
17	Acceptance of Gratuities From Patrons	A–17
18	Adoption of Rules For Class III Activities	A–18
19	Station Inventories and Procedure For Opening Stations For Gaming	A–20
20	Procedure For Distributing Gaming Chips and Coins to Gaming Stations	A–21
21	Procedure For Removing Gaming Chips and Coins From Gaming Stations	A–24
22	A. Procedure For Shift Changes at Gaming Stations	A–26
	B. Procedure For Closing Gaming Stations	A–27
23	Count Room: Characteristics	A–29
24	Procedure For Counting and Recording Contents of Drop Boxes	A–30
25	Signatures	A–33

APPENDIX X

to the

_____ - STATE OF WASHINGTON

CLASS III GAMING COMPACT

RULES GOVERNING

TRIBAL LOTTERY SYSTEMS

SECTION 1. OVERVIEW 1

SECTION 2. DEFINITIONS 1

2.1 Cashless Transaction System 1
2.2 Central Computer 2
2.3 Electronic Accounting System 2
2.4 Electronic Scratch Ticket 3
2.5 Electronic Scratch Ticket Game 3
2.6 Electronic Scratch Ticket Game Set 3
2.7 Electronic Scratch Ticket Game Subset 3
2.8 Game Play Credits 3
2.9 Manufacturing Computer 4
2.10 On-Line Lottery Game 4
2.11 On-line Lottery Game Ticket 4
2.12 Player Terminals 4
2.13 State Gaming Agency("SGA") 4
2.14 Tribal Gaming Agency ("TGA") 4
2.15 Tribal Lottery System 5

SECTION 3 TRIBAL ELECTRONIC SCRATCH LOTTERY GAME SYSTEM 5

3.1 Description of System Operation 5
3.2 Game Set and Subset Requirements 7
3.3 Data Required to be Available Prior to Commencement of an Electronic Scratch Ticket Game 9
3.4 Data Required to be Available Following the Completion of a Scratch Ticket Game 10
3.5 Software Auditing Tool to be Made Available 10
3.6 No Auditing of Game Sets While in Play; Dispute Process 11
3.7 Manufacturing Computer 12
3.8 Central Computer Used in Connection With Electronic Scratch Ticket Game 13
3.9 Player Terminals Used in Electronic Scratch Ticket Games 14

SECTION 4 TRIBAL ON-LINE LOTTERY GAME SYSTEM 14
4.1 Description of System Operation 14
4.2 Central Computer Used for On-Line Lottery Game 16
4.3 Player Terminals Used for On-Line Games 17
4.4 Verification and Viewing Requirements for On-Line Game Results 18
4.5 On-line Lottery Game Records 18
4.6 Redemption Period 18
4.7 Other Game Rules 18
4.8 Prizes; Jackpots 19

SECTION 5 PLAYER TERMINALS 19
5.1 Use as a Stand-Alone Gambling Device Prohibited 19
5.2 Features 19
5.3 Non-Volatile Backup Memory Required 20
5.4 On/Off Switch 20
5.5 Static Discharge/Interference 20
5.6 Accounting Meters 20
5.7 No Automatic Clearing of Accounting Meters; Reading and Resetting Meters 21
5.8 Display of Information 22
5.9 Protection of Displayed Information 22
5.10 Hardware Switches Prohibited 22
5.11 Networking Requirements 22
5.12 Prohibited Software Functions 23
5.13 Quick-Pick Function 23
5.14 Wagers; Displaying Electronic Scratch Ticket Outcomes 23

SECTION 6 STANDARDS FOR RANDOM NUMBER GENERATORS USED WITHIN THE TRIBAL LOTTERY SYSTEM
6.1 Chi-Square Analysis 24
6.2 Runs Test 24
6.3 Correlation Analysis 24
6.4 Serial Correlation Analysis 24

SECTION 7 ELECTRONIC ACCOUNTING SYSTEM 25
7.1 Revenue Reporting Requirements 25

SECTION 8 CASHLESS TRANSACTION SYSTEM SECURITY, REPORTING AND STORAGE REQUIREMENTS 29
8.1 Player Accounts 29
8.2 Smart Cards 31
8.3 Other Functions 31

SECTION 9 GENERAL SECURITY REQUIREMENTS 32
9.1 Separation 32
9.2 Security 32
9.3 Secure Connections; DES or Equivalent Data Encryption 32
9.4 Surge Protection; Uninterrupted Power System (UPS) 32
9.5 Identification Plates 32
9.6 Locked Areas 33
9.7 Key Control Standards 33
9.8 MEAL Cards 33
9.9 Access Control 33
9.10 Cameras 33
9.11 Verification Data and Functions 34

SECTION 10 TESTING OF TRIBAL LOTTERY SYSTEMS TO ENSURE INTEGRITY 34
10.1 Designation of Independent Gaming Test Laboratory 34
10.2 Testing and Certification of Tribal Lottery Systems 34
10.3 Approval by the SGA 36
10.4 Modifications of Approved Lottery Systems; Emergency Certifications 36
10.5 Manufacturer's Conformity to Technical Standards 36
10.6 Payment of Gaming Test Laboratory Fees 37
10.7 Gaming Test Laboratory Duty of Loyalty 37
10.8 Random Inspections 37
10.9 SGA to be Supplied Model of Player Terminal and System 37

SECTION 11 ALTERNATIVE STANDARDS PERMITTED 38

SECTION 12 TRIBAL LOTTERY SYSTEM TERMINAL ALLOCATIONS 38
12.1 Initial Allocation 38
12.2 Compliance Requirement 38
12.3 Compliance Review 39
12.4 Further Conditions 39
12.5 Other Circumstances 40

SECTION 13 STATE REGULATORY FEES 40
13.1 Payment of Outstanding Fees 40
13.2 Set-up Fee 41
13.3 Payment of Tribe's Share of Set-up Fee 41
13.4 Annual Regulatory Fees 42

13.5 Regulatory Fee Disputes 43

SECTION 14 OTHER PAYMENTS 44
14.1 Impact Costs 44
14.2 Charitable Donations 44
14.3 Community Impacts 44
14.4 Payment 44

SECTION 15 MORATORIUM 45
15.1 Three year moratorium 45
15.2 Technical Changes 46
15.3 Amendments 46

SECTION 16 DISPUTE RESOLUTION 46

STATE OF WASHINGTON OFFICE OF THE GOVERNOR
Olympia, WA, March 28, 2006

Hon. JOHN MCCAIN,
Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Senator McCain:

I am writing to share my concerns and those of the Washington State Gambling Commission (WSGC) about action the Senate Indian Affairs Committee will soon take on S. 2078 regarding the Indian Gaming Regulatory Act (IGRA).

A critical component of IGRA is the local control that it provides for negotiating state-tribal gaming compacts, particularly in relation to Class III gaming. Washington has entered into gaming compacts with 27 of our state's 29 federally recognized tribes. Each compact has been negotiated in a government-to-government manner, taking into account the unique circumstances present in Washington and in the local communities where tribal casinos will be located.

The WSGC has successfully regulated Class III gaming, in cooperation with the local tribes, for more than 13 years. The WSGC has a specific Tribal Gaming Unit composed of 19 agents, whose work is solely devoted to tribal gaming regulation. This unit has developed an expertise in the regulation of Class III gaming within Washington and works closely with each tribal gaming authority. In addition, the WSGC operates a state-of-the-art Electronic Gambling Lab, which tests and approves every Class III electronic game offered in a Washington tribal casino.

Increasing the National Indian Gaming Commission (NIGC) authority to regulate Class III gaming infringes upon local control and is unnecessary, considering Washington's strong regulatory controls. The NIGC internal controls are not specific to Washington gaming and do not provide regulations for some critical gaming activities in our state. For example, our electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact, would not be regulated under NIGC controls. An additional level of enforcement will negatively impact our state's long-standing relationship with the tribes regarding Class III gaming, without providing any substantial benefit, and will interfere in our state's authority to regulate gambling activity.

I hope you will reconsider expanding the authority of the NIGC over Class III gaming in Washington. Our state is proud of its tribal gaming regulatory program and believes local control over Class III gaming is in its best interest, having proven successful for the past l3 years.

Again, thank you for your consideration of this matter.

Sincerely,

CHRISTINE O. GREGOIRE,
Governor.

cc: Senator Patty Murray, Washington State; Senator Maria Cantwell, Washington State; and Senator Byron Dorgan, Vice Chair, Committee on Indian Affairs.

