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# H.R. 831, TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY; AND H.R. 2793, TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS.

## LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

**Thursday, June 24, 2004**

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# LEGISLATIVE HEARING ON H.R. 831, TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE BAY MILLS INDIAN COMMUNITY; AND H.R. 2793, TO PROVIDE FOR AND APPROVE THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS.

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**Thursday, June 24, 2004**
**U.S. House of Representatives**
**Committee on Resources**
**Washington, DC**

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The Committee met, pursuant to notice, at 2:21 p.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Young, Duncan, Jones, Gibbons, Hayworth, Flake, Rehberg, Cole, Pearce, Rahall, Kildee, Faleomavaega, Pallone, Christensen, Inslee, and Bordallo.

Also Present on Dais: Representative Stupak.

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

The CHAIRMAN. The Committee on Resources will come to order.

The Committee is meeting today to hear testimony on H.R. 831 and H.R. 2793. They are intended to settle land claims asserted by the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians. The bills are sponsored by Michigan Representatives Candice Miller and John Dingell.

The CHAIRMAN. Bay Mills and Sault Ste. Marie have reservations on the Upper Peninsula of Michigan, and the land claims pertain to an area called Charlotte Beach, which is also on the U.P. The premise of these bills is to extinguish the land claims in exchange for placing lands in trust for the purpose of gaming several hundred miles away from the tribes' existing reservation. Casinos would be constructed on the trust lands pursuant to the Indian Gaming Regulatory Act or as specified in the terms of the bills and the Tribal-State settlement agreements the bills ratify.

A few months ago, our distinguished former Chairman of this Committee, Mr. Young of Alaska, added similar legislation on

H.R. 3550 during the Transportation Committee's markup of that bill. Because such legislation is within the Resources Committee's jurisdiction, at my request, the Gentleman from Alaska was kind enough to withdraw the land claims language from TLU when it reached the Floor.

As everyone should know by now, I made the request because it is my policy to protect this Committee's jurisdiction in the most aggressive manner possible. Because interest in these bills remains strong among several members of this Committee, among many others in the House, including the Ranking Democrat Member, Mr. Rahall, it is appropriate to hold a hearing on these bills.

Holding this hearing today accomplishes two purposes. It upholds the regular order of the House, thereby discouraging attempts by other committees to dabble in our jurisdiction—

[Laughter.]

The CHAIRMAN.—and it enables people on both sides of this issue, including those riding the fence, to air out their questions, concerns, and positions.

I look forward to hearing the testimony of our witnesses today. It is my understanding that one of our colleagues from the State of Michigan, after they are done testifying, want to participate in the hearing. At this time, I ask unanimous consent that the Gentleman from Michigan, Mr. Stupak, be allowed to sit on the dais and participate in the hearing.

Before anybody objects, I say that for those that are interested in sitting on the dais, I want to point out that in this Committee we operate with the understanding that we show respect for the other members of the Committee and for our witnesses. And if at any time—I know this is an emotional issue for people, but if at any time you go beyond what I consider the decorum of this Committee, I will ask you to be removed.

Hearing no objections, so ordered.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard Pombo, Chairman, Committee on Resources**

H.R. 831 and H.R. 2793 are intended to settle land claims asserted by the Bay Mills Indian Community and the Sault Sainte Marie Tribe of Chippewa Indians. The bills are sponsored by Michigan Representatives Candice Miller and John Dingell. Bay Mills and Sault Sainte Marie have reservations on the Upper Peninsula of Michigan, and the land claims pertain to an area called Charlotte Beach, which is also on the U.P.

The premise of these bills is to extinguish the land claims in exchange for placing lands in trust for the purpose of gaming several hundred miles away from the tribes' existing reservations. Casinos would be constructed on the trust lands pursuant to the Indian Gaming Regulatory Act, or as specified in the terms of the bills and the tribal-state settlement agreements the bills ratify.

A few months ago, our distinguished former chairman of this Committee, Mr. Young of Alaska, added similar legislation to H.R. 3550 during the Transportation Committee's mark-up of that bill. Because such legislation is within the Resources Committee's jurisdiction, at my request the Gentleman from Alaska was kind enough to withdraw the land claims language from TEA-LU when it reached the Floor. As everyone should know by now, I made the request because it is my policy to protect this Committee's jurisdiction in the most aggressive manner possible.

Because interest in these bills remains strong among several Members of this Committee and among many others in the House, including the Ranking Democratic Member, Mr. Rahall, it's appropriate to hold a hearing on these bills. Holding this hearing today accomplishes two purposes: It upholds the regular order of the House, thereby discouraging attempts by other Committees to dabble in our jurisdiction,

and it enables people on both sides of this issue, including those riding the fence, to air out their questions, concerns, and positions.

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The CHAIRMAN. With that, I will now recognize the Ranking Democrat of the Committee, Mr. Rahall.

## STATEMENT OF HON. NICK J. RAHALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman. I do thank you for holding today's hearing and certainly look forward to welcoming our colleagues to present their testimony.

We are going to hear about two extremely important and worthy measures that have been brought to our attention by my good friend, by the past and future Chairman of the Energy and Commerce Committee, and the dean of the House of Representatives, John Dingell; and our colleagues Candice Miller and Bart Stupak.

There is, in my view, a compelling public interest in these two bills being enacted into law. At issue are approximately 110 acres of land in an area known as Charlotte Beach. Currently some 109 Indians reside in this area under a clouded title to the land.

It is my understanding that this situation rose out of a series of long and tortured events, but it fundamentally boils down to the fact that these ancestral lands, while they were supposedly to have been held in trust, were instead illegally sold for unpaid taxes. I would suggest that this is not a tenable situation. Those who reside in the Charlotte Beach area are being robbed of their peace of mind, with no security in a place they call home. At the same time, the two tribes are being robbed of enjoyment and benefit of their ancestral lands.

Moreover, the issues addressed by these two bills have already passed one public interest test. The legislation would simply ratify a settlement agreement between the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians and the State of Michigan.

So I again commend our colleagues, Representatives John Dingell, Candice Miller, for bringing this legislation to our attention. And I also thank my good friend Bart Stupak, who, as I understand, supports enactment of this settlement agreement. I look forward to their testimony today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rahall follows:]

### Statement of The Honorable Nick Rahall, II, Ranking Democrat, Committee on Resources

Mr. Chairman, today the Committee meets to receive testimony on two extremely important and worthy measures that have been brought to our attention by my good friend, the Dean of the House of Representatives, John Dingell, and our colleague, Candice Miller.

There is, in my view, a compelling public interest in these two bills being enacted into law.

At issue are approximately 110 acres of land in an area known as Charlotte Beach. Currently, some 100 non-Indians reside in this area under a clouded title to the land. It is my understanding that this situation arose out of a long and tortured series of events, but fundamentally boils down to the fact that these ancestral lands of the Indians while supposedly to have been held in trust where instead illegally sold for unpaid taxes.

I would suggest that this is not a tenable situation. Those who reside in the Charlotte Beach area are being robbed of their peace of mind, with no security in the place they call home. At the same time, the two tribes are being robbed of the enjoyment and benefit of their ancestral lands.

Moreover, the issues addressed by these two bills have already passed one public interest test. The legislation would simply ratify a settlement agreement between the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians and the State of Michigan.

So again, I commend Representatives John Dingell and Candice Miller for bringing this legislation to our attention, as well as to my good friend Rep. Bart Stupak, who also supports enactment of this settlement agreement.

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The CHAIRMAN. Thank you.

Normally under the Rules of the Committee we limit opening statements. But the former Chairman of the Committee has asked to be recognized for a very, very brief statement. Mr. Young.

**STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA**

Mr. YOUNG. Thank you, Mr. Chairman. Very frankly, I'm at a little bit of a loss because I have never been called a dabbler before. [Laughter.]

Mr. YOUNG. I've been called many things, but a dabbler never. And I do recognize and respect the gentleman's fierce defense of the Committee. As the former Chairman, I admire that, and you are absolutely correct, and we did withdrawn the provision in my bill.

But this is not new to me. Mr. Stupak actually came to me with Mr. Bonior introducing these bills in 2002, with the Government's support, the signing off by the tribes, and I became interested. And we tried to move these bills, and of course, as you recognized, we moved them through the House and got over to the Senate side and they began to languish away like many other pieces of legislation.

So I am here to say that this is not a new subject for me, and one that does support this concept, and hope through the hearing we will understand why those oppose. For those I would suggest, respectfully, the Old Young Rule I hope still applies to this Committee, whereby you do not do harm to another Member's District. If you are not from that District, you are not representing those people. And if you don't represent those people, then you should be out of this issue. Because this is a form of representative Government. And second, you know, when one lives in glass houses, someone should be very careful because someone may be caught up with shattered glass.

And so I am suggesting respectfully through the hearing that we learn all the facts and information on this issue. And as one of the original sponsors in passage of the original gaming issue, with Mr. Udall, I want everybody, as long as they play by the rules and requirements passed by this Committee, then they should be entitled to attempting to do what they wish to do, and that is settle their land claims settlement.

And with that, Mr. Chairman, I thank you for your kindness in your recognition and the respect you show me, as I respectively show you as Chairman. Thank you very much.

The CHAIRMAN. Thank you. I would also like to recognize Mr. Kildee of Michigan.

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

Mr. KILDEE. I thank the Chairman for recognizing me.

Mr. Chairman, as a member with an established and unwavering record of being an advocate for protecting the sovereign rights of Indian tribes, I find no pleasure in stating my strong opposition to the land settlement bills of the Bay Mills Community and the Sault Ste. Marie Tribe, two tribes located in my State, the great State of Michigan. I have such deep respect and admiration for my friends, Bay Mills Chairman Jeff Parker and Sault Ste. Marie Chairman Bernard Bouschor. Nor do I delight in objecting to the bills that my colleagues have sponsored so that their Districts could enjoy the economic benefits of Indian gaming.

Mr. Chairman, should Congress enact these bills, the unintended consequences will be to set dangerous precedents that would serve to undermine the Indian Gaming Regulatory Act, IGRA, and would promote bad public policy regarding Indian Land Claims Settlements.

First, legitimacy of these land claims has never been fully adjudicated, and the Department of Interior was not involved in the negotiations between the Governor and the tribes that led to the settlement agreements, even though the Secretary would be required to take land into trust for the tribes.

Second, never before has Indian Land Claims Settlement legislation, such as we have before us today, expressly permitted a tribe to use the Land Claims Settlement exception of IGRA. Nor has Congress ever passed a law ratifying every term of a gaming compact negotiated between a State and tribe, as we would do today. Under IGRA, Congress delegated the responsibility of taking land into trust as part of a settlement of a land claim and also the approval of a negotiated State-Tribal gaming compact to the Department of Interior. While Congress may approve land settlement legislation for claims that arise from U.S. Government dealings with Indian tribes, controversial provisions that authorize off-reservation gaming and approve gaming compact terms should not be included in Indian land settlement legislation.

Third, the result of these bills, if enacted, could lead to a proliferation of off-reservation Indian gaming on land where Indian tribes have no historical tribes. Indian tribes could open gaming facilities anywhere in any State where gaming is permissible—downtown Chicago, New York City, Columbus, Ohio, or Newark, New Jersey. The land that the Bay Mills Community and the Sault Ste. Marie Tribe seek to have taken into trust is several hundred miles away from the tribes' reservation and the sites are not a part of the tribes' ancestral homeland. For those of us who have fought tirelessly against legislative attacks that would serve to harm Indian gaming, we could expect a flurry anti-Indian gaming riders, legislation, and court battles to follow the enactment of these bills.

In the current political climate, could we really expect to be successful in defending an action that so clearly abuses the intent of IGRA by making virtually any place in America a possible Indian gaming site? I have received several tribal resolutions from tribes in Michigan opposing these bills. In addition, the Chairman has received letters from bipartisan groups of our colleagues that express

opposition to these bills and raise general concerns about off-reservation Indian gaming.