STATE OF WASHINGTON GAMBLING COMMISSION
January 13, 2006

Hon. CHRISTINE GREGOIRE,
Washington State Governor,
Olympia, WA.

Dear Governor Gregoire:

We are writing to seek your assistance in expressing our concerns regarding two current legislative efforts in Congress which would subject Washington Tribes to an increase in fees paid to the National Indian Gaming Commission (NIGC), and would authorize an unnecessary expansion in the regulatory authority of the NIGC. We respectfully request your assistance in contacting Washington's Congressional delegation and lobbyist regarding these problems.

First, Senate Bill 1295, which was passed by the U.S. Senate on December 12, 2005, contains a provision that would authorize the NIGC to impose a fee on each compacted gaming Tribe not to exceed 0.080 percent of the gross gaming revenues for all tribal gaming operations. Washington Tribes could pay close to $1 million in additional Federal regulatory fees each year under this proposal.

Under its compacts with Washington's Tribes, regulatory enforcement in Tribal casinos is accomplished through a partnership between the Tribes and the Washington State Gambling Commission ("Commission"). Each Tribe is required to have its own Tribal Gaming Agency (TGA), independent from the Tribe, which provides on-site regulation for casino operations. Under the compacts, the Tribes reimburse the Commission for the costs that the Commission incurs in its regulatory work with the Tribes. The Commission incurred over $1.4 million for state costs to regulate Class III gaming for the l2-month period between October 2004 and September 2005. These costs were billed to the Washington Tribes. These fees do not include amounts paid by the Tribes for their own on-site regulatory programs.

Second, the Commission is even more concerned about the NIGC's request to "clarify its authority" over Class III gaming activity. During a hearing before the Senate Committee on Indian Affairs, the NIGC Chairman testified that his Commission had submitted a draft bill to Congress to "clarify the NIGC's authority to regulate Class III gaming generally, and to promulgate and enforce its MICS (Minimum Internal Control Standards) regulations for Class III gaming specifically."

This request was in response to the decision by the U.S. District Court in Washington D.C., where the court held that the NIGC's MICS for Class III gaming exceeded the agency's statutory authority. *Colorado River Indian Tribes v. National Indian Gaming Commission,* (2005 WL 2035946). The court recognized that, under the Indian Gaming Regulatory Act, Class III gambling is subject to regulation by Tribes and states pursuant to the provisions of compacts between the Tribes and states. The NIGC has extensive regulatory authority over Class II gaming, but none over Class III gaming.

Pursuant to the compacts with Washington Tribes, Commission staff has been involved with Class III gaming regulation for more than thirteen years. Our Tribal Gaming Unit has 19 agents, whose work is solely devoted to tribal gaming, and an Electronic Gambling Lab that tests and approves all Class III electronic games offered in tribal casinos.

The Commission believes that an additional layer of regulation is unnecessary for Washington's Tribal casinos. Although the MICS provide a starting point for internal controls and should be available as a resource for states and Tribes, they are not specific to Washington gaming. Moreover, they do not provide regulations for some critical gaming activities, such as our State's electronic Tribal Lottery System, which we regulate according to a detailed, 46-page appendix to each compact.

Because of the strong regulatory structure in our gaming compacts, the Commission believes that fee increases and an additional level of internal control enforcement will negatively impact the Tribal-State relationship without providing any substantial benefit. If these proposals are passed in either pending or future legislation, the Commission would strongly urge that states like Washington that have effective Tribal-State regulatory programs be exempted from such requirements. We respectfully request your assistance in contacting Washington's Congressional delegation and lobbyist regarding these concerns.

Sincerely,

CURTIS LUDWIG,
Commission Chair.

cc: Senator John McCain, United States Congress—Arizona; Senator Maria Cantwell, United States Congress—Washington State; Senator Patty Murray, United States Congress—Washington State; Representative Jay Inslee, United

States Congress—1st Congressional District; Representative Rick Larsen, United States Congress—2nd Congressional District; Representative Brian Baird, United States Congress—3rd Congressional District; Representative Doc Hastings, United States Congress—4th Congressional District; Representative Cathy McMorris, United States Congress—5th Congressional District; Representative Norm Dicks, United States Congress—6th Congressional District; Representative Jim McDermott, United States Congress—7th Congressional District; Representative Dave Reichert, United States Congress—8th Congressional District; Philip Hogen, Chairman—National Indian Gaming Commission; Randy Sitton, Regional Director—Region 1—National Indian Gaming Commission; and John Lane, Governor's Executive Policy Office—Washington State Gambling Commission.

Gaming Jurisdiction Comparison

TGA = Tribal Gaming Agency
SGA = State Gaming Agency
* NIGC = National Indian Gaming Commission
Class III = Casino-Style Gambling
IGRA = Indian Gaming Regulatory Act

	TGA	SGA	NIGC	NIGC 2078
Operational:				
Washington Tribes Electronic Gambling Devices	Yes	Yes	No	Yes
Table Games	Yes	Yes	No	Yes
Cashier Cage/Soft Count	Yes	Yes	No	Yes
Accounting/Internal Audit	Yes	Yes	No	Yes
Security	Yes	Yes	No	Yes
Surveillance	Yes	Yes	No	Yes
Electronic Device Testing & Approval	No	Yes	No	No
Licensing:				
Licensing - Individuals	All Employees	Class III	Key Employees	Yes
Licensing - Equipment Suppliers	Yes	Class III	No	Yes
Licensing - Financiers	Yes	Class III	No	Yes
Licensing - Management Companies/Consultants	Yes	Class III	Yes	Yes
Licensing - Gaming Commissioners	Not Generally	No	No	Yes
Other:				
Public Inquiries/Complaints	Yes	Yes	Yes	Yes
On-Site Regulation	Primary	Co-Regulatory	Periodic	Unknown
Criminal Investigations	Not Generally	Yes	No	No
Gaming Ordinance	Yes	No	Yes	Yes
Class II - Bingo & Pull Tabs	Yes	No	Yes	Yes
Use of Gambling Proceeds	Maybe	No	Yes	Yes

* Minimum Internal Control Standards (MICS) - NIGC has developed these standards and used them to gain jurisdication in Class III gaming. However, IGRA has not provided NIGC with direct authority over Class III gaming.

Prepared by the Washington State Gambling Commission
April 2006

The CHAIRMAN. Mr. Allen, thank you very much for being with us, and your testimony today.

Next, we will call on the Honorable Valerie Welsh-Tahbo, I hope I have pronounced that correctly, who is a Council Member of the Colorado River Indian Tribes Tribal Council in Parker, Arizona. You may proceed.

STATEMENT OF VALERIE WELSH–TAHBO, COUNCIL MEMBER, COLORADO RIVER INDIAN TRIBES TRIBAL COUNCIL

Ms. WELSH-TAHBO. Thank you, Senator. Good morning, Mr. Chairman and Members of the Committee. Thank you for providing the Colorado River Indian Tribes with the opportunity to testify this morning. My name is Valerie Welsh-Tahbo. I am of the Chiricahua-Apache Tribes, as well as the Mojave Tribe, which is the indigenous nation of the Colorado River Indian Reservation. I am currently the tribal Secretary.

At the outset, I wish to express our gratitude for your willingness to work with the tribes in exploring a possible amendment of IGRA. We understand that the Federal court's decision in our litigation against the National Indian Gaming Commission have rightly or wrongly fed the perception that there is a need for increased Federal regulation of Class III gaming.

Before directly addressing that question, I would like to very briefly describe that litigation before I do that. From time to time, deficiencies are identified. CRIT wants to address comments previously made by Chairman Hogen regarding the length of time taken to address these deficiencies. We want to assure the Committee that each of these deficiencies were addressed as expeditiously and thoroughly as possible.

The background of *CRIT v. NIGC,* as we have repeatedly stressed, CRIT did not seek out its challenge to the NIGC's regulatory authority. Like every other tribe in the Country, we questioned the commission's statutory authority to mandate Class III minimum internal control standards. When the NIGC began an audit of our compliance with its MICS in January of 2001, we attempted to discuss with the audit team the statutory basis for its audit. Tempers flared. The audit team left with its audit unfinished and the NIGC issued a notice of violation and assessed a $10,000 fine against the tribes.