Mr. Chairman, I am aware of the previous attempts to include these bills in an appropriation measure, and I hope that you will continue to oppose any attempt to move these bills, or any variation of these bills, in legislation that is not before this Committee. We must maintain, as you have so well in the past, the jurisdiction of this Committee.

I yield back the balance of my time, and I thank you again for yielding.

The CHAIRMAN. Thank you, Mr. Kildee.

Mr. Gibbons?

**STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA**

Mr. GIBBONS. Thank you very much, Mr. Chairman. And I did want to take a moment for thank you for recognizing me to make a few remarks here. I do want to associate myself with the remarks of my friend from Michigan, Mr. Kildee, on this and briefly to express my reservations regarding the two bills that are the subject of our meeting this afternoon.

My concern stems, Mr. Chairman, not from any opposition to the institution of gaming, Native American or otherwise, as my home State of Nevada owes much of its current economic prosperity to its thriving gaming industry. My personal apprehension is with legislation that seeks to circumvent the Congressionally established process for establishing Native American casinos in the United States, as outlined in the Indian Gaming Regulatory Act, IGRA, that was passed by Congress. In fact, I have a deep concern with any bill designed to provide a certain unfair advantage to one business-seeking group or entity over all others, who follow the letter of the law in the pursuit of their business opportunity.

I am assured, Mr. Chairman, that many of my colleagues here are also holding a similar opinion. I believe Congress would be making a grave mistake if we were to approve these two bills. And if we pass this legislation, we would be granting a tremendous favor or advantage of one group of Native Americans over others. And if Congress rolls out the red carpet for one tribe or entity, who can say that we shouldn't roll it out for all others in the same fashion? Where would we draw the line, and why would we have regulations and controls in place that we do?

More importantly, Mr. Chairman, if Congress were to move forward with these proposals, we would be giving a tremendous advantage to the Native American gaming community, leaving the non-Native American gaming entities, like those in Nevada, to operate at an unfair and biased business atmosphere and disadvantage.

In 1988, Congress established a firm review and approval process for all proposed Indian casinos through the IGRA process. Congress intended the States, local Government, and residents to work together with the tribes and the Federal Government to establish Native American casinos only on tribal lands and in areas mutually agreed upon by all sides. The bill before us today seeks to usurp that well-founded procedure to the detriment of other legal

gaming entities and other tribes who followed the letter of the law when conducting business.

I look forward to hearing our witnesses' testimony today and hearing their response to my questions. And with that, Mr. Chairman, I will yield back the balance of my time, and thank you for your courtesy.

The CHAIRMAN. Thank you. And for our last opening statement on the Committee, Mr. Pallone.

**STATEMENT OF HON. FRANK PALLONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman.

I just wanted to say, having read the background on these two bills, I think that it is clear that the Bay Mills Indian Community, Sault Ste. Marie Tribe of Chippewa, and the State of Michigan and the local municipalities have all worked together to reach a mutual agreement about the land claims in question and the building of new gaming facilities. It is unfortunate that, when it comes to Indian gaming, such cooperation is a rarity rather than a norm. More often than not, we are used to hearing about fierce legal battles that have pitted local municipalities against tribes.

That is not the case in these two instances. As evidenced by the local referendums that were passed, these communities want Indian gaming and see it as an opportunity to spur economic development and create jobs. Consider the level of success the Sault Ste. Marie Tribe and its neighbors have already experienced from Indian gaming. Revenues from the tribe's current five casinos have allowed the tribe to offer critical services to its 29,000 enrolled members, including a new health center and additional housing.

Additionally, these casinos have provided their host communities with hundreds of thousands of dollars. It is my understanding that through past casino revenues, these local communities were able to purchase snow plows, fire trucks, ambulances, and a number of other important items that they could not have afforded otherwise. With the addition of another gaming facility, I am sure the surrounding communities and the State are sure to reap additional benefits.

So I think that this is an example of where, if people work together, both tribes, the State, the local communities, I think it is a great example of success in that respect. And for that alone, I think that we should support the bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I would like to now introduce our first witnesses, three of our distinguished colleagues from the State of Michigan, Mr. Dingell, Mr. Rogers, and Mr. Stupak.

Let me take this time to remind all of today's witnesses that, under Committee Rules, oral statements are limited to 5 minutes. Your entire written statement will appear in the record.

Mr. Dingell?

**STATEMENT OF HON. JOHN DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. I thank you for calling this hearing today and I thank the members of the Committee for being here to listen to the merits of the issue.

I also thank the distinguished Mayor of Romulus, Mr. Alan Lambert, Mr. William Black, of the Michigan Brotherhood of Teamsters, and Mr. Paul Shagen of the Sault Tribe for being here today to talk about the resolution of a land dispute that has long plagued our State.

I would also like to thank my colleague, Congresswoman Candice Miller, for her valuable work on this issue and for introducing one of the two bills which are before the Committee today.

I also want to thank my dear friend Mr. Stupak, who represents the District in which the Indians interested in this matter reside.

I am here to speak of economic development opportunities that have arisen for my constituents. As you all know, we have had significant job losses in Michigan. This will afford us a fine opportunity for economic development and makes possible the creation of about 6,500 well-paying union jobs that will help our State recover from the difficulties that we have confronted in the economy. It also is to be noted that this will benefit the entirety of southeast Michigan in a very specific way.

I sit before the Committee today to discuss Land Settlement Agreements that were entered into with Michigan's former Governor, Mr. John Engler. One agreement affects the citizens in and around the Port Huron area, in Representative Candice Miller's District, and while the other directly impacts citizens within and surrounding the city of Romulus, it is a part of my Congressional District.

I would like at this time to submit both of these Land Settlement Agreements for purposes of the record, Mr. Chairman. I believe they will be helpful.

[NOTE: The agreements have been retained in the Committee's official files.]

Mr. DINGELL. Mr. Chairman, I would note that only with the settlements of these two land claims will this issue go away and cease in the State of Michigan. I will begin speaking about why I became involved in this.

As you will note, Governor Engler came to this conclusion with both the Bay Mills Community and the Sault Community over a land dispute in which the Indians have been very grossly unfairly treated. Land had been taken from them in spite of their clear right under the treaty. This is, I think, a good settlement in something which has created great difficulty throughout the entirety of Michigan.

Two communities, I would note, in my District have indicated their interest in locating a casino in the community, and it is my purpose to try and see to it that they are heard and that their concerns and your concerns with regard to what they seek are properly addressed. Romulus, I note, passed a referendum with 57 percent support, approval for the casino. At Port Huron, the community also held a referendum that passed by a margin of 55 to 45.

I would note that in response to the requests of my people in Romulus, I introduced legislation to ensure that the citizens of Romulus received complete and proper representation and that they have a seat at the table regarding legislation regarding not only our affairs, but Port Huron. And I note that I support both bills and believe that they are both in the interest of settlement of a difficult problem in Michigan which has long plagued us.

The legislation that I introduced would extinguish land claims in the area of the Sault Tribe. In exchange, the legislation will grant the Sault Tribe alternative lands in Otsego, Michigan, and Romulus, Michigan, as outlined in the settlement agreement. I would note, just yesterday I introduced new legislation to perhaps modernize this by dropping Vanderbilt from this, which has expressed no interest to me in participating in the provisions of the legislation of which I am particularly interested.

Settlements of these land claims, I note, will provide 6,500 badly needed well-paying jobs in Michigan, and the Sault Tribe would bring to our people in Romulus some $350 million worth of world-class casino, conference center, and hotel. And they would bring in not only gamblers, but also those who would provide an additional boost to the surrounding economy by creating opportunities for conferences and other things which are important to us. Similar opportunities would occur in Port Huron, which is a city suffering significant economic problems at this particular time. About $11 million will be added in revenues to western Wayne County, and some $30 million in tax receipts will be received by reason of this.

Romulus, I believe, and Port Huron deserve the passage of these bills to provide jobs and revenues to their people and to the State of Michigan. After more than 3 years, we are here today to discuss the merits of legislation concerning two communities in Michigan which have great need.

I want to thank you, Mr. Chairman, to your consideration to me and to us for holding these hearings today and for giving me an opportunity to bring you the concerns of these two communities, particularly my city of Romulus, where a fully integrated community has great difficulties in terms of providing the necessary jobs to the people that reside there.

Thank you, Mr. Chairman, and I will ask that my entire statement be included in the record.

[The prepared statement of Mr. Dingell follows:]

**Statement of The Honorable John D. Dingell, a Representative in Congress from the State of Michigan**

Mr. Chairman, I would like to thank you for calling this important hearing today. I would also like to thank the members of the Committee that are here to listen to the merits of this issue. I would like to thank The Mayor of Romulus, Alan Lambert, William Black of the Michigan Brotherhood of Teamsters, and Paul Shagen of the Sault Tribe for coming here to speak today to talk about how the resolution of this land dispute would benefit their respective communities. I would like to thank Representative Candice Miller for her valuable work on this issue and introducing one of the bills before the Committee today. Finally, I would like to thank Rep. Bart Stupak for his long and dedicated work on helping to resolve the land dispute issue in his district.

I am here to speak of the economic development opportunities that have arisen for my constituents in the 15th Congressional District of Michigan; an opportunity that would bring 3,500 well paying jobs to my district. Like all of Michigan in the last few years, my district has seen its share of job loss. We have lost many well

paying manufacturing jobs. To that end, local governments are looking for new ways to bring dollars to their communities. When the constituents of my district approached me and said, "Dingell, we want to be considered for an economic development opportunity based on gaming." I told them I would be here to do all that I can to help.

Some may say enough is enough, and that the State does not need another casino. Others will express strong opposition based on the fact that it is just too far away from the original reservation. While still others may say that the Southeastern Michigan gaming market is saturated. To those opposed to these pieces of legislation, I simply say, let's not create a battle between those communities that have casinos versus those communities that do not. Rather, let us work together to help extinguish land disputes that have been around for generations while at the same time allowing investment in our communities and our State. Let us build a brighter Michigan that creates 6,500 well paying, union jobs that will help our state recover from the recent job loss we have experienced.

I sit before the Committee today to discuss two land settlement agreements that were entered into by Michigan's former Republican Governor, John Engler. One agreement affects the citizens in and around the City of Port Huron in Representative Candice Miller's district, while the other directly impacts the citizens within and surrounding the City of Romulus that is a part of my Congressional district. I would like to submit both of these settlement agreements for the record. Since I represent the 15th Congressional District, it is to that bill that I will mainly speak about today. I must stress that only with the settlement of both land claims will this issue cease in the State of Michigan.

I will begin by speaking about how I came to be involved in this effort. I will then explain why I introduced H.R. 2793. Finally, I will talk about how this legislation would help my constituents in Romulus, Michigan.

We are here today to discuss legislation that was introduced as a result of agreements reached by former Michigan Governor John Engler with both the Sault St. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community.

As you will hear from the other panelists, the settlement agreements stem from a dispute by both tribes over land in Charlotte Beach, Chippewa County, Michigan. To end this long running dispute, Governor Engler signed agreements with both the Bay Mills Indian Community and the Sault Tribe. In order to execute the agreements, Rep. Miller introduced legislation with regards to the Bay Mills tribe and Port Huron, Michigan while I introduced legislation with regard to the Sault Tribe and Romulus, Michigan as well as to Otsego County, Michigan.

*I. TWO COMMUNITIES IN MY DISTRICT EXPRESSED INTEREST IN LOCATING A CASINO IN THEIR COMMUNITY.*

My role in this process began when Governor Engler signed a land settlement agreement at the end of December 2002 with the Sault Tribe that would provide land for gaming in Otsego County, Michigan as well as one of three other areas, the city of Flint, Michigan, the city of Romulus, Michigan, and Monroe County, Michigan, south of the River Raisin.