At that point, we had no choice but to defend ourselves. Our defense was a simple legal position that we shared with most other tribes: The commission did not have the authority under the Indian Gaming Regulatory Act to mandate Class III MICS. The Federal District Court agreed with our position and the Court of Appeals of the District of Columbia circuit affirmed that decision last fall.

As a result of those court decisions, some members of this Committee and others have expressed concern that their now exists a regulatory void, requiring the grant of increased powers of NIGC to regulate Class III gaming. Certainly in our case there is no regulatory void. CRIT's gaming activity is vigorously regulated by both the tribe under tribal law and by the State of Arizona through the mechanisms of the tribal-state compact required by IGRA.

The draft bill, in considering legislation to address the CRIT decision, it is important to bring the discussion back to the limited subject of what our litigation involved and what the courts actually held. We did not claim that the courts did not hold that the NIGC

has no regulatory authority over Class III gaming. They held only that the NIGC lacked the authority to impose mandatory minimal internal control standards on Class III gaming. Those standards regulate the details of how Class III games are conducted for the sole purpose of ensuring that gaming revenues are properly tracked and accounted for.

The fix for the CRIT ruling, if needed at all, is quite narrow. Expressly authorize the commission to adopt and require such standards, subject to an opt-out provision for tribes whose tribal law and compacts are sufficiently rigorous. The draft bill we address today goes far beyond that limited need. Indeed, it would authorize the regulatory committee and the NIGC to develop minimum standards for the regulation of Class III gaming. This scope of regulation goes far beyond minimum internal control standards and would confer Class III regulatory authority that not even the NIGC has previously claimed or sought.

The draft bill's grant of authority for the regulation of Class III gaming encompasses every aspect of the tribe's Class III gaming operation. It would give the NIGC the broad authority to adopt whatever regulation it wished, subject only to a requirement that it be rationally related to the purpose of IGRA. The elephant gun of total regulation is disproportionate to the perceived flea of control standards. It would also eliminate, for all practical purposes the regulatory role of the tribes and the compacting role of the States.

It is unnecessary, overbreadth, and the draft bill also incorporates one of the most troubling aspects of Senate 2078 considered by this Committee during last session. The mere addition of the words of "Class III gaming" to subsections 2706(b)(1)(2) and (4) effectively guts the tripartite scheme of the statute as originally conceived by giving NIGC equal or preemptively superior regulatory authority over the tribes and the States. This seemingly straightforward amendment would set up the likelihood of inconsistent regulations and render much of the compacting process meaningless.

We would propose instead an amendment limited to the issues of minimum internal controls incorporated through the existing ordinance approval process. We submitted proposed language to the Committee last year and would be happy to provide it again. We did also submit as part of our testimony recommendations to the draft bill.

We would like to close on a positive note. We are pleased that the draft bill recognizes that many compacts impose rigorous tribal regulations and State oversight that does not need an additionally expensive layer of Federal activity. If the opt-out process contemplated by the draft bill is ultimately adopted, we hope to participate actively in formulating a procedure that fully respects the experience and wisdom developed by the tribes and the States and avoids needless intergovernmental conflict.

I thank you again for giving CRIT the opportunity to offer its views on the important issue. We look forward to working closely with the Committee to develop a bill that satisfactorily addresses the issue on internal controls, without destroying the delicate intergovernmental balance that has largely worked extraordinarily well for nearly 20 years.

Thank you, Senator.

[The prepared statement of Ms. Welsh-Tahbo follows:]

PREPARED STATEMENT OF VALERIE WELSH-TAHBO, COUNCIL MEMBER, COLORADO RIVER INDIAN TRIBES TRIBAL COUNCIL

Good Morning Mr. Chairman and Members of the Committee. Thank you for providing the Colorado River Indian Tribes with the opportunity to testify this morning. My name is Valerie Welsh-Tahbo, and I am a member of the Tribal Council of the Colorado River Indian Tribes (CRIT).

At the outset, I wish to express our gratitude for your willingness to work with the tribes in exploring the possible amendment of IGRA. We understand that the Federal courts' decisions in our litigation against the National Indian Gaming Commission have, rightly or wrongly, fed the perception that there is a need for increased Federal regulation of Class III gaming. Before directly addressing that question, I'd like very briefly to describe that litigation for those members new to this Committee.

Background of the *CRIT v. NIGC* Litigation

As we have repeatedly stressed, CRIT did not seek out its challenge to the NIGC's regulatory authority. Like every other tribe in the country, we questioned the Commission's statutory authority to mandate Class III Minimum Internal Control Standards (MICS). When the NlGC began an audit of our compliance with its MICS in January of 2001, we attempted to discuss with the audit team the statutory basis for its audit. Tempers flared, the audit team left with its audit unfinished, and the NIGC issued a notice of violation and assessed a $lO,OOO fine against the tribe. At that point, we had no choice but to defend ourselves. Our defense was the simple legal position that we shared with most other tribes: the Commission did not have the authority under the Indian Gaming Regulatory Act to mandate Class III MICS. The Federal district court agreed with our position, and the Court of Appeals for the District of Columbia Circuit affirmed that decision last fall.

As a result of those court decisions, some Members of this Committee and others have expressed concern that there now exists a regulatory void, requiring the grant of increased powers the NIGC to regulate Class III gaming. Certainly in our case, there is no regulatory void. CRIT's gaming activity is vigorously regulated by both the Tribe under tribal law and by the State of Arizona through the mechanism of the tribal-state compact required by IGRA.

The Draft Bill

In considering legislation to address the CRIT decision, it is important to bring the discussion back to the limited subject of what our litigation involved and what the courts actually held. We did not claim, and the courts did not hold, that the NIGC has *no* regulatory authority over Class III gaming; they held only that the NIGC lacked the authority to impose mandatory *minimal internal control standards* on Class III gaming. Those standards regulate the details of how Class III games are conducted for the sole purpose of ensuring that gaming revenues are properly tracked and accounted for.

The "fix" for the CRlT ruling, if needed at all, is quite narrow: expressly authorize the Commission to adopt and require such standards, subject to an opt-out provision for the tribes whose tribal law and compacts are sufficiently rigorous.

The Draft Bill we address today goes far beyond that limited need. Indeed, it would authorize the Regulatory Committee—and the NIGC—to develop "minimum standards *for the regulation of Class III gaming.*" This scope of regulation goes far beyond minimum internal control standards, and would confer Class III regulatory authority that not even the NIGC has previously claimed or sought. The Draft Bill's grant of authority "for the regulation of Class III gaming" encompasses every aspect of a tribe's Class III gaming operation. It would give the NIGC the broad authority to adopt whatever regulation it wished, subject only to a requirement that it be rationally related to the purposes of IGRA. The elephant gun of total regulation is disproportionate to the perceived flea—minimum internal control standards. It would also eliminate for all practical purposes the primary regulatory role of the tribes and the compacting role of the states.

In its unnecessary overbreadth, the Draft Bill also incorporates one of the most troubling aspects of S. 2078, considered by this Committee during the last session. The "mere" addition of the words "and Class III gaming" to subsections 2706(b)(1), (2) and (4) effectively guts the tripartite scheme of the statute as originally conceived. By giving the NIGC equal (or preemptively superior) regulatory authority with the tribes and the states, a seemingly straightforward amendment would set

up the likelihood of inconsistent regulations and render much of the compacting process meaningless.

We would propose instead an amendment limited to the issue of minimum internal controls, incorporated through the existing ordinance approval process. We submitted proposed language to the Committee last year and would be happy to provide it again.

Other Comments

Bearing in mind that the Draft Bill is the opening point of the discussion, we have a number of additional comments.

First: We believe that a minimum of 1 year's experience in the regulation of Class III gaming is insufficient for service on the proposed Class III Regulatory Committee. We recommend that the minimum be at least 3 years.

Second: We strongly recommend that the Bill require that at least two members of the Committee be Native Americans.

Third: If constitutionally permissible, we propose that the Committee be comprised of five individuals, one individual being appointed by each of the Secretary, the Senate Majority Leader, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader.

Fourth: We recommend that the prohibition on Committee members being Commission employees be expanded, to prohibit Committee membership for anyone employed by the Commission within the immediately preceeding 12 months.

Finally: We close on a positive note. We are pleased that the Draft Bill recognizes that many Compacts impose rigorous tribal regulation and state oversight that does not need an additional—and additionally expensive—layer of Federal activity. If the opt-out process contemplated by the Draft Bill is ultimately adopted, we hope to participate actively in formulating a procedure that fully respects the experience and wisdom developed by the tribes and states, and avoids needless intergovernmental conflicts.

I thank you again for giving CRIT the opportunity to offer its views on this important issue. We look forward to working closely with the Committee to develop a Bill that satisfactorily addresses the issue of internal control standards without destroying the delicate intergovernmental balance that has largely worked extraordinarily well for nearly twenty years.

I would be happy to answer any questions the Committee may have.

The CHAIRMAN. Ms. Tahbo, thank you very much for your testimony.

I would like to ask if we could have Chairman Hogen come back to the witness table, and Mr. Shelton as well. Take a couple of chairs. I apologize that we are a little bit cramped there, but I appreciate very much all of you being willing to stay and be available for questions.

Let me begin by stating that, this issue of regulation or the regulatory mechanism for gaming is a very important issue. We have a lot of experience, for example, with the development of a gaming industry in Las Vegas, Nevada, which kind of became the first and the largest. We have a lot of experience with this issue of what kind of regulation is needed with respect to Las Vegas, for example, when someone builds a major new facility with gaming. I assume they provide for their own regulatory capability inside the facility.

And then in addition to that, there is a very stringent regulatory system by the State of Nevada, by a control board of some sort. So you have two different levels. If Mr. Wynn, for example, who is a very big builder there, he opens up a new facility with gaming, he I am sure, with his professional people, are creating their level of regulatory schematics inside the company, and then the State has a very certain regulatory capability.

In my opening statement, I talked about the need to have regulatory oversight outside of the entity that owns the facility itself.

The entity that owns the facility in almost all cases will have the best opportunity to create standards, but there needs to be another level.

Now, Mr. Allen, first of all, do you agree with that, and second, if that is the case, the second level in most cases with respect to the compact would be State governments. Am I correct about that?

Mr. ALLEN. Yes. The way you characterized it isn't quite right. The owner, Mr. Wynn, or the tribe, will have their own internal controls and accountability and security measures, so the system will be structured to account for the management of our assets and the operation of the business. Then you are going to the regulatory oversight to assure you are compliant with all regulations and any agreements that the tribes have made with the State and then subsequently compliant with IGRA.

So then our regulatory agency is insulated and it is independent. It is commissioned by the tribe as a government regulatory agency to do that. The States do the same thing. Nevada does the same thing. So that is how they are authorized in order to provide that regulatory oversight. Then the State, for us, oversees how well we have done that, and how well we have committed to the agreement that we have had with regard to the regulatory oversight of the operation.

The CHAIRMAN. I want to understand that. Mr. Wynn doesn't create his own oversight system.

Mr. ALLEN. No, he doesn't.

The CHAIRMAN. It is the State of Nevada that then provides that oversight.

Mr. ALLEN. That is correct.

The CHAIRMAN. My question is this. With respect to the tribes that own the casinos themselves, they provide their own internal systems and then the States, according to the compact, would provide its oversight system. Is that correct?

Mr. ALLEN. Well, it is two-fold. Imagine the business itself as one level. The regulatory oversight, as a government, because we are the government just like the State of Nevada, so we have our own regulatory agency that we established.

The CHAIRMAN. But you are a government that owns the facility.

Mr. ALLEN. Yes, that is true. But then so States who run lotteries provide the same oversight for their lotteries. It is the same. They are establishing independent regulatory oversight of their own gaming operation. They own the lottery, so it is the same with them. And no one questions their integrity, so that is our point. We think that we are doing a good job.

Now, are they meeting the standards? The question of the day is are we meeting the standards to provide credibility and integrity with regard to the public interest. That is the question. We think that IGRA is requiring that.

Now, I know Phil has raised issues about there are some areas where the compacts don't address that, and the issue is what is the appropriate course of action to try to improve those areas where the compacts don't address those internal controls.

The CHAIRMAN. Mr. Shelton, in the State of California, describe to me the system in the State of California that now exists.

Mr. SHELTON. At this time, the first compacts were issued in 1999 to address and recognize IGRA and the role of NIGC as approving regulations that the tribes submit. California believes in the compacts. We have the authority to do the oversight, but at this time what we have done is financial audits for the special distribution fund that comes to the State and is distributed to different entities.

Doing that, we do look at internal control standards around financial issues, but we have not gone further. The Division of Gambling Control, which comes under another constitutional officer, which is the Attorney General, has sworn personnel that do go out and do spot checks on minimum control standards, but not to the extent neither of us have done due to resources that NIGC has done.

So we felt and believe strongly that they complement what we do. We don't question the integrity of the tribes. As a matter of fact, the audits that we have performed have shown great operations, great integrity. But the Governor believes transparency is very necessary for the gaming public to have, and we need the oversight to do that and do the inspections to verify what is actually occurring.

The CHAIRMAN. Mr. Hogen, respond to Mr. Allen's point. Mr. Allen's point is that you have lotteries out there that are run by the States. No one is overseeing that, or no one is coming back at a second level. Why should it exist with respect to tribal casinos?

Mr. HOGEN. I think there are certainly some parallels that can be drawn, but I think there are more differences than there are similarities. That is, for the most part in tribal gaming, tribal gaming is if not the only, the principal source of funding. So the tribe in many cases is almost totally dependent on that revenue stream. So the significance of the dollars is different.

I think it is also economies of scale, trying to compare the St. Augustine Rancheria and its membership and ability to regulate and manage and separate those, with the State of Texas and their State lottery, I think it is quite a stark contrast. The State lotteries are a little different in terms of the gaming that they operate. They don't deal blackjack. They don't run slot machines. They don't do slot machines drops and so forth.

So I think the principle is the same, but there are significant differences, enough differences that I think that it is very important and appropriate to have that independent oversight.

The CHAIRMAN. Mr. Hogen, other testimony has indicated this morning that they feel you do retain some authority over Class III gaming. In your judgment, is that accurate? Tell me how you view that testimony.

Mr. HOGEN. Yes, we absolutely have and continue to have after the CRIT decision authority to do a number of things. Most of those, however, deal with the actual operation of the gambling activity. We look at the use of gaming revenues; the adoption of the tribal gaming ordinance. We continue to get audits reflecting the report on an annual basis.

But in terms of that tool that we had, the minimum internal control standards, that dealt with where the surveillance cameras are, what the resolution has to be, how you protect the playing cards

and things like that, we have been kind of ejected from that arena. And that is really important with respect to the integrity of the gaming. I think Nevada learned first the hard way that you have really got to have those rules and that control.

The CHAIRMAN. Myra Pearson, in your testimony you described the opposition of the Great Plains organization. How many tribes exist in that organization?

Ms. PEARSON. Twenty-eight.

The CHAIRMAN. I think you made the point, and I would echo the point that all of you have made, this hearing isn't held for the purpose of describing some significant national problem that exists in Indian gaming. That is not the case and people should understand that.

The question is, with respect to the CRIT decision, has that decision impacted the oversight or the regulatory capability with respect to Indian gaming in a manner that should suggest this Committee adopt some modifications or some legislative changes. That is the purpose of this inquiry. I appreciate the comments, and I will have a couple of additional questions, but let me call on the Vice Chair, Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Hogen, I want to go back to you. We have heard here this morning, and certainly previously, that this CRIT fix is not necessary because the compacts include within their provisions, provisions or standards that are similar to these minimum controls or these MICS standards. In your judgment, are the States in any way hindered from enforcing the internal control standards of their compacts?

Mr. HOGEN. I don't believe that there is a legal hindrance there. I think there is, for a multitude of reasons, a lack of inclination in many cases to be very involved or very effective. In some cases, the language of the compact just doesn't provide for that. In other cases, while the language may address it, it is permissive. And second, the States have not really devoted much resources to do that.

Senator MURKOWSKI. So it would vary from State to State, depending on the priority or the compact. Is that your suggestion?

Mr. HOGEN. Absolutely. There is a huge variety there. We have compacts in 22 States and none of them are identical. Some have some similarities. Some in fact adopt the NIGC minimum internal control standards, but one size certainly does not fit all.

Senator MURKOWSKI. Let me ask a question, and I perhaps suggested this in my opening remarks. With the language that we have before us in this bill, there is some concern that perhaps the NIGC could gain additional authority to regulate the Class III establishments over and above the compliance with the MICS. Is that your understanding? Is that what the NIGC is seeking, that broader or more expansive authority?