Both the City of Romulus and Monroe County, Michigan are in my Congressional District. For almost 6 months the two communities in my district discussed whether or not they wanted to be considered for a casino. Eventually Monroe County fell out of the running while the City of Romulus expressed continued support for a casino. In fact, voters in Romulus passed a referendum with 57% support approving a casino to be built in that city. As for Port Huron, that community also held a referendum that passed with a margin of 55% to 45% in favor of pursuing gaming.

To answer the call I received from Romulus, I introduced legislation, helping ensure that the citizens of Romulus receive complete and proper representation in the House and that they have a seat at the table should legislation regarding Port Huron begin moving. Since both bills derive from land settlement agreements that originate from the same land dispute it is important that both bills move together so this matter may be resolved completely and in a timely manner.

The legislation I introduced would extinguish the land claims in the area of the Sault Tribe. In exchange, the legislation will grant the Sault tribe alternative lands in Otsego County, Michigan and Romulus, Michigan as outlined in the settlement agreement. These alternative lands would become part of the reservation of the Sault Tribe community. I would note, just yesterday, I introduced new legislation that would limit the alternative lands solely to Romulus, Michigan. In addition, the Sault Tribe has voluntarily elected to pursue only the possibility of alternative land in Romulus.

In addition, my legislation directs the Secretary of the Interior to take these lands into trust as land obtained in a settlement of a land claim under the Indian Gaming Regulatory Act.

*II. SETTLEMENT OF THESE LAND CLAIMS WILL PROVIDE 6,500 BADLY NEEDED, WELL PAYING JOBS IN MICHIGAN.*

Approval of these land claims will create 3,500 new jobs in Western Wayne County and 3,000 in Port Huron. Many would be high paying, union jobs in two communities where unemployment is high.

The Sault tribe would build a $350 million world-class casino, conference center and hotel, bringing in not only gamblers, but also conferences that would provide an additional boost to the surrounding economy.

Furthermore, it will add up to another $11 million in revenue to Western Wayne County, and provide more than $30 million in tax revenue to the State of Michigan annually.

*III. ROMULUS AND PORT HURON DESERVE THE PASSAGE OF THESE BILLS TO PROVIDE JOBS AND REVENUE TO THEIR COMMUNITIES AND THE STATE OF MICHIGAN.*

After more than three years, we are here today to discuss the merits of legislation concerning both Romulus and Port Huron. It is important that we work toward passage of these bills in a timely manner to help these communities. In this struggle of the haves versus the have nots, it is important to give these communities the opportunity to pursue economic development.

I want to thank the Chairman for calling this legislative hearing on both my legislation and Rep. Miller's legislation. It is important to settle both claims at the same time so we can allow the State and these communities the prospect of job creation. During these difficult economic times, we must give our communities the tools with which to prosper. I look forward to working with this Committee and you Mr. Chairman in making these economic development opportunities a reality.

NOTE: Attachments to Mr. Dingell's statement have been retained in the Committee's official files.

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The CHAIRMAN. Without objection, so ordered.

Mr. Rogers?

## STATEMENT OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. ROGERS. Thank you, Mr. Chairman, Ranking Member Rahall, the distinguished members from Michigan, Mr. Dingell, Mr. Stupak. I thank you for convening this important hearing on an issue that will have a profound impact on the citizens throughout my home State of Michigan.

Others today will discuss the flawed policy of the two bills before you, but I will focus my testimony on Michigan's opposition to two new casinos, and any new casinos, and the inaccurate notion that new casinos bring economic development without significant consequences.

Mr. Chairman and Ranking Member, without objection I would ask to submit for the record a letter that was circulated by myself and Congresswoman Carolyn Kilpatrick, and is signed by 35 of our colleagues, opposing each of these bills. I would note that the first six signatures on this letter are members from Michigan, both Republicans and Democrats.

[The letter follows:]

Congress of the United States
Washington, DC 20515

June 9, 2004

The Honorable Richard Pombo
Chairman, House Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20215

The Honorable Nick Rahall
Ranking Member, House Committee on Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Pombo and Ranking Member Rahall:

We write to express our strong opposition to H.R. 2793, a bill that would allow the Sault Ste. Marie Tribe of Chippewa Indians of Michigan to settle a proposed land claim and build a gambling facility, and H.R. 831, a bill that would allow the Bay Mills Indian Community of Michigan to settle a proposed land claim and build a gaming facility more than 300 miles from their current reservation. The passage of either measure would create a dangerous precedent under the Indian Gaming Regulatory Act (IGRA) and undermine the authority of the Michigan State Legislature.

As you know, a provision in IGRA allows land to be taken into trust for gambling purposes for the settlement of a land claim. The sole purpose of H.R. 2793 and H.R. 831 is to allow the Sault Tribe and the Bay Mills Tribe to build a casino in exchange for settling this proposed land claim. We believe this was not the intention of IGRA. In fact, we are concerned that the passage of this legislation would set a dangerous precedent across the country by allowing Tribes to randomly sue landowners in the hopes of obtaining off-reservation lands to build a casino.

H.R. 2793 and H.R. 831 each circumvent two important provisions of the existing compact between the State of Michigan and the respective tribes in an attempt to undermine the authority of the Michigan Legislature. The approval from the Governor of Michigan is required by an IGRA provision to which the tribe agreed when land is taken into trust for off reservation gambling and the compact requires revenue sharing with all other Michigan tribes for any new off reservation gambling. H.R. 2793 and H.R. 831 would side step these two important provisions. It is for these reasons that Bureau of Indian Affairs testified against H.R. 831 at a hearing conducted by the Senate Committee on Indian Affairs during the 107th Congress.

It is our understanding that these proposed land claims have never been upheld in federal or state court. In fact, the federal district court dismissed one suit because it did not include the Sault Ste. Marie Tribe, which has equal claim to the land. Second, the Michigan Court of Claims outright rejected the Bay Mills Tribe's land claim (Bay Mills Indian Community v Michigan, 244 Mich. App. 739, 626 N.W. 2d 169 (2001)). The Tribe's attempt to reverse this decision was rejected by the Michigan Supreme Court and the U.S. Supreme Court.

Finally, we are deeply concerned that these bills attempt to undermine the authority of the

Michigan State Legislature over tribal-state gaming compacts and the judicial branch. In Michigan, tribal-state gaming compacts are negotiated by the governor and ratified by the state legislature. As the judicial branch of our government can take an independent view of the claim and the historical case being made, disputes of land claims historically are settled by the judicial branch, not Congress.

Thank you for your consideration of this request and we look-forward to working with you in the future.

Sincerely,

W. Todd Akin

David Vitter

Joe Wilson

Steve King

Dave Weldon

Sam Johnson

Sam Graves

John Hostettler

Gary Miller

Jim Nussle

Kenny Marchant

Mike Pence

Wally Herger

Jim Gerlach

Jack Kingston

Ron Paul

Gene Taylor

Lamar Smith

Tom Tancredo

Steve Chabot

Albert R. Wynn

Charles Gonzalez

Rep. Mike Rogers (MI)
Rep. Carolyn Kilpatrick (MI)
Rep. John Conyers (MI)
Rep. Vern Ehlers (MI)
Rep. Pete Hoekstra (MI)
Rep. Fred Upton (MI)
Rep. Mike Pence (MI)
Rep. Joe Pitts (PA)
Rep. Zach Wamp (TN)
Rep. Christopher Shays (CT)
Rep. Walter Jones (NC)
Rep. Ric Keller (FL)
Rep. Chris Cannon (UT)
Rep. Wally Herger (CA)
Rep. Todd Akin (MO)
Rep. David Vitter (LA)
Rep. Joe Wilson (SC)
Rep. J. Gresham Barrett (SC)
Rep. Dave Weldon (FL)
Rep. Steve King (IA)
Rep. Scott Garrett (NJ)
Rep. Sam Johnson (TX)
Rep. Roscoe Bartlett (MD)
Rep. John Hostettler (IN)
Rep. Trent Franks (AZ)
Rep. John Shadegg (AZ)
Rep. Jim Gibbons (NV)
Rep. Jon Porter (NV)
Rep. Raul Grijalva (AZ)
Rep. Grace Napolitano (CA)
Rep. James Clyburn (SC)
Rep. Donna Christensen (VI)
Rep. Gregory Meeks (NY)
Rep. Albert Wynn (MD)
Rep. Sheila Jackson Lee (TX)

Mr. ROGERS. Michigan residents have said clearly that enough is enough with regard to new casinos in our State. Michigan already has more casinos, at 20, than public universities, at 15. In a recent survey, only 6 percent of Michigan voters favored opening a new casino in our State. Newspapers from Detroit to Flint to Washington, D.C. have opposed the authorization of these new casinos. In fact, the Flint Journal stated in opposition to these bills, and I quote: Flint is a likely next target expecting to benefit from an advisory voter referendum this year. Such referenda passed in Romulus and Port Huron were, in typical misleading fashion,

misleading voters, were fed the lie that gambling is a means of economic development. End quote.

Mr. Chairman, that brings me to my second point. During my service as an FBI agent working organized crime in the city of Chicago, I saw first-hand how casinos would introduce a whole host of unintended consequences to a community. One study shows that States face an additional $6 billion per year in total increased costs related to gambling—for bankruptcies, addiction treatment centers, and in increased costs to the judicial system. A news report last month stated that the city of Detroit, this year, had to pay in excess of $1.2 million in additional unaccounted for police, fire, and emergency services directly related to the three new casinos currently operating there. Bankruptcy filings in the Eastern District of Michigan have risen 60 percent since the opening of those three casinos. I am going to repeat that: 60 percent increase in personal bankruptcy filings since the three Detroit casinos were approved.

Though Mayor Kilpatrick's leadership is helping revitalize the city of Detroit, the three Detroit casinos have not panned out to be the savior for the city the supporters of it originally claimed. Five years after a ballot proposal that I strongly opposed was approved, Detroit faces a $65 million budget shortfall, is losing more people than any other large city in America, and has been ranked as the Nation's most dangerous city for four out of the past 5 years. Casinos haven't saved Detroit, and casinos won't save Romulus or Port Huron, either.

Studies have shown that counties that host new casinos, and this is the entire population of the county, face an additional $219 per adult per year in direct costs and indirect costs. Thirty-seven percent of that, which is based on Government services, an increase in Government services and a tax on those services caused by the casino. Crime, bankruptcies, suicide, family costs, and abuse all account for the increase.

More than two-thirds of all compulsive gamblers—also borne out in Canadian casinos as well—turn to crime to finance their addiction. There are 350,000 addictive compulsive gamblers in Michigan today. A recent research project by the University of Nevada-Reno found that cities hosting new casinos had sharp increases in theft, domestic abuse, drug crimes, personal bankruptcies, and suicides. A 2001 study by the University of Illinois and Georgia found that 8 percent of property crime and 10 percent of violent crime in counties that had casinos was due directly to the presence of a casino. There is no place in Michigan where a casino is more than one hour's drive.

Mr. Chairman, our citizens are saying enough is enough, and I ask your Committee to stand with them today. Thank you again for convening and allowing me to testify on this very important matter.

[The prepared statement of Mr. Rogers follows:]

**Statement of The Honorable Mike Rogers, a Representative in Congress from the State of Michigan**

Chairman Pombo and Ranking Member Rahall, I thank you for convening this important hearing on an issue that will have a profound impact on the citizens throughout my home state of Michigan. Others today will discuss the flawed policy of the two bills before you. I will focus my testimony on Michigan's opposition to

new casinos, and on the inaccurate notion that new casinos bring economic development without significant consequences.

Mr. Chairman and Ranking Member, without objection I ask to submit for the record a letter that was circulated by Congresswoman Carolyn Kilpatrick and myself that is signed by thirty-five of our colleagues opposing both of these bills. I would note that the first six signatures on this letter are Members from Michigan, Republicans and Democrats.

Michigan residents have said clearly that enough is enough with regards to new casinos in our state. Michigan already has more casinos at twenty than public universities at fifteen. In a recent survey, only 6% of Michigan voters favored opening a new casino in the state, 66% were opposed and 28% were undecided. Newspapers from Detroit to Flint to Washington, DC have opposed the authorization of these new casinos. In fact, the Flint Journal stated in opposition to these bills that: "Flint is a likely next target, expecting to benefit from an advisory voter referendum this year. Such referenda passed in Romulus and Port Huron where in typical misleading fashion voters were fed the lie that gambling is a means of economic development."

Mr. Chairman, that brings me to my second point. During my service as an FBI Special Agent working organized crime in the City of Chicago, I saw first-hand how new casinos would introduce a whole host of unintended consequences to a community. One study shows that states face an additional $6 billion per year in total increased costs related to gambling, bankruptcies, addiction treatment centers and the judicial system. A news report last month stated that the City of Detroit this year had to pay in excess of $1.25 million in additional, unaccounted for, police, fire and emergency services directly related to the three casinos that currently operate there. Further, bankruptcy filings in the Eastern, Michigan District Court have risen nearly 60% since the three Detroit casinos were approved. Though Mayor Kilpatrick's leadership is helping revitalize the City of Detroit, the three Detroit casinos have not panned out to be the savior for the city the supporters of it originally claimed. Five years after a ballot proposal that I strongly opposed was approved, Detroit faces a $65 million budget shortfall, is losing more people than any other large city in America and has been ranked as the Nation's most dangerous city for four out of the past five years. There are no movie theaters in the city and no major shopping malls. Casinos haven't saved Detroit and casinos won't save Romulus or Port Huron.

Studies have shown that counties which host a new casino face an additional $219 per adult per year in direct costs, 37% of which are increased taxes. Crime, bankruptcies, suicide, family costs and abuse all account for the increase. More than two-thirds of compulsive gamblers turn to crime to finance their addiction and there are 350,000 compulsive gamblers in Michigan. In fact, a recent research project by the University of Nevada-Reno found that cities hosting new casinos had sharp increases in theft, domestic abuse, drug crimes, personal bankruptcies and suicides. A 2001 study by the Universities of Illinois and Georgia found that 8% of property crime and 10% of violent crime in counties that had casinos was due directly to the presence of the casino.

There is no place in Michigan where a casino is more than an hour's drive. Mr. Chairman, our citizens are saying enough is enough and I ask your Committee to stand with them. Thank you again for convening this hearing.

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The CHAIRMAN. Thank you.

Mr. Stupak?

## STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Thank you, Mr. Chairman, Mr. Rahall, and members of the Committee for the opportunity to testify.

I have been working on this land transfer problem for years. I first introduced legislation back in 1999 in an effort to resolve this issue. As you can see from the size of my file, it has been a long road.

I hope that my testimony on these two bills will help to finally resolve the land dispute between the Bay Mills Indian Community—Bay Mills Tribe, the Sault Ste. Marie Band of

Chippewa Indians—Sault Tribe, and most importantly, the property owners along Charlotte Beach on Michigan's eastern Upper Peninsula, all of which reside in my District.

Currently, the two tribes claim rights to the land along Charlotte Beach, creating a cloud on the land-holder's title by the property owners. I first became involved in this land issue at the request of the property owners, not the tribes. With a cloud on their title, the Charlotte Beach property owners have been sued, have had a difficult time trying to secure real estate loans, cannot get title insurance, have experienced lost real estate values as well as significantly lower property values.

In order to resolve this land issue, an agreement was reached in September of 2002 and again in December 2002 with the former Governor, John Engler, between the two tribes. In the settlement agreements, the tribes agreed to extinguish their property claims on the Charlotte Beach in exchange for land in two Michigan communities, Romulus and Port Huron. Under Federal law, these parcels of land would be taken into trust on the tribes' behalf by the Federal Government.

You will hear today that the measures are also supported by local elected officials in Port Huron and Romulus. In addition, the voters in these communities have signaled their approval. It is crucial that Congress ratify the two settlement agreements reached by the Bay Mills and Sault tribes and former Governor Engler. The tribes have worked with the State of Michigan and with each other, but without Congressional approval the land exchange cannot be completed.

By ratifying these two land transfer settlements, Congress has an opportunity we can't afford to miss—an opportunity to right a wrong and bring an end to a land dispute that has been going on far too long. This wrong has been inflicted upon all three of the parties involved—the two tribes, who have a legitimate claim to more than 100 acres along Charlotte Beach, and 180 innocent homeowners along Charlotte Beach. And that is all that these two bills really do. They simply ratify a land exchange and put an end to a longstanding land dispute. This is a specific solution to a localized problem that has been arrived at only after extensive negotiation between all the parties and the State of Michigan.

If I can get one point across to you in my testimony today, it is that the parties involved have worked together to come to an agreement to end a land dispute. Congress has the opportunity, the power, and the obligation to finally settle this dispute.

Finally, the Charlotte Beach landowners support this legislation, and their attorney, Leanne Barnes Deuman, has drafted testimony to submit for this hearing, so I ask, Mr. Chairman, it be included in the record. I would also like to submit a letter written by former Michigan Governor John Engler recently on this issue. I would like that letter to be also submitted for the record.

It is my hope that the rights of all parties involved will be addressed during the discussion of this bill and that an agreement will be reached. I remain committed to addressing this issue and will continue to work with everyone, including our colleagues Mr. Dingell and Ms. Miller, and this Committee to bring about a final resolution to this land dispute, no matter how long it takes.

With that, Mr. Chairman, I will conclude my testimony. I will be happy to answer any questions you may have. I would ask unanimous consent that the letter dated June 23, 2004, from former Governor John M. Engler, and the testimony drafted by the attorney, Lee Barnes Deuman, Attorney at Law, on behalf of the landowners be submitted for the record.

The CHAIRMAN. Without objection.

[The Engler letter and Deuman statement submitted for the record follow:]

John M. Engler
6700 Sorrel Street
McLean, VA 22101

June 23, 2004

The Honorable Richard Pombo
Chairman
Committee on Resources
U.S. House of Representatives
Washington, D.C., 20515

The Honorable Nick Rahall
Ranking Member
Committee on Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Ranking Member Rahall:

I want to thank you and the members of the House Resources Committee for moving forward with hearings on H.R. 831 and H.R. 2793, which will finally resolve the so-called Charlotte Beach land claims of the Bay Mills Indian Community and the Sault Saint Marie Tribe of Chippewa Indians.

As Governor of Michigan, it was my duty to negotiate the land settlement agreements between the State of Michigan and Bay Mills and the Sault Tribe in 2002. I signed the Bay Mills agreement in August 2002 and the Senate Committee on Indian Affairs held a hearing on the settlement just three months later in October. At that hearing, Chairman Inouye suggested the state also reach an agreement with the Sault Saint Marie Tribe to complete the settlement process. In December of 2002, I signed the agreement with the Sault Tribe. I am proud that every concerned party involved in this settlement supports this agreement. This is a true example of a state and the Tribes promoting cooperation rather than conflict.

More than 20 years ago the Bay Mills Tribe revived their efforts to reclaim land they believed were unjustly taken from them almost 150 years ago. This 110-acre parcel, commonly referred to as the Charlotte Beach property, first came to the state of Michigan's attention in the 1980's when more than 200 property owners complained that they could not obtain clear title to their land. Property value assessments on these properties had been reduced by as much as 90 percent. Bay Mills was unsuccessful in pursuing this claim in either the state or federal court system and procedural rulings have prevented any resolution of the claim – leaving the property owners without marketable title. Congressional action is the only way to resolve extant claims that are having a real impact on the lives of the landowners.

As Governor, I worked hard to forge a settlement that would be satisfactory to all parties involved. An agreement had to remove all claims against the land and allow the landowners to obtain clear title to their property. It also had to fairly compensate the

Tribes for the loss of their ancestral lands. And the new lands had to be in a community that supported the agreement that could allow the Tribes to operate a casino on these new trust lands.

The new lands located in Port Huron were carefully chosen for the Bay Mills Tribe as Port Huron remains the last border crossing in the state of Michigan without a United States run casino where a Canadian one exists on the other side. This is a major factor in the economic distress of Port Huron as millions of U.S. dollars are spent annually right across the border in Canada. The Sault Tribe was allowed to negotiate with several areas but could only move forward with the consent of the area involved.

Upon close examination, I believe you will find the settlement your committee is considering is a win win for everyone involved:

- the Charlotte Beach landowners will receive clear title to their land
- the tribes will be able to take land in trust, which is smaller in size, but potentially profitable and beneficial to the tribal members
- the communities of Port Huron and Romulus, cities in Michigan that have historically had a higher rate of unemployment than the rest of the state, have voter approved resolutions supporting the new casino ventures in their communities
- and the State will receive more than $30 million per year in new revenues at a time when budget constraints are affecting the state's ability to delver services

It is important to note that every member of the Michigan Congressional delegation representing a community involved in this settlement also supports the agreements. Congressman Stupak, who represents the Charlotte Beach landowners and the current home reservations of the two Tribes, has worked to find a solution to this situation for years. Congresswoman Candace Miller represents the City of Port Huron and is the sponsor of the Bay Mills bill. And Congressman John Dingell is a strong supporter and sponsor of the Romulus solution for the Sault Tribe.

Congressman Pombo, you and your committee members, are doing your duty by considering this state-tribe negotiated solution, the Charlotte Beach land claim and settlement. I encourage you to support H.R. 831 and H.R. 2793 to bring a positive conclusion to this unfortunate and too long unresolved situation.

Sincerely yours,

John Engler

**Statement submitted for the record by Leanne Barnes Deuman, Attorney at Law, Law Offices of Thomas J. Veum, P.C., 216 Ashmun Street, P.O. Box 516, Sault Ste. Marie, Michigan 49783**

I am Leanne Barnes Deuman, an attorney in private practice in Sault Ste. Marie, Michigan. I am pleased to submit this testimony for the record in support of both H.R. 831 and H.R. 2793.

I represent 149 individuals who own very small parcels of land in an area known as Charlotte Beach, Michigan. My clients innocently acquired their land parcels in an area that later became the subject of a land claim by Indian tribes in the Upper Peninsula of Michigan, including the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community. My clients' story is very sad; their resources are extremely meager; and without the help of Congress, the lands which constitute their most precious assets, will be rendered worthless forever. The following is their story.

The Charlotte Beach lands are located on the southern shore of what is now known as Lake Nicolet, approximately 18 miles southeast of the City of Sault Ste. Marie, in the Upper Peninsula of Michigan. Prior to private ownership of the Charlotte Beach lands, these lands were designated for withdrawal from the public domain under a certain Treaty of 1855. This Treaty, known as the Treaty of Detroit, withdrew public domain land for selection by individual Ottawa and Chippewa Indians whose tribes were party to the treaty with the United States. After the 1855 Treaty was negotiated, but prior to its ratification by Congress and, therefore, prior to the actual withdrawal of the lands from the public domain, the federal government issued land patents to Boziel Paul and his wife, who were non-Indians. Those land patents issued to the Pauls in 1856 included the present day Charlotte Beach property.

In 1857, for reasons which are not fully documented, the Pauls conveyed their Charlotte Beach property to the then Governor of Michigan, Kinsley S. Bingham, in trust for the benefit of two Bands of Chippewa Indians in and around Sault Ste. Marie. Whether the deed was delivered and/or accepted by the Governor is also unknown. Of course, once in the hands of the Governor, the lands were technically in fee status and subject to the payment of real property taxes, which taxes subsequently were never paid. As a result of the non-payment of taxes, the lands were forfeited and sold by the State of Michigan to third parties at tax sales, notwithstanding the Indians interests in those lands.