Mr. HOGEN. When I last testified about this subject, I think the language I used was "let me be crystal clear." We are not trying to expand our authority at all. We just want to keep doing what we at that time were doing, drafting, requiring compliance with minimum internal control standards and having the ability to go out there and audit to see if there was compliance, and when there

wasn't compliance, to try and help tribes fix it, or if necessary to take enforcement action.

Senator MURKOWSKI. As you have done that in these audits, have you surveyed the States that have entered into Class III compacts to determine whether or not they would welcome a mandate that would allow these Class III establishments to comply with or to follow the MIC standards? Has that type of a survey of the States been done?

Mr. HOGEN. I don't know that we have had a specific discussion with each and every of those 22 States, but for example, Mr. Shelton's agency, we often discuss this sort of thing and we have in many places. I just returned from the North American Gaming Regulators Association that had their annual meeting in Kansas City. There, we meet with the State regulatory agencies. We have a good open relationship with those agencies, and I think for the most part they are supportive.

Certainly, nobody wants to give up their turf, so to speak, but when we go out and do our audits, we literally never run into or stumble across or duplicate what States are doing. Where States address those kinds of issues, we do it less often. One of the requirements in our minimum internal control standards is when the tribes do their annual audit, they have to follow the auditors, the independent outside auditors, follow agreed upon procedures. They have to look, is the tribe in compliance with NIGC's minimum internal control standards. They give that report to the tribe. They give it to us. That is how we focus on those places that we go to do the audits, and literally, we have never been there while the State was doing the same thing, and I don't know any States that do exactly what we do when we do the minimum internal control standards audits.

We have never closed a facility for their failure to comply with the MICS. When we found shortcomings, we have said, let us help you fix it, and for the most part, that has worked.

Senator MURKOWSKI. Well, let me ask you, Mr. Shelton, it is not very often that we get somebody coming from the State actually asking or urging us to step in and regulate in areas that the court has determined that the Federal Government should perhaps stay out of. So it is kind of unusual to have you coming in and I appreciate the perspective that you have shared with California. But can you tell me what the difference is here, and perhaps answer my question? To the best that you know, are there other States that are in the same situation as California, where you are suggesting that the Federal Government should have an increased role there?

Mr. SHELTON. I wouldn't be presumptuous to speak for the other States, but I came to Kansas City with Mr. Hogen at the same time, and several States and Canada were represented. NIGC received a wonderful welcome there in their reaction.

California has grown so immensely in gaming, from $1 billion and some in 2001, to 2006 over $7 billion. We had not geared up to do what we should be doing. The tribes have been very open. They are great to work with and we have great communications, but the Governor sees NIGC filling a void at this time, and it is very necessary. They have been just recently in our State and did

an audit. I don't know of any ramifications from that audit that would be negative.

Most of the tribes I talk to, and I believe to the major tribes in California, I have a good rapport with, and they told me that we don't know which one we want in. We enjoy NIGC coming in. We haven't experienced in the State of California a full MICS inspection at this time. What we fear is both of you coming in at the same time.

We understand that. Chairman Hogen and I have discussed that. As long as we at the point California is at, we would coordinate our activities. That is not what any of us want to do. The Governor would not want that. He would not allow that. He doesn't want the heavy-handedness. His respect for sovereignty is too great. So I believe it is a good marriage that works out.

Senator MURKOWSKI. Let me ask you, probably Mr. Allen, you had mentioned in your comments the need for just the openness and the integrity, or an acknowledgment that in your opinion these are attributes that we are staying with, in the content of the gaming that is going on. We have not heard anything to dispute that. In fact, I understand that there are some polls out there that have been conducted for the National Indian Gaming Association that say Indian gaming has an approval rating between 61 percent and 75 percent, depending on the question asked.

We would only dream of those kinds of approval ratings here in the Congress.

[Laughter.]

Senator MURKOWSKI. We recognize that whether you are the Congress or whether a business enterprise, everybody stands before that court of public opinion. And where we recognize that sometimes that public opinion is a fragile base, how important is it that the Indian gaming industry adhere to a uniform national and kind of best practices set of standards for the internal control, to maintain this integrity that you currently have?

Mr. ALLEN. Well, it is important that there is a set of standards that the general public and the policymakers know that the tribes are adhering to, without a doubt. Many of us believe that NIGC has sufficient authority right now in terms of its oversight. They have to approve our tribal regulations with our gaming agencies. So they review them, so they know exactly what that is.

This whole process is a dynamic process in terms of our regulatory independent agencies with regard to that regulatory oversight. The issue before us is should NIGC approve the standard internal controls that would be adhered to with the tribes and/or the States with respect to that matter. The question is, how that would be imposed.

The dialogue and debate is about is it an additional layer. That is our concern, that the way it is being structured right now, and what we are advocating with the Chair, is be careful here because you could be adding a layer, even though it appears like it is not a layer.

So the question is, if NIGC is given this authority and it says that it has to have these internal control standards for Class III activities, then now the issue is are they going to now being engaged in our negotiations with our compacts, so that those require-

ments are now in our compacts? So now it is no longer a State-tribal relationship as authorized by IGRA. Now, there is an NIGC role in that forum. You have this triangular negotiation about what is acceptable and not acceptable. It can be a little bit presumptuous.

Now, we are growing. Here is the fact. We are 20 years old now in this industry. We have been growing together at the same time. It is not about one entity or one agency has greater superiority than the other. We have been growing. The only one who has greater superiority or experience is Nevada and New Jersey, et cetera. But the rest of us have grown and have the same kind of expertise as anyone else.

So the question is, if the Act is amended, how is it structured so that it is not paternalistic toward the tribe, and is respectful of the tribal governments, as we impose these conditions? And make sure you know exactly what is going on out there, because the integrity of oversight, as we have all testified, is at a very high level. There are no problems, as the Chairman has pointed out. There aren't very many problems out there. There is this concern that Phil and his staff can point to.

I have some examples. You have to have some examples. But what is the kind of corrective action you should take, and do you already have the authority to do that, to fix those things? How should you be encouraging higher levels of internal controls and standards?

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman. I may have some additional questions to submit for the record.

The CHAIRMAN. Senator Inouye?

Senator INOUYE. Thank you very much.

May I make a statement in lieu of asking questions?

The CHAIRMAN. Absolutely.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Mr. Chairman, I have had the pleasure of serving on this Committee for many years, as either Chairman or Ranking Member, since 1986. The first challenge that this Committee faced was the Cabazon case. The Cabazon case was decided by the Supreme Court in 1985, and it once again reestablished and affirmed the sovereignty of Indian nations. It was not considered an important case because you hardly saw this matter being reported in the press.

When this Committee realized that we had a problem before us, we immediately conferred with the Government of the United States because it was our belief that the sovereignty of Indian nations required a government-to-government relationship not with the States, but with the Federal Government. At that time, the Attorney General, the White House, all said no, we don't want any part of this, and so we conferred with the States.

Mr. Chairman, I had the privilege of meeting every Governor to discuss this matter because it was obvious to me that this matter will someday become big. In the beginning, this Committee, and for that matter the Congress of the United States, with the Administration, had very little concern or interest in Indian gaming. As one

told me, well, these simple folks won't know what to do. They just want to run bingo games and such.

And the Indian tribes because they were not receiving any help from the financial institutions of the United States, because their lands could not be alienated, they could not put it up for mortgage. They couldn't borrow any money. They had to go elsewhere to borrow money, at times from unscrupulous people, many times, across the ocean to foreign lands, paying high interest rates, unheard of, outrageous regulations. But they did this.

Mr. Chairman, I supported the Indians because I believe in their sovereignty. And second, we have not kept up our side of the bargain. There have been many treaties in which we promised Indian Country that we would do this and that. Keep in mind that this Country was once owned by the Indians, and they gave up jurisdiction over these lands on the promise that they would be cared for. And the way we have cared for Indians is just a blight upon the democracy of this land. We should be ashamed.

So when this came about, I said, here is an opportunity where the Indians may be able to help themselves. Well, they began doing well. They regulated their industries they went into, and said, OK, we will live with these outrageous compacts, but we will go ahead and do it. They paid extraordinarily large interest rates, but they still made money. And they set up hospitals and schools and housing, something that we should have been doing.