In the late 1990s, litigation over those lands ensued, but did not. result in clearing the cloud on the title to these Charlotte Beach parcels. The federal court litigation brought by the Bay Mills Indian Community, one of the modern political successors in interest to the two Bands for which the lands were originally withdrawn, was dismissed on procedural grounds for failure to join an indispensable party, the Sault Ste. Marie Tribe of Chippewa Indians, another modern day political successor in interest to the Bands for whom the lands were also withdrawn. The State court litigation, also brought by Bay Mills, was dismissed on substantive grounds, but did not clear the landowners title. Therefore, as of today, there has never been an adjudication of the Indians claims to the Charlotte Beach parcels in private ownership. As a result, there is an outstanding cloud on title to these parcels, which will never be lifted absent Congressional action extinguishing those claims. The cloud will never be lifted because tribes are immune from suit resulting from their sovereign status. Thus, any quiet title action by my clients (or any other Charlotte beach landowner) against tribes designed to clear the cloud on title will not be allowed to proceed. At this point, and based upon the previous litigation, it does not appear that any tribe will ever waive its immunity if such litigation were initiated. Therefore, the cloud will remain unless cleared through Congressional action.

The nature and extent of the economic loss to my clients is devastating and overwhelming. At present, no title company in Michigan of which I am aware is willing to issue a title insurance commitment or title insurance policy in connection with any of the Charlotte Beach parcels. As you no doubt appreciate, that means no present owner of a Charlotte Beach parcel is able to sell his or her property, since few if any buyers are willing to forego title insurance. And the title companies are unwilling to insure over the Indian claims even for an additional insurance premium. Similarly, no Charlotte Beach parcel owner can use his or her land to secure any loan. Thus, not only can they no longer sell their land, they can no longer refinance any existing loan on their property.

Theoretically, a Charlotte Beach land owner could sell his or her land for cash, but of course few if any are willing or able to buy a parcel with a cloud on title and. without title insurance, and it is a rare purchaser willing to buy land they know they will be unable to resell in the future because of the cloud on title. This

is particularly true since litigation over the cloud on title has occurred and may occur again in the future.

This cloud on title is devastating to my clients. For most of my clients, their Charlotte Beach lots are the location of their primary residences. And these residences are anything but glamorous. The lots are small and the homes are modest; indeed, many of the parcels are occupied by trailers or modular homes. The residents are good, hard working people with meager resources. Their homes and parcels represent the bulk of their personal worth. They live in a poor rural area, where jobs are low paying and hard to find. Suffice it to say, these parcels and the homes located on them are neither large, nor glamorous. The owners can barely afford to attend court hearings in connection with litigation affecting their lands, let alone afford the legal fees required to protect their only real asset in life.

You will likely hear a variety of testimony today by many persons interested in the Bills before you. That testimony may come from down State political figures, such as Mayors of large cities in Michigan. It will probably also come from publicly-traded corporations owning and operating substantial casinos. Clearly, those persons testifying will have interests they wish to protect, for which they are not to be faulted. But, please, do not forget the real victims of this land claims dispute. The real victims are the property owners of the Charlotte Beach parcels, who bought lands with whatever resources were available to them, only to find out years later that there is a cloud on their title that relates back to the mid 1800s, and that that cloud has, as a practical matter, rendered their property difficult, if not impossible, to sell or collateralize. Had they foreseen litigation and the problems which ensued in conjunction with it, they may have taken a different path. Had they known in advance, perhaps they could have bought land elsewhere. Now, having purchased the land and subsequently learning of the defect in their title, they are absolutely helpless to do anything about it. They have no money for legal fees. And even if they did, the money would do them no good, since there is no way to quiet title to lands against unwilling defendants which are immune from suit.

The only salvation for these innocent purchasers of Charlotte Beach land is for Congress to step in and extinguish the Tribes claims to these parcels. Of course, the Tribes interest in these parcels must be compensated, but we understand that the Bills before you would accomplish that, thereby passing constitutional muster. We support the passage of these Bills that would clear the cloud' on the Charlotte Beach parcels and allow my clients to go on with their lives, knowing that their homes will no longer be considered worthless.

Thank you for accepting my testimony and allowing my clients concerns to be brought to the Committee's attention.

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[The prepared statement of Mr. Stupak follows:]

**Statement of The Honorable Bart Stupak, a Representative in Congress from the State of Michigan**

Thank you, Mr. Chairman, Mr. Rahall, and members of the Committee, for the opportunity to testify on this important matter. As most of you know, I have been working on this land transfer problem for years and first introduced legislation in 1999 in an effort to resolve this issue. And as you can see from the size of my file, it's been a long road.

I hope that my testimony on these two bills will help to finally resolve this land dispute for the Bay Mills Indian Community (Bay Mills Tribe), the Sault Ste. Marie Band of Chippewa Indians (Sault Tribe), and most importantly, property owners along Charlotte Beach on Michigan's Eastern Upper Peninsula—all of whom reside in my district. Currently, the two tribes claim rights to the land along Charlotte Beach, creating a "cloud" on the land owned by the property owners of Charlotte Beach.

I first became involved in this land issue at the request of the property owners, not the tribes. With a "cloud" on their title the Charlotte Beach property owners have been sued, have a difficult time trying to secure real estate loans, and have experienced lost real estate sales as well as significantly lower property values.

In order to resolve this land issue, an agreement was reached in September of 2002 between former Michigan Governor John Engler and the Bay Mills tribe. And in December of that same year, the former governor reached a similar settlement agreement with the Sault Tribe on their land claim.

In the settlement agreements, the tribes agree to extinguish their property claims on Charlotte Beach in exchange for land in two Michigan communities—Romulus and Port Huron. Under federal law these parcels of land would be taken into trust

on the tribes' behalf by the federal government. {25 USC Sec. 465 authorizes the Secretary of the Interior to take this land into trust on behalf of tribes}

You will hear today that the measures are also supported by the local elected officials in Port Huron and Romulus. In addition, the voters in these communities have signaled their approval.

It is crucial that Congress ratify the two settlement agreements reached between the Bay Mills and Sault tribes and former Governor Engler. The tribes have worked with the State of Michigan and each other, but without Congressional approval, the land exchange cannot be completed.

By ratifying these two land transfer settlements, Congress has an opportunity we can't afford to miss—an opportunity to right a wrong and bring an end to a land dispute that has been going on far too long.

This wrong has been inflicted upon all three of the parties involved—the two tribes who have a legitimate claim to more than 100 acres of Charlotte Beach and the 180 innocent homeowners along Charlotte Beach.

And that is all these two bills do—ratify a simple land exchange and put to rest this land dispute. This is a specific solution to a localized problem that has been arrived at only after extensive negotiations between the parties.

If I can get one point across to you in my testimony today, it is that the parties involved have worked together to come to an agreement on a land dispute. Congress has the opportunity, the power, and an obligation to finally settle this dispute.

Finally, the Charlotte Beach landowners support this legislation and their attorney, Leanne Barnes Deuman, has drafted testimony to submit for this hearing, and I ask, Mr. Chairman, that it be included in the record.

I would also like to submit a letter written by former Michigan Governor Engler for the record.

It is my hope that the rights of all parties involved will be addressed during the discussion of this bill and that an agreement will be reached. I remain committed to addressing this issue and will continue to work with everyone, including our colleagues John Dingell and Candice Miller to bring about a final resolution to this land dispute—no matter how long it takes!

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The CHAIRMAN. I know that Mr. Dingell has a conflicting appointment. If it is necessary for you to leave, you may.

Mr. DINGELL. Thank you, Mr. Chairman. You are most gracious.

The CHAIRMAN. And Mike, did you have to leave, too?

Mr. ROGERS. Very shortly, Mr. Chairman.

The CHAIRMAN. OK. Does anybody have any questions that they would like to ask of Mr. Rogers or Mr. Dingell before they have to go?

Mr. RAHALL. Mr. Chairman, if I might ask just one quick question of Mr. Dingell before he leaves.

Is there any reason to believe that if your legislation were enacted into law that the Sault Ste. Marie Tribe would pull out of the Detroit casino in which it has an 80 percent interest, as I understand it.

Mr. DINGELL. No, there is no reason. There is a commitment on the part of the tribe that that will not happen. There also is a commitment on the part of the tribe that they are going to do everything they can to hold Detroit and the city of Detroit risk-free in the event that this casino starts going up in terms of loss of tax revenues and things of that kind.

Mr. RAHALL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. Mr. Rogers, do you have gambling in your District?

Mr. ROGERS. Mr. Chairman, I do not.

Mr. YOUNG. You do not have any gambling in your District?

Mr. ROGERS. Mr. Chairman, I do not.

Mr. YOUNG. It is my understanding that there are two casinos across the border from Port Huron. Is that correct?

Mr. ROGERS. Port Huron?

Mr. YOUNG. Yes.

Mr. ROGERS. That's correct.

Mr. YOUNG. In Canada.

Mr. ROGERS. Mm-hm.

Mr. YOUNG. And that 75 percent of that revenue they generate is from America, Americans?

Mr. ROGERS. I think there is some dispute about percentage, but I imagine it is a healthy percentage.

Mr. YOUNG. I just—one of the things, again, in my opening statement was that I am really here because of Candice Miller. And it is her District, and I am very supportive of that. And the people have spoken from that District. And if they are willing to take over the responsibility of the—in fact, if there is a gaming casino, what is wrong with that?

Mr. ROGERS. Well, unfortunately, the impact of casinos don't remain wholly in a Congressional District. The entire Congressional District certainly didn't speak. And it has large ramifications, really, across the State of Michigan. The Mayor of Detroit, who is opposed to these two new casinos—

Mr. YOUNG. But she has three in her District, right?

Mr. ROGERS. The Mayor does, that is right.

Mr. YOUNG. If she has three, I can understand why she is opposed to this one because it might take something from that District, because—I believe that was just brought up by Mr. Dingell.

Mr. ROGERS. Sure.

Mr. YOUNG. But the reality is we are talking about who has and who had not, not about, you know, the legitimacy of settling the land claims part. That is what this bill is about. Like Mr. Stupak said, we are trying to settle it. I would feel a lot more comfortable with your testimony if you would say, OK, let's bar all casinos period.

Mr. ROGERS. I would be happy to join with—

Mr. YOUNG. You would be happy with that.

Mr. ROGERS. Absolutely.

Mr. YOUNG. But would the Mayor be happy with that?

Mr. ROGERS. Probably not.

Mr. YOUNG. Would any other mayor—

Mr. ROGERS. Politics makes strange bedfellows, Mr. Young.

Mr. YOUNG. I know. I understand that.

Mr. ROGERS. You understand that.

[Laughter.]

Mr. YOUNG. I haven't talked to Candice about that.

[Laughter.]

Mr. ROGERS. What you do on your own time, Mr. Chairman, is absolutely up to you.

Mr. YOUNG. I will have to find out about that. But what I am suggesting is that it appears to me, with 20 casinos in Michigan, it is those that have the casinos now are ganging up against those that do not have and saying this is an inappropriate thing to do. And to me, that is really not quite cricket, I mean, as I look upon this. It is sort of, you know, I got mine, pull the gangplank up now and nobody else needs this.

Mr. ROGERS. Well, and I understand—I welcome that in this fight. If they want to stop the expansion of casinos, I am with them. I have opposed—

Mr. YOUNG. Elimination—if we are going to do it, we eliminate.

Mr. ROGERS. I would be happy to do that as well. I don't—

Mr. YOUNG. You would, but they would not.

Mr. ROGERS. Well, that is correct. But at the end of the day, as you know, Mr. Chairman, you put together coalitions to further your goal. And I say I will gladly work with them if they want to stop the expansion of casinos. I have opposed every Indian compact that came through the State legislature when I was there. I opposed the three Detroit casinos for, really, all the reasons I have mentioned. They have not been an economic panacea. As a matter of fact, they have had tremendous costs.

You know, the last movie theater left Detroit, Kmart closed up and left there. It is a major city. I can go on.

Mr. YOUNG. Don't bring that in. I have Kmarts that left this area, too, and no casino was here. I have had 7-Elevens close here, and there are no casinos here. So don't blame everything on the casinos. I can go back to my good friend Mr. Gibbons from Nevada saying what a great thing it is for Nevada and how it works very well. This is not about gambling, it is about who is going to gamble.

Mr. ROGERS. Well, I disagree. It is about the economic impact to the communities that house casinos.

Mr. YOUNG. You and I have a difference of opinion on it.

Mr. ROGERS. Absolutely. And unfortunately, the statistics bear out that there is a negative consequence to having casinos. Some will make money. I have no doubt that the tribes will make a tremendous amount of money. But there is a cost to the community that houses these casinos. We have seen it in all 20 communities that house the casinos currently and we see it across the country. As a matter of fact, even Nevada is coming to start to deal with some of their problems that are—

Mr. YOUNG. You and I are arguing about gambling. We are not talking about the claims settlement.

Mr. ROGERS. And I understand that. There is great argument just on the claims settlement why this shouldn't happen. I happened to argue—I am going to let somebody else argue that. But there is also great argument why we ought not have rampant expansion of gambling without taking into consideration the impact of everybody who lives in the surrounding communities. At what cost—

Mr. YOUNG. Again—wait a minute. But they already voted on that. The community there already voted on it. And if you believe in democracy and the Republic, you have to respect the wishes of the people who vote on it. You have no right to sit in judgment on those around the area it affects. You say it affects the whole State.

Mr. ROGERS. It does affect it.

Mr. YOUNG. I would agree with that if you didn't have the 20 other gambling institutions within the State. If it was the first one, great. But in the meantime, they are going through the town, a little town, a very depressed area, and going into Canada and spending their dollars. And you are not stopping that. It is like exporting jobs. It is like exporting money to buy oil from the OPEC countries.

I don't think that is correct, either. I think that ought to be left here in the United States. We ought to be drilling our own wells, not voting "not drill" them.

Thank you, Mr. Chairman.

Mr. ROGERS. I would be happy to debate that issue anytime, Mr. Young.

Mr. YOUNG. Really? You would like to debate the drilling?

[Laughter.]

Mr. YOUNG. On ANWR?

[Laughter.]

Mr. ROGERS. I will trade you that for a casino, Mr. Young.

Mr. YOUNG. Now we're talking.

[Laughter.]

Mr. ROGERS. Well, that is good, because you already had me on ANWR.

Mr. YOUNG. We're talkin'.

[Laughter.]

Mr. YOUNG. Sold.

The CHAIRMAN. Strange bedfellows, indeed.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

And I do have the utmost respect for Mr. Rogers's opinions about this issue. But I was just curious, does the State of Michigan also participate in lotteries; if he considers lotteries, horse racing, the problems of the sins of alcoholic beverages and the beer lobby? Would you also be in agreement that we ought to ban all of these evils as well?

Mr. ROGERS. Well, again, you are asking from a moral perspective. I argue casino gambling on the economic impact of it. I really don't support the State being involved in lotteries. It has proven in all State lotteries it tends to go after the poor more than it does the wealthy folks, unfortunately. Horse racing is a different animal. I have adamantly opposed—they are trying to put slot machines at horse tracks. I have adamantly opposed that because then, again, it takes it from a different demographic and shoves it to—quite frankly, it preys on those who are of lesser means. And those machines are designed to take your money away from you.

So, I mean, I look at these things as economic and criminal enterprise impact. And the information on what casinos do to a community is overwhelming. And it is really indisputable. And, you know, that 60 percent bankruptcies in southeast Michigan, we are all paying for that. You are paying for that. When somebody goes down to get a loan, had nothing to do with one of these casinos and certainly isn't the recipient of it, they are paying a price for that. They are paying a higher price in products that they consume.

Mr. FALEOMAVAEGA. Well, I am not going to dispute your statistical knowledge of all this, Mr. Rogers, but one of the ironies—and correct me if I had a wrong reading of history—was that one of the first ways that our Revolutionary Government started to fund the war effort was to conduct a lottery. The Founding Fathers of this Nation had to do this simply because of economic necessity. And I was wondering if having a lottery at the time we were trying to establish this Nation in terms of the economic necessity that the Founding Fathers had to do this for economic purposes, not the moral issues but strictly because of economics.

Mr. ROGERS. Well, and I will—I am not familiar with that case, to be honest with you, but I do know the economics of casinos currently as they exist in America today, and they are a bad bet for the citizens that house them in those communities. Every community has found it. We had, I think, seven escort services—just to give you an example on the social side—seven escort services, exotic escort services prior to the casinos in Wayne County. Two months after the casinos opened, there were 42.

Mr. FALEOMAVAEGA. Are you suggesting to the Gentleman from Nevada that gaming altogether ought to be banned from the State of Nevada?

Mr. ROGERS. I am not going to worry about the State of Nevada. I am going to worry about the State of Michigan.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

[Laughter.]

Mr. ROGERS. If they can take our nuclear waste, maybe we can talk.

The CHAIRMAN. That is still not a deal.

Mr. GIBBONS. We are getting a lot done here, Mr. Chairman, thank you.

The CHAIRMAN. I don't know, he was talking about banning beer. I think you are going way too far with that.

Mr. ROGERS. Mr. Chairman, if you noticed, I didn't mention beer. I am all for that.

The CHAIRMAN. Further questions? Mr. Kildee.

Mr. KILDEE. Just one question. Mr. Young before he left mentioned that it is a question of have and have-nots. Mr. Rogers, Bay Mills, are they a have-not right now?

Mr. ROGERS. I don't know what you mean, Mr. Kildee.

Mr. KILDEE. Well, they have a casino, right?

Mr. ROGERS. Yes, they do, actually.

Mr. KILDEE. So it is not a have or have-not there. And Sault Ste. Marie has at least one casino up north and they have a casino in Detroit.

Mr. ROGERS. That is correct.

Mr. KILDEE. So they would have three casinos if these bills were to pass.

Mr. ROGERS. That is correct.

Mr. KILDEE. So it is not so much have or have-not. I helped write IGRA myself, and I think it has been helpful to the Indian communities. We want to continue to be helpful, but it is not—I want to make it clear that this is not really have or have-nots, that these tribes, as much as I hold them close to my heart, they do have a casino or, in one instance, more than one casino—one in Detroit, which is a fairly good market.

The CHAIRMAN. Any further questions? Mr. Inslee?

Mr. INSLEE. Mr. Rogers, you indicated that bankruptcies have gone up 60 percent since the Detroit casinos had opened. When did they open?

Mr. ROGERS. They went into operation in 2000, I believe.

Mr. INSLEE. So I guess that would have been a 60 percent increase in bankruptcies since George Bush has been elected? Is that right?

[Laughter.]

Mr. ROGERS. It is an interesting point, but I would argue differently. We have also seen those percentage increases in other communities that house casinos. And it is consistent with other communities that house casinos as well.

The CHAIRMAN. Mr. Duncan?

Mr. DUNCAN. Just very briefly, Mr. Chairman. Chairman Young had some good points, but I also think that Congressman Rogers has some good points, too. I just wanted to ask, did I hear somebody say that Michigan already has 20 casinos? How many casinos do you have in Michigan?

Mr. ROGERS. We currently have 20 casinos and there are a whole bunch on deck, unfortunately.

Mr. DUNCAN. How many are on deck?

Mr. ROGERS. I want to say seven, if I understand correctly. Nine, I am being told.

Mr. DUNCAN. Other than Nevada, is that going to put Michigan at the top per population for Indian casinos, or do you know?

Mr. ROGERS. Well, three of those casinos are not quote-unquote Indian casinos. They were—

Mr. DUNCAN. Oh, they are just regular—

Mr. ROGERS.—in the city of Detroit. The remainder of those are Indian casinos. We already have—I think, by different types of gambling, we are second only to Nevada on the types of gambling that Michigan affords.

Mr. DUNCAN. All right. Thank you very much.

The CHAIRMAN. Any further questions?

Mr. FALEOMAVAEGA. Mr. Chairman, I just want to correct for the record. I am the one that mentioned something about the beer lobby. Alcoholic beverages.

The CHAIRMAN. Yes, that is the one I was worried about.

Mr. FALEOMAVAEGA. I just wanted to clarify that for the record, Mr. Chairman.

The CHAIRMAN. I even moved your bill.

[Laughter.]

The CHAIRMAN. No further questions. I want to thank our witnesses. I know that two of our witnesses have to leave, but Mr. Stupak, you are more than welcome to join us on the dais.

Mr. DINGELL. Thank you, Mr. Chairman. Thank the members of the Committee.

The CHAIRMAN. I would like to at this time call up our next panel, consisting of Aurene Martin, the Deputy Assistant Secretary for Indian Affairs.

Before you take your seat, if I could just have you stand and raise your right hand?

[Witness sworn.]

The CHAIRMAN. Thank you very much. Welcome back to the Committee. I believe we are ready when you are.

**STATEMENT OF AURENE MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.**

Ms. MARTIN. Good afternoon, Mr. Chairman, and members of the Committee. I would like to thank you for the opportunity to present the Department of Interior's views on H.R. 831 and H.R. 2793,

which provide for and approve the settlement of land claims of the Bay Mills Indian Community and the Sault Ste. Marie Tribe.

As discussed in our written testimony, the Department is not currently able to support the bills as they are written. H.R. 831 and H.R. 2793 extinguish land claims of the Bay Mills and Sault Ste. Marie tribes against the State of Michigan for lands located in Charlotte Beach. The legislation approves the settlements the State has entered into with each of the tribes to extinguish the claims and quiet title to the tracts at issue. It also identifies lands which will be provided to the tribes in settlement of the claims and directs the Department of Interior to take those lands into trust. Finally, it deems the new lands as settling a land claim, thus making them exempt from the requirements of Section 20 of the Indian Gaming Regulatory Act and eligible for use for Class III gaming facilities.

The Department has reviewed the legislation and identified concerns, which are outlined in our written testimony. Our concerns include the following: The bill requires us to acquire the lands in trust within 30 days of the signing of the bill into law. The mandatory nature of the provision does not provide for us to not take the lands into trust if there are significant contamination issues or other environmental concerns with the lands that are at issue. And the timing of the trust acquisition is such that we can't do a sufficient review of the environmental concerns that we might have with the lands at issue.

We also have some questions regarding the implications of Section 9 of the Michigan Compact, the compact that is entered into between the tribe and the State for operation of gaming, which requires agreement with other affected tribes if these settlements fall within its scope.

Finally, these agreements provide for revenue sharing provisions and other provisions which pertain to the operation of gaming, which we believe must be reviewed and approved by the Department pursuant to the Indian Gaming Regulatory Act because they fall within that jurisdiction.

While we have had significant concerns over the past 2 years with these agreements, I would like to note that the Department has been involved in discussions with the Bay Mills Indian Community regarding this legislation, and the community has been making every effort to address our concerns. They have even made significant progress in dealing with those issues and have agreed to deal with some of the environmental issues with regard to the legislation and have submitted the agreement that they reached with the State of Michigan to the Department for our review under the Indian Gaming Regulatory Act.

However, two issues do remain a concern for us. The departmental review which is currently contemplated is not binding unless it is addressed in the legislation. That is, we can review the agreement that has been submitted to us, but if we find that it does not meet the requirements of IGRA, we cannot—if this legislation was passed, we cannot do anything about it. It is not binding on the parties.

Most importantly, though, this legislation raises a significant policy issue upon which the Department has not yet formulated a

position. Whether a tribe may settle a land claim in exchange for land whose purpose is to be used for conducting Class III gaming has not yet been addressed by the Department during this Administration. While we have initiated internal discussions regarding this issue, we have not yet determined our position. This discussion implicates a number of land claims in additional States, and we are aware of its far-reaching implications. Our discussion will address the issue as a global matter and will, hopefully, provide a blueprint for our positions in the future. However, we have not completed that internal discussion and we do not have a position right now.