Now, Mr. Chairman, I don't wish to be part of any move that would in any way erode the sovereignty that they have. And so you will find me on the other side. I think the Indian nations have done extremely well. We haven't had any major scandal. Compare that with the so-called well-run activities of New Jersey and Las Vegas, and see how the Indians have done. The one big scandal that involved Indian gaming came about because non–Indians tried to scam and con Indians. It wasn't initiated by the Indians.

So Mr. Chairman, I think this is a good hearing. I should tell you that I will do everything possible to see that this bill disappears. Incidentally, there are two States in the union that prohibit any form of gambling, Utah and Hawaii. I am against gambling. I don't think that is the way to make money. But I respect the sovereignty of Indian nations.

Thank you.

The CHAIRMAN. Senator Inouye, thank you very much.

[Applause.]

The CHAIRMAN. That is a wonderful description of the history going back to the Cabazon case that has changed the landscape with respect to the issue of Indian gaming, the opportunity to develop a stream of income to be helpful to Indian tribes around the Country. And your description of the compacts and so on is an apt description.

One of the things that we have tried to make certain in this Committee is about consultation and the Committee is about understanding and recognizing sovereignty. That is very important. Those are two things that I believe when people take a look through the rearview mirror of history about this Committee, they will understand, starting long, long ago, with the stewardship of Senator Inouye, and I hope up to and including now with Senator

Murkowski and myself and many other Members of the Committee, that people understand this Committee was about consultation and respecting and recognizing the sovereignty that exists.

Let me just ask one additional question. Mr. Luger, you are the Executive Director of the Great Plains organization. You accompanied Chairwoman Pearson today. Let me finally just ask a question. I am going to submit questions to a number of you.

One of the reasons for a continuing discussion about this is the need, or the feeling that there is a need for more than one level of regulation. My understanding is that in some cases in the Country, that there is common membership in the tribal council and also the gaming authority, the regulatory authority for that tribe's gaming facility. I don't know that that is the case in many circumstances, but I understand it is in some. If that is the case, then you don't have an arm's length regulatory oversight of the gaming facility.

Is it your feeling and Chairman Pearson's feeling that there needs to be at least two levels? I think in previous discussions, you have indicated that there is with the State compact a State level of regulatory authority, and the tribe. Is there a feeling that there needs to be at least two levels of regulatory authority?

Mr. LUGER. Yes. The short answer is yes. We, as you know better than I, the hard work of all of these. And the frustrating part is that because of the Seminole decision, we have put all of our time and energy in beefing up our own tribal gaming commissions and our relationship with the States.

Quite frankly, and I will be very brief, as long as Phil is here, it is something that just never comes up and it is a constant consternation to Indian Country, and that is with technical assistance, a lot of this would have been minimized or eliminated. They have done poorly in that area. It is hurtful, especially for your tribes at home, Senator Dorgan. I can't call up NIGC. I have 14 training and regulatory seminars last year. I have called the Minneapolis area every time, John Peterson, and every time I get the same response: I don't have an expert in that field, or I don't have the travel time, or what have you.

I have to go back out into Indian Country to find those experts in that regulatory area. I don't think there is a tribe in here that wouldn't disagree with me that the technical assistance aspect of NIGC has been less than star quality.

The CHAIRMAN. Mr. Hogen, you are welcome to respond to that in writing if you wish.

Let me make a final point today. Senator Inouye, you offered an amendment dealing with the Seminole case, which I supported. That failed on a tie vote in this Committee. I don't disagree that we need to resolve and deal with the Seminole case. That is a related issue that we should be considering.

Our future discussions will ensue from the information we have now received from our witnesses. I think the witness table is probably a pretty accurate reflection of the division that exists in the country on this subject. I am talking now about Indian Country. As I indicated, we will digest and evaluate what we have heard today, and what we feel we should do to respond.

Having had this hearing, and now being able to study over some period of time in the future the information we have received, I want you all to understand again that the principal priority of this Committee is going to remain health care, housing, education, teen suicide, methamphetamine, and law enforcement. Those are the items that will consume a substantial amount of the passion and energy of this Committee because we have a full-blown crisis in Indian Country on those issues.

I did think it was important to have this hearing in order to consider how to move forward with respect to this issue of regulatory authority for Indian gaming. Indian gaming is very important. It produces a very substantial $25 billion revenue stream for Indian tribes, and it has been desperately needed in much of this country. So I think no one in this room who comes to this subject wishes in any way to injure or to cast doubt upon these issues. We believe that this issue is a very important issue and a very important source of much-needed revenue for American Indians.

One final point, I would agree with my colleague, Senator Inouye, that the Congress of the United States over many, many decades has I think shamefully ignored its responsibility to address the very issues I have described with tribes in many ways. I think Presidents and Congresses have failed with people living in Third World conditions in this Country on Indian reservations, and it is shameful that that continues to exist.

This Committee and many others have a responsibility to address it and address it aggressively, and that will remain the major agenda for this Committee.

Let me thank the witnesses for coming. Let me thank my colleagues for being here as well.

This hearing is adjourned.

[Whereupon, at 10:50 a.m. the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF TRACY BURRIS, GAMING COMMISSIONER OF THE CHICKASAW NATION

Good morning Chairman Dorgan and distinguished Members of the Committee.

On behalf of the Chickasaw Nation, allow me to extend our deep appreciation for this opportunity to comment on this important legislative proposal. My name is Tracy Burris and I serve as the Commissioner of Gaming for the Chickasaw Nation, a post I have held for approximately 12 years. The Chickasaw Nation strives always to provide constructive comments, and I am honored to deliver the Chickasaw Nation's view in relation to the proposed amendment on the issue of the NIGC's authority over Class III gaming. We hope the Committee finds our testimony today useful in its deliberations on this important issue.

Let me open with the observation that there is no debate in Indian Country about the need for sound internal control standards. Effective internal control standards represent a critical tool in safeguarding critical tribal gaming revenues and ensuring operational integrity. Neither is there a question as to the importance of regulatory oversight and the enforcement of regulations designed to serve these purposes. As a front line gaming regulator, the utility and necessity of internal control standards is clear and we work hard to ensure operational compliance at the Chickasaw Nation's gaming facilities.

In our view, the issue before us today is NOT whether regulatory oversight is important or whether internal control standards are necessary, but rather how best to allocate regulatory responsibilities essential to the fulfillment of the purposes for which IGRA was enacted. First and foremost, IGRA was enacted to establish a comprehensive regulatory framework for tribal government gaming. The act reflects a balance between the competing governmental interests by assigning regulatory roles to tribal, state and Federal agencies based on a classification system dividing gaming activities into three classes with regulatory roles distributed among tribal, state and federal governments in accordance with the class of the gaming activity.

Class I gaming consists of traditional tribal social games. In light of the superior tribal governmental interest in matters of culture and tradition, tribal governments were accorded exclusive regulatory authority over Class I games. Class II games include bingo, lotto, pull-tabs, games similar to bingo and certain other enumerated games as well as certain non-banking card games. Though similar, Congress accorded greater weight to the tribal interest in Class II games, according tribal government primary regulatory authority, though establishing a Federal regulatory agency charged with regulatory oversight responsibilities.

With regard to Class III gaming, which includes slot machines, facsimiles, house banked card and table games and other wagering activities, Congress did something novel. It created a consensual mechanism, and then left tribal and state governments to work out their differences. If negotiations succeeded in producing a tribal-state gaming compact, and the compact met with the approval of the Secretary of the Interior, tribal governments could lawfully engage in Class III gaming activities.

In the beginning, there was considerable discontent on both sides. Over the years, however, tribal and state governments for the most part have succeeded in working through the compacting process. As a result, the Class III gaming industry comprises most of the tribal gaming industry. This fact underscores how effective IGRA has been in altering the course of the tribal-state relationship in a more positive direction. Given the tensions that once characterized the tribal-state relationship over gaming, it's almost surprising that the issue that brings us here today is the Federal interest in Class III gaming.

The crux of the matter is a decision by the Federal Circuit Court of Appeals for the District of Columbia affirming the lower court's ruling that IGRA does not authorize the NIGC to regulate Class III gaming nor to promulgate and enforce its minimum internal control standards in relation to Class III gaming activities. The committee is now considering whether to amend IGRA to broaden its authority to

encompass Class III gaming. Bill language to do so has been drafted and we thank Chairman Dorgan for the courtesy of circulating a discussion draft.