I would like to thank the Committee for the opportunity to present our views, and I would be happy to answer any questions.

[The prepared statement of Aurene Martin follows:]

**Statement of Aurene Martin, Principal Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior**

Good afternoon, Mr. Chairman and Members of the Committee. My name is Aurene Martin, and I am the Principal Deputy Assistant Secretary—Indian Affairs, at the Department of the Interior. I am pleased to be here today to testify on H.R. 831, a bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, and on H.R. 2793, a bill to provide for and approve certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians. For the following reasons, the Department is unable to support these bills as written.

H.R. 831 would approve and ratify an agreement executed on August 23, 2002, between the Governor of the State of Michigan and the Bay Mills Indian Community. H.R. 2793 would approve and ratify an agreement executed on December 30, 2002, between the Governor of the State of Michigan and the Sault Ste. Marie Tribe. The settlement agreements provide the basis for Congress to extinguish the two tribes' claims to the Charlotte Beach lands. In consideration for the extinguishments of the tribes' claims, Section 2 of H.R. 831 would require the Secretary to take into trust for the Bay Mills Indian Community alternative land located in Port Huron, Michigan, some 250 miles from the Tribe's reservation. Section 1(b) of H.R. 2793 would require the Secretary to take into trust for the Sault Ste. Marie Tribe two parcels of land, one located in Otswego County, subject to the approval of the Village of Vanderbilt and the Little Traverse Bay Bands of Odawa Indians, and the other one located in the City of Romulus, Michigan, subject to the approval of the City.

The settlement agreements are similar and contain, in pertinent part: (1) provisions relating to the tribes' agreement to relinquish all legal and equitable claims to the Charlotte Beach lands; (2) the Governor's concurrence in the trust acquisition of the alternative lands for gaming purposes; (3) tribal payments to the State of Michigan in an amount equal to 8% of the net win derived from all Class III electronic games of chance in consideration for limited geographical exclusivity, and payments in the aggregate amount equal to 2% of the net win from all Class III electronic games of chance to local units of state governments; (4) limitation of the tribes' Class III gaming operations in Michigan; (5) the Governor's forbearance from exercising the State's unilateral right to renegotiate the Compact pursuant to Section 12(c) of the Compact; and (6) a statement that Section 9 of the compact is not implicated by provision of the alternative land to the Tribe, and the Governor's waiver of this provision to the extent it is determined to be implicated.

We are concerned with the mandatory nature of the land acquisition provisions in the bills for two reasons. First, the bills would require that alternative lands be taken into trust even if the Department determines that potential liabilities exist on these lands. In this regard, we would recommend that any acquisition in trust be conditioned upon the lands meeting applicable environmental standards. Second, we believe that the 30-day time frame to take the lands into trust after receipt of title insurance policies is too short, and would make it impossible for the Department to comply with its existing regulation, 25 CFR 151.12, that a notice be published in the Federal Register at least 30 days before land is taken into trust. The Department asks that Congress consider the cost to and potential liability of the United States Government with respect to legislative transfers of land into trust, both in this particular instance and all future mandatory trust transactions.

We also are concerned with the lack of consultation with other Michigan tribes that may be impacted by the terms of these settlements, especially since the

agreements purport to waive Section 9 of the Michigan compacts to the extent it is implicated by the settlements.

Finally, we believe that the gaming-related provisions of the settlement agreements should be evaluated under the Indian Gaming Regulatory Act (IGRA) through the submission of compact amendments to the Secretary. It is our view that IGRA requires that all substantive provisions relating to the operation of gaming activities be included in a tribal/state compact. These bills arguably carve an unwise exception to this requirement, especially since the revenue-sharing provisions of the settlement agreements may be in violation of Section 11(d)(4) of IGRA.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

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The CHAIRMAN. Thank you, Ms. Martin.

The opposition that you state to these two bills seems to based largely on technical issues. Is it possible to rewrite or amend the legislation in a way that would address what the concerns of the Department are?

Ms. MARTIN. Generally speaking, yes. But as I stated in my written testimony, there is one policy matter which we have not resolved internally; that is, whether we believe as a policy matter that it is appropriate to take land into trust in settlement of a land claim that is solely to be used for gaming purposes and, in this case, very far away from where the tribes' reservations are.

The CHAIRMAN. So as far as the Department is concerned, there are really two big issues; one, are technical issues with the legislation, the other being the overall policy statement that you have not yet taken a position on, that the Secretary has not yet taken a position on, nor has this Committee in terms of the location of land such as this. So those are, really, two major issues that need to be settled before there can be support from the Administration?

Ms. MARTIN. Yes, that is true.

The CHAIRMAN. And the second issue is up in the air in terms of what position the Secretary ultimately takes?

Ms. MARTIN. With regard to the policy issue, yes.

The CHAIRMAN. All right, thank you.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

You have testified to a concern about the Department taking land into trust through these bills which might have some environmental problems, or be contaminated in some way. Doing so could cause serious liability questions for the Department, and I think that is a very legitimate concern. I also understand that you have worked with the Indian tribes before us today on these matters in this legislation.

Ms. MARTIN. Yes, we have. We have had some discussions in the past few weeks.

Mr. RAHALL. And I would hope you would be willing to work with the Bay Mills and Sault Ste. Marie tribes to come up with language that has been used before to address some of the problems?

Ms. MARTIN. Yes, we will.

Mr. RAHALL. One last question, if I might. Your testimony says that the 30-day timeframe given in the bills to take land into trust once the Department receives a title insurance policy was too short to comply with the Department's notice regulations. Could you give us a timeframe that is more in line with those regulations? For example, would 90 days be adequate for the Department?

Ms. MARTIN. I can't give you a set number of days right now, but I will get back to you on what might be adequate. Obviously, we need to take enough time to deal with matters that we need to take care of, but the balance is trying to find what is the least amount of time that we can do those things.

Mr. RAHALL. Is an Act of Congress required for an Indian tribe to relinquish its property rights, or can this be handled administratively?

Ms. MARTIN. I do believe that an Act of Congress is required under 25 U.S.C. Section 177, the Nonintercourse Act.

Mr. RAHALL. That is my understanding as well. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Further questions? Mr. Cole.

Mr. COLE. Thank you, Mr. Chairman.

Secretary, it is always a pleasure to have you here. A couple of quick questions. I want to pick up on a point that the Chairman raised and just clarify it for my purposes and my understanding. Are your objections primarily process- and jurisdictional-oriented, or are they substantive? In other words, you have, obviously, some concerns about times and certain things that worry you about the process. But as you step back and look at the agreement, is there anything in the agreement, from the Department's standpoint, that causes you problems?

Ms. MARTIN. We have not fully reviewed the agreement yet. It was submitted to us within the last 2 weeks for review for IGRA purposes. Whether provisions of that agreement violate provisions of IGRA, we haven't yet determined. But the provisions of the bill and the terms of the legislation, the concerns that we have had with those, based on our discussions with Bay Mills, at least, they would be more than willing to work with us to try to rectify what those problems might be.

Mr. COLE. Could you characterize too, or if you have an opinion on the process, the negotiation process between the State of Michigan when Governor Engler was Governor, and the tribe? Does that appear to have been open and fair and, you know, handled well, from your standpoint?

Ms. MARTIN. As far as I am aware, it was conducted in an open and fair manner. I do know that when I testified on similar legislation 2 years ago, a representative of the Governor appeared at that hearing and did testify in support of the legislation.

Mr. COLE. Does the fact that the local community appears to be supportive of this influence your decision, impact it one way or the other? Make any difference?

Ms. MARTIN. Yes, it does have an impact on our decisionmaking. There is a policy of the Secretary and the Department generally to always try to get the support of a local community whenever we enter into any kind of activity in that area. So it would be our policy also here to try to respect agreements that States and tribes come to terms with. Here, though, we have, I think, what is a far-reaching policy matter which needs to be addressed by the United States, and we just have not done that yet.

Mr. COLE. It is still pretty impressive, though, to see a State, a tribe, and a locality that actually work together and arrive at a

solution. I mean, we don't see that very often. It is a remarkable occurrence.

One last question, if I may. You mentioned that the Secretary had not yet arrived at a determination as to whether or not land could be moved into trust solely for the purposes of gaming, if I understood your point. Have previous Administrations—is this an Administration question? Have previous Administrations taken a position on this or Congress taken a position on this before? So are you reviewing what we have done before or is this totally new ground that you are looking at?

Ms. MARTIN. It is my understanding that both this Administration up to now and the past Administration had an informal policy that they would not approve either water or land claims settlements that contemplated an exchange of land which would solely be used for gaming. And my understanding is also that Congress has never approved such a settlement, either. But we are at a point now where there are a number of land claims negotiations that are being undertaken in different States, where the settlement contemplated is specifically land being taken into trust for gaming. So we will have to, if not here, in some other settlement in, I think, the relatively near future, have to take some kind of a position on that issue.

Mr. COLE. Well, again, I would just join my colleagues, I think on both sides of this issue, and ask, with full understanding that it is a pretty weighty question, that you expedite that. Because we do—obviously we are going to have a number of cases that depend on this kind of decision, and at least give us some enlightenment as to where the Administration is going to ultimately come down on this. It would be extraordinarily helpful.

Ms. MARTIN. Yes, sir.

Mr. COLE. Thank you very much.

Thank you, Mr. Chairman.

Mr. KILDEE. Mr. Chairman?

The CHAIRMAN. Further questions from Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Madam Secretary, I appreciate your testimony. Someone asked whether we could rewrite this legislation to remove any imperfections. But would rewriting the legislation remove the far-reaching implications which you mentioned? You mentioned that there are far-reaching implications for Congress to enact such a law. Because we know there are many tribes throughout the country who are seeking to have land put into trust for the purpose of gaming. I think the Miamis are seeking a place in Illinois, the Delaware a place in New Jersey, and there are other places. How many of these cases are pending now where they are seeking to put land into trust for that purpose?

Ms. MARTIN. I am aware of at least four land claim—well, six land claims issues and two water settlements.

Mr. KILDEE. Now, let me ask you this. If Congress, bypassing the process which we put together under IGRA, if Congress bypasses that and takes land into trust for the purpose of gaming, could not then Congress set a precedent where no place in America could not be subject to having an Indian casino put on that land?

Ms. MARTIN. Well, I think that is part of the overall discussion. If you start on a path of—even though you might say that it is not precedent, you take land into trust in settlement of a land claim, and then you take land into trust further away from a tribe's aboriginal area, then the next step—as you progress further and further, where do you draw that line? Do you draw a line at near the reservation, 100 miles from the reservation, 300 miles? Is it OK to put land in a trust in another State? You start down that path, and it has implications even though you might not intend for that to happen. And we are at that point now.

Mr. KILDEE. The compact which was reached between the Bay Mills and the Sault Ste. Marie Tribe with Governor Engler would be put into law were we to pass this legislation. Is there precedent for a compact to be put into law by Congress?

Ms. MARTIN. No, there is not. Not that I am aware of. In fact, obviously, that is one of our concerns with the bill, that once you approve this legislation and, by virtue of that, approve the settlement, then there is the possibility, then, other tribes will attempt to bring their provisions to Congress for approval, provisions that might not otherwise be approved through the departmental process.

Mr. KILDEE. I thank you.

And thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. And welcome, Madam Secretary, to the Committee.

If we could just put the issue of gaming aside, I was just wondering, these lands in question, weren't they once owned by the Chippewa Tribe?

Ms. MARTIN. Yes, they were.

Mr. FALEOMAVAEGA. So what we are doing here is just simply formalizing the situation? I mean, how did the Chippewa Tribe lose these lands to begin with?

Ms. MARTIN. Well, it is actually a fairly complicated history. The lands in Michigan were ceded by a larger Chippewa Tribe, as I understand it, but then there were further cessions by individual bands as they organized separately. I think overall the lands that are at issue here were part of the cession by the one Chippewa Tribe in Michigan.