We note that the bill would also establish an alternative rulemaking process for the development of Class III minimum internal control standards. To some extent, the fact that language is drafted and a hearing convened would indicate that there is to some degree a sense that the amendment is warranted. The purpose of this hearing is to aid the committee in deciding if this is so and whether the proposed language is acceptable to tribal and federal governments.

We see the proposal as an effort to again strike a balance between competing governmental interests, yet it is important to recognize that the amendment will alter the regulatory framework and the balance reflected in it. We would prefer to avoid amending IGRA in this manner because IGRA represents a compromise that has finally been accepted after a very long and difficult period of time. Statutory amendments introduce complexities and create uncertainties, which is not conducive to a stable business environment. Moreover, it is not possible to foresee every ramification, particularly where the amendment effects such fundamental change. We know that where multiple jurisdictions have overlapping functions and responsibilities, inefficiencies inevitably result and costs increase. Redundancy is also conducive to conflict, which creates instability.

By all indications, the tribal gaming industry is healthy. It has enjoyed double digit growth in productivity each year for more than a decade. On the whole the industry enjoys a wholesome public image and maintains considerable public support. Tribal regulatory capacity and expertise have strengthened over the years and tribal regulatory agencies continue to achieve ever increasing levels of sophistication. In every respect IGRA represents one of the most successful and important pieces of Indian legislation ever enacted by the Congress. It has provided tribal governments a substitute for the tax base they lack, and in so doing, it has strengthened tribal governments economically and institutionally.

In light of the success and importance of gaming to tribal governments, it is only natural that tribal officials will have misgivings about amending IGRA. Tribal officials are equally apprehensive in relation to proposed rules, particularly regulations such as the MICS which are legislative in nature and highly detailed technically. In the first place, the responsibility for implementing, monitoring and enforcing such regulations falls most heavily on tribal gaming regulatory agencies. Yet, the NIGC's policies with regard to tribal participation in the drafting process have been erratic. There have been periods when the NIGC has welcomed participation and others where it has been unreceptive. We believe that the quality and workability of regulations suffers when those most directly affected by the regulations, particularly those responsible for on-the-ground implementation are not given a seat at the drafting table. The development of internal control standards requires an intimate working knowledge about the gaming environment as well as expertise in all aspects of gaming operations.

The MICS have been the subject of longstanding complaints from both the regulatory and the operational sides of the industry. In reviewing the draft bill, we appreciated that a provision was included to address these tribal concerns and felt that we might offer some insight that may aid the committee's deliberations on the subject.

The dissatisfaction with the MICS arose soon after they were first adopted. In implementing the MICS it soon became evident that the standards were flawed in several respects. First, they were largely borrowed from the Nevada Gaming Control Board's regulations at a time when the industry was undergoing a period of significant technological advancement. As a result, the MICS were already stale in several areas at the time of adoption. They were also poorly suited to the Class II gaming environment, though the NIGC resisted this premise based on its belief that electronically aided Class II games are indistinguishable from Class III gambling machines.

Another flaw was that the MICS initially reflected a one-size-fits-all approach. The same standards applied to all tribal gaming activities regardless of the size of the operation, which in Indian Country ranges from some of the world's largest gaming operations to some of its tiniest. The rigidity of the MICS was frustrating to regulators and operators. Moreover, compliance with the MICS presented so many practical difficulties that tribal governments were alarmed by the implications. Federal enforcement action, as a result of these difficult to implement provisions of the MICS was the concern that prompted tribes to begin questioning the NIGC's authority to promulgate and enforce the standards.

In 2000, tribal leaders and regulators approached the NIGC about the problems. The commission agreed to review the MICS and consider revisions to address the practical problems tribal governments were experiencing. A tribal advisory com-

mittee was assembled and a significant revision resulted, but the issue of the NIGC's authority was not resolved until the decision in the Colorado River case.

We are aware of the NIGC's strong concerns about the court's decision and its desire for a legislative solution. We can also understand the committee's interest in discerning whether the court's decision creates a regulatory gap. At the same time we know that tribal governments are not so irresponsible as to abandon their internal control standards. To do so would deprive them of their most valuable regulatory tool and render operations vulnerable to panoply of harms. Tribal governments are competent to promulgate and enforce tribal standards without a statutory or regulatory mandate or the threat of enforcement. Tribal governments desire strong effective internal control standards because they are in the best interest of the tribe.

On the question of whether the rule making function should remain with the NIGC or be delegate to a specially created entity, we view this decision as less important from our perspective than ensuring that tribal officials have a seat at the drafting table. Unless the provision guarantees that a specially created entity would be more receptive to collaborative processes than the NIGC has been we cannot see its value. The draft does not mandate that tribal officials will be accorded meaningful participation or ensure that the committee members will have expertise and experience that will allow them to participate in meaningful discussion. We encourage the committee to consider a slightly different approach. As drafted, the proposed bill establishes a drafting committee, but offers very little procedural guidance. The Negotiated Rulemaking Act and the Federal Advisory Committee Act, on the other hand, each contains procedures that if applied would go far in alleviating our concerns.

We strongly believe that all rule making under IGRA should be subject to collaborative processes. Besides the expertise tribal gaming regulators can provide, they have important insights to offer as to the practical strengths and weaknesses of the regulations. They will also be better equipped to identify areas in need of attention. Moreover, it is illogical to exclude tribal gaming regulators from the drafting process, given that tribal regulatory agencies will have primary responsibility for implementing, monitoring and enforcing the regulation plus approving the necessary operating procedures. Providing oral or written feedback on draft regulations is of limited use. Once a draft is prepared, there is typically limited interest in exploring alternative approaches or effecting significant revision. Too much time and effort has been invested and important choices have already been made.

I will close where I began. Tribal officials well understand the importance of internal control standard and effective regulations. Tribal governments rely on gaming revenues to fund essential governmental functions, services and programs. These revenues fuel the economic engine driving tribal economic growth and development. Gaming provides permanent jobs, fair wages and benefits. Thanks to gaming, there are business opportunities within the community. These jobs and opportunities stay right where they are and this knowledge increases confidence and stability in the economy which fosters continued growth.

These successes were not easily accomplished. Years of hard work have been invested, and years more will be needed to achieve the standard of living and quality of life our leaders envision for ourselves and our posterity. As Governor Bill Anoatubby has observed many times, we do not see the accumulation of wealth from gaming as an end in itself, but as a means of achieving the goals to which we aspire on behalf of the Chickasaw Nation.

Thank you.

PREPARED STATEMENT OF STANLEY R. CROOKS, CHAIRMAN OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

Good morning Chairman Dorgan, Vice Chairman Murkowski, and Members of the Committee. My name is Stanley R. Crooks, and I am the Chairman of the Shakopee Mdewakanton Sioux Community ("Community"), a federally recognized Indian tribe located in the State of Minnesota. On behalf of the Community, I appreciate the opportunity to provide this written testimony on the draft legislation ("Draft Bill") that would amend the Indian Gaming Regulatory Act of 1988 ("IGRA").

As explained in more detail below, because the Draft Bill would give the National Indian Gaming Commission ("NIGC") general regulatory authority over Class III gaming, the Community does not believe that the amendments to IGRA set forth in the Draft Bill are warranted or necessary. Although the Community disagrees with the Draft Bill, we would also like to provide the Committee with specific com-

ments on why we believe the Draft Bill in its current form is overbroad, vague, and would prove unworkable in practice.

Notwithstanding the Community's objections, we look forward to working with the Committee in a cooperative manner to ensure that any concerns with the regulation of Indian gaming are addressed in a manner consistent with the congressional intent of IGRA and are in the best interests of all applicable regulatory authorities.

General Federal Regulatory Authority Over Class III Gaming is Unwarranted

Among other things, the Draft Bill deviates from IGRA's careful regulatory balance by insinuating the NIGC into matters that are now within the exclusive domain of the states and the tribes. The Draft Bill would do this by granting to the NIGC new, general regulatory authority to regulate Class III gaming. As the Committee is aware, IGRA in its current form does not provide the NIGC with such general authority. As the U.S. District Court for the District of Columbia noted in a case brought by the Colorado River Indian Tribes:

> Upon a careful review of the text, the structure, and the legislative history of the IGRA, and the entire record in this case, the Court is compelled to agree with Colorado River that the [IGRA] statute does not confer upon the NIGC the authority to issue or enforce [minimum internal control standards] for Class III gaming.. . . [T]he NIGC has overstepped its bounds.

Colorado River Indian Tribes v. National Indian Gaming Commission, 383 F. Supp. 2d 123 (D. D.C. 2005), *aff'd,* 466 F.3d 134 (D.C. Cir. 2006)(hereinafter, *"CRIT"*). In affirming the *CRIT* decision, the D.C. Circuit Court of Appeals concluded its analysis by posing a question and then answering it: "[W]hat is the statutory basis empowering the [NIGC] to regulate class III gaming operations? Finding none, we affirm." 446 F.3d at 140.

When Congress enacted IGRA in 1988, it was careful to ensure that IGRA's statutory framework clearly enumerated the authority of the NIGC with respect to Class II and Class III gaming. Because Indian tribes that conduct Class III gaming must have in place valid, executed Tribal-State compacts, Congress did not believe that a third layer of Federal regulation for Class III gaming was necessary. Furthermore, the Federal Government—through the Department of Justice—argued against such Federal regulatory authority over Class III when Congress was considering IGRA. The legislative history to IGRA states:

> Recognizing that the extension of State jurisdiction on Indian lands has traditionally been inimical to Indian interests, some have suggested the creation of a Federal regulatory agency to regulate Class II and Class III gaming activities on Indian lands. Justice Department officials were opposed to this approach, arguing that the expertise to regulate gaming activities and to enforce laws related to gaming could be found in state agencies, *and thus that there was no need to duplicate those mechanisms on a Federal level.*

S. Rep. No. 100–446, at 5 (1988)(emphasis added).

Careful enumeration by Congress in 1988 of the NIGC's authority over the various classes of gaming authorized by IGRA has proven to be an effective and efficient regulatory scheme, and one that has transformed Indian gaming into the most heavily regulated form of gaming in the United States. The Tribal-State compact mechanism, although not perfect, has allowed Indian tribes and state governments to negotiate and allocate regulatory duties in a single document. These compacts, some of which—such as the Community's compacts with the State of Minnesota—are long term or are perpetual in duration—were entered into on the basis of the assumption that Class III gaming would be regulated exclusively by tribes and the states.

Just as the hearing record fails to support the creation of yet another layer of regulation for Class III gaming, there is no justification for the added regulatory costs the NIGC would undoubtedly seek to impose on tribes. Indian tribes currently pay all costs of tribal gaming commissions, the costs of state regulation under the Tribal-State compacts, and the entire budget for the NIGC through the NIGC's annual assessment of fees. To now provide the NIGC with blanket Class III regulatory authority, as the Draft Bill would do, would upset the delicate balance Congress struck in 1988 and that tribes and states have relied on ever since.

If the NIGC is concerned that the *CRIT* decision may limit its ability to audit Class III gaming facilities or ensure that Indian tribes have adopted minimum internal control standards ("MICS"), the Community believes that these issues can be addressed in a more narrowly tailored manner and through direct consultation with tribal leaders.

The Community's Comments on the Draft Bill

Section 1 of the Draft Bill sets forth the purpose of the legislation, and Section 2 would generally provide the NIGC with authority to regulate Class III gaming. Section 3 of the Draft Bill would establish a mechanism whereby the NIGC's regulatory authority over Class III might be preempted if the NIGC itself certifies that the regulatory activity required under the Tribal-State compact meets the standards established by the Class III Regulatory Committee ("Class III Committee"). Section 3 further grants the Secretary of the Interior authority to establish the Class III Committee, which would consist of five to eight members appointed by the Secretary. No member of the Class III Committee could be an employee of the NIGC, and the NIGC would pay the Class III Committee's operating expenses.

The Community believes that even if the apparent assumption upon which the Draft Bill was written—that a need exists to provide the NIGC with regulatory authority over Class III gaming—was valid, which it is not, the Draft Bill in its current form is flawed and unworkable. Some examples include the following:

(1) *The Class III Committee Would Have Unfettered Discretion to Adopt Regulatory Standards.* The Draft Bill provides the Class III Committee with nearly unrestricted authority to promulgate substantive regulatory standards. Indeed, the Draft Bill states that the Class III Committee shall "develop minimum standards for the regulation of Class III gaming." In addition to providing the Class III Committee with authority to establish standards for the operation of Class III games, the Draft Bill's open-ended charge might also be construed by some as granting the NIGC authority to venture—among other areas—into scope of games issues and gaming classification standards.

The NIGC's unilateral efforts to establish gaming classification regulations have been universally opposed by tribes as conflicting with IGRA's stated purpose to promote "tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The broad scope of the Class III Committee authority, however, might provide an avenue for that Committee to establish substantive standards in areas where the NIGC has thus far been unsuccessful.

Also, the Class III Committee might use its broad mandate to create substantive environmental, health and safety standards, a regulatory area that IGRA reserves to Indian tribes. As a condition precedent to the lawful operation of gaming activities on Indian lands, an Indian tribe must adopt a gaming ordinance which must be approved by the NIGC. 25 U.S.C. § 2710. Among other requirements, tribal gaming ordinances must contain provisions ensuring that "the construction and maintenance of the gaming operation, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety." 25 U.S.C. § 2710 (b)(2)(E).

Although IGRA grants the NIGC the authority to approve gaming ordinances that satisfy these broad criteria, it does not grant the NIGC authority to prescribe the substance of these environmental, health or safety regulations. These decisions rest with the individual tribes. In 2002, the NIGC attempted to impose on tribal gaming operations substantive environmental, health and safety criteria, but abandoned the effort in the face of widespread tribal opposition. The broad discretion granted to the Class III Committee in the Draft Bill would establish a mechanism for the NIGC to use the Class III Committee as a proxy to regulate in these and other areas in which the text and structure of IGRA do not allow.

(2) *No Grace Period for NIGC to Review Existing Tribal-State Compacts and No Deadlines for Implementation of Class III Committee.* Section 2 of the Draft Bill grants the NIGC new authority to regulate Class III gaming, while Section 3 establishes the Class III Committee that will later develop standards that may provide a basis for a tribe or a state to be exempt from the new authority provided in Section 2. The Draft Bill, however, does not contain any time frames for when the new NIGC authority in Section 2 will become effective. Presumably, Section 2 will be effective immediately upon enactment of the legislation into law.

Operating under this presumption, *all* Indian tribes will be subjected to the NIGC's general Class III regulatory power until the Class III Committee is established, the Class III Committee promulgates standards, and the NIGC acts to certify Tribal-State compacts. Without any deadlines for the establishment of the Class III Committee, the promulgation of that Committee's standards, or for the NIGC to act to certify a given Tribal-State compact, it will likely take years before an Indian tribe—through no fault of its own—can be exempted from the NIGC's Class III regulatory authority. The absence of a grace period or associated deadlines for implementation renders the purported exemption in Section 3 of the Draft Bill nothing more than an illusion.

(3) *No Process for Appealing the NIGC's Refusal to Certify a Tribal-State Compact.* The Draft Bill provides no mechanism for a tribe to appeal a determination by the

NIGC that a Tribal-State compact does not satisfy the standards established by the Class III Committee.

(4) *Status of Nonconforming Tribal-State Compacts Unclear:* The Draft Bill does not address the status of those Tribal-State compacts that the NIGC determines do not comply with the Class III Committee's standards. This might lead some to demand that these "nonconforming" compacts be reopened for negotiation. This, in turn, could create an opening for states that are parties to such compacts to demand new or increased "revenue sharing" in exchange for the tribes' continued ability to conduct gaming. At the very least, this omission would create a cloud over the legality of these compacts. The Draft Bill should explicitly state that compacts that the NIGC determines do not conform to the Class III Committee's standards are not subject to amendment or to renegotiation without the written consent of all parties to the compacts.

If Congress opts to have the NIGC assume all regulatory control over Class III tribal gaming, as the Draft Bill would do, then there is no need for the Tribal-State compacting process that is now an integral part of the IGRA. The Community does not believe that this is the result the Committee intends.

Rather, the Community believes that to the extent the Committee believes that a legislative response to the *CRIT* decision is necessary, the Committee should consider including MICS as a component of tribal gaming ordinances rather than handing the NIGC broad regulatory authority. The Community, however, has grave concerns about the wisdom of any attempt to amend IGRA in the current political climate.

I appreciate the opportunity to provide the Community's views on the Draft Bill. The Community stands ready to work with the Committee and its members on this and other issues affecting Indian gaming.

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