Mr. FALEOMAVAEGA. So there was no forced takeover or adverse possession by other interests or other groups of people that came and occupied them before it became the State of Michigan or during the time that we became a country? I just wanted to find out—I am curious. We are conveying land back to the true owners of—the people who really owned the land to begin with? I am just wondering if this is how I read history, and correct me if I am wrong on this.

Ms. MARTIN. Well, I think you can make that argument for all of the lands in the United States, really.

Mr. FALEOMAVAEGA. Well, I don't want to talk about the United States. I just want to talk about Michigan and the Chippewa Tribe, because this is what we are discussing here.

Ms. MARTIN. They were originally owned by the larger Chippewa Tribe, yes, and ceded to the United States by them.

Mr. FALEOMAVAEGA. Ceded, or forced to be ceded?

Ms. MARTIN. Ceded through treaty, is my understanding.

Mr. FALEOMAVAEGA. OK, they were not taken like the way it was taken in other instances?

Ms. MARTIN. No.

Mr. FALEOMAVAEGA. No treaty relationship between the Chippewas. This is how the Chippewas lost these lands, by treaty?

Ms. MARTIN. Oh, if you are talking about the Charlotte Beach land—

Mr. FALEOMAVAEGA. I am talking about, specifically, these two tracts of—pieces of property here.

Ms. MARTIN. Oh, OK. I was confused. I thought you meant the lands that were being exchanged.

Mr. FALEOMAVAEGA. No, no, no.

Ms. MARTIN. They were actually, the lands in Charlotte Beach were reserved to what was historically, what is now the Bay Mills Community. But at the time that the tribes entered into those agreements, they did not know that the title to portions of those lands had been given to a non-Indian.

Mr. FALEOMAVAEGA. Yes, and who gave it to the non-Indian?

Ms. MARTIN. The United States.

Mr. FALEOMAVAEGA. Thank you.

Ms. MARTIN. OK.

Mr. FALEOMAVAEGA. So what we are actually doing is that we are just trying to correct an inequity or a transgression on the part of the U.S. Government—took the land away from the tribe to begin with. My point here is that these lands belonged to the tribe to begin with. So we are just simply formalizing the transfer by having the State of Michigan be the transferor, if you will, to the tribe.

The reason why I raise this issue, Madam Secretary, is that if these lands belonged to the tribe to begin with, we are just simply formalizing another way of conveying it back to the tribe that owned the land to begin with. And that being the case, why would there be an objection on the part of the Administration that this is just simply what we are doing, formalizing the transfer of the land that actually was owned by the Chippewas to begin with?

Ms. MARTIN. Well, but the land that we are exchanging to give back to the tribe is—

Mr. FALEOMAVAEGA. Doesn't belong to—

Ms. MARTIN. It is not in that area. It is very far away.

Mr. FALEOMAVAEGA. Does it matter? Did it belong to the tribes in question?

Ms. MARTIN. Well, historically it belonged to a larger Chippewa Tribe.

Mr. FALEOMAVAEGA. OK. Madam Secretary, I just wanted to ask another question. I understand the DOI policy has not been established. Talking about the instances of non-reservation lands, if you will, is this time the first instance that something like this has happened, as far as the laws, the IGRA is concerned, and where you have not really made a decision as a policy decision in the Department?

Ms. MARTIN. It is the first time before the fact, that is, in settlement of the land claim, that we would be taking lands into trust for gaming.

Mr. FALEOMAVAEGA. OK, now, do you think the Congress should wait for the Department for a decision? Or we could probably just put a little zip in the amendment and be done with it as a matter of public policy, and make an amendment on the IGRA. So that way, you don't have to worry about—or us waiting on the part of the Administration to make a decision. Would you recommend that we make an amendment, an appropriate amendment of these proposed bills to take care of that policy problem that you are having?

Ms. MARTIN. I think that it would make our discussion much easier. I couldn't tell you that that is our position right now, though.

Mr. FALEOMAVAEGA. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Further questions? Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, and thank you for the courtesies extended to me at today's hearing.

Ms. Martin, I think you alluded to it earlier, Chapter 25. If we are going to extinguish any claim or title to a land by a Native American tribe, Congress must act on it, correct?

Ms. MARTIN. Yes.

Mr. STUPAK. And there is land that the BIA takes into trust for Native American tribes that is not used for gaming. Correct?

Ms. MARTIN. Yes.

Mr. STUPAK. If you look at the legislation—I found it on Page 3, subsection (b) in one and subsection (c) in the other—there is no requirement that this land be used for gaming. It may be used for gaming, but if they never build a casino on this land once it is transferred, there is no penalty or anything like that. They don't have to use it for a casino, do they?

Ms. MARTIN. No, they don't.

Mr. STUPAK. And it goes on, in each of these pieces of legislation, I think it is the last part of each of these legislation, second-to-last piece, Page 4, subsection (2) "Not Precedent," that by extinguishing these land claims, if Congress approves this, you would not set a precedent for any other tribe or any other State that would enter into a settlement of land claims, that these are unique and should not be considered as precedent for any future agreement between any tribe and the State. Is that correct?

Ms. MARTIN. That is what it says, yes.

Mr. STUPAK. And also, in response to Mr. Kildee's question about a compact, this is not a compact between the Native American tribes and Governor Engler. This is a settlement of a claim. The State of Michigan has already approved their compact a number of years ago, and it is good for about 20 years, if I remember correctly, from the date they approved it. So we are not approving a gaming compact here, asking the BIA to approve a compact. What is said here is "as a settlement of a land claim." That is all this is. Is that—it is not a compact between the State of Michigan and these tribes.

Ms. MARTIN. The agreement is not termed a compact, but it does contain provisions which are normally contained in a compact and

the type of provisions which IGRA contemplates the Department would review.

Mr. STUPAK. Sure, similar provisions. But does not under the compact that currently exists between the State of Michigan and all the tribes in Michigan—I believe there are eight recognized tribes in Michigan that have gaming—that there are provisions in that compact that allow the Governor to enter into negotiations on points that were not totally addressed in that compact when it was signed a couple of years ago. Is that not correct?

Ms. MARTIN. Yes, but it is also our position that the provisions which are addressed in the agreement would amend the compact by their very nature.

Mr. STUPAK. Right. But the compact that the State of Michigan has with the tribes, which you approved, BIA approved, allows the Governor that right to go back and discuss, negotiate, and settle issues that come up under this compact during this 20-year period that were not contemplated between the parties.

Ms. MARTIN. Yes.

Mr. STUPAK. And you approved that the Governor could do that. And in this case, Governor Engler used that compact, that provision to allow him to enter into this settlement agreement. Correct?

Ms. MARTIN. I believe so.

Mr. STUPAK. OK. When you indicated that the Bay Mills and the Sault tribes were—you kept saying, well, there is a bigger Chippewa Tribe. But you would agree that the Bay Mills Tribe and the Sault Tribe of Chippewa Indians are a successor of this larger Chippewa Tribe, and the right that was extended to the first Chippewa Tribe—the big Chippewa Tribe, as you describe it—flows through to these tribes here present today?

Ms. MARTIN. That is a far more complicated question than I could answer right now. We would have to undertake a legal review to determine whether they are a successor in interest or not.

Mr. STUPAK. Well, let me ask you this, then. Successor in interest with these tribes does not end with the death of the people who made up the agreement. Isn't that correct? It flows to their ancestors.

Ms. MARTIN. Generally speaking, yes, but every situation is different. And there have been a number of land claims settlements which have discussed how successors in interest would be able to make claims against certain tracts of land. I couldn't make that kind of review and answer that question for you right now on the spot.

Mr. STUPAK. Are you familiar with the court cases that were involved in this case at all?

Ms. MARTIN. Not in detail.

Mr. STUPAK. How about this generality that the Court of Appeals indicated to the tribes, that the Sault Tribe was an indispensable party? The lawsuit was brought by Bay Mills, the Sault Tribe was an indispensable party to this land claim. Therefore, the judge basically ruled, if you are going to settle this case, you have to have both parties here, not just one of you, because you cannot extinguish half a cloud on a title.

Ms. MARTIN. I believe that that is correct.

Mr. STUPAK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Thank you, Ms. Martin, for your testimony. Members may have additional questions that they would like to ask you that will be submitted in writing. If you could answer those in writing so that they can be included in the hearing record.

Ms. MARTIN. Thank you very much.

The CHAIRMAN. Thank you for being here.

I would like to now call up Panel No. 3. We will hear from the Honorable Jeff Parker of the Bay Mills Indian Community; the Honorable Mark Neal, Mayor of Port Huron, Michigan; Paul Shagen, Senior Tribal Attorney for the Sault Ste. Marie Tribe; and the Honorable Alan Lambert, Mayor of Romulus, Michigan.

If I could have you remain standing.

[Witnesses sworn.]

The CHAIRMAN. Thank you very much. Let the record show they all answered in the affirmative.

Thank you all for being here today. I would like to start with Mr. Parker.

**STATEMENT OF JEFF PARKER, PRESIDENT OF THE EXECUTIVE COUNCIL, BAY MILLS INDIAN COMMUNITY OF MICHIGAN, BRIMLEY, MICHIGAN**

Mr. PARKER. Mr. Chairman, members of the Committee, thank you very much for allowing me time to testify before you on a bill that impacts my tribe. I am the elected president of the Bay Mills Indian Community, a post I was first elected to in 1989 and, except for a couple of years, have held since then.

We are talking about an issue that is going on its third century now of not being resolved, and we are coming before the Committee to ask for your help in resolving this issue. In the mid-1800s, Bay Mills, on advice from others, ceded property that it bought and paid for from the Governor of Michigan. This is a mechanism that was used by other tribes in Michigan to protect property. In fact, there is still a State reservation today, in Athens, Michigan, that was made a reservation by the same process. What we are trying to do now is rectify what happened to our tribe in losing that property. I am sure there are going to be others that are going to talk to you and question the distance between an existing Bay Mills reservation and lands that we are looking for in settlement in Port Huron.

I have before me, and I would like to include it for the record, what is called a Royce map. Royce was a gentleman the Smithsonian Institute had hired to go and put on the maps all of the treaties in the United States. This was a report to Congress, so it may still be around here somewhere. Anyway, these areas are called different things. The Port Huron area is called Royce map 66. And when you talked earlier about a bigger Chippewa Tribe, the bigger Chippewa Tribe and other tribes in Michigan basically ceded that territory to the U.S. Government. My ancestor signed that treaty. In fact, today, tribes in Michigan, Indian people, are afforded educational opportunities based on that treaty. And those opportunities aren't limited in any way to one specific tribe, but the entire State.

I would also like to address some of the concerns people have that we are not following the proper process, we are not going through the proper channels, we should go before a court. And we had gone to court, and we had reached a settlement agreement. And when we brought that in to Interior to have them review it, they said everything looked OK and looked appropriate, thank you very much for at least coming in and sharing that with us. As we were leaving, they said, Oh, by the way, because you have an interest in property, in order for this claim to be fully extinguished, you need an Act of Congress.

We don't need an Act of Congress to ratify things, we need an Act of Congress that basically extinguishes Bay Mills claim to the Charlotte Beach lands. The settlement that we have reached is with the State of Michigan, with the elected leader of that State, Governor Engler. Even Congress in IGRA contemplated land claims—it is mentioned in IGRA—and contemplated mechanisms for doing that, making sure that the Governor of the affected State was involved in the process and concurred, making sure that the local unit of Government was involved and concurred.

We are by no means attempting to slip a tribal casino into an area that is now wanted. And in fact, the Port Huron site was selected by Governor Engler as a site that he wanted to have this facility to compete with the Canadian casino across the bridge that, as you heard earlier, could be 75 percent of the revenue comes from United States citizens.

I am not sure what I can do to convince you that this is the right thing. I will tell you that this is not a commercial casino that we are dealing with. Tribes don't have the luxury of commercial casinos. We are basically taxed 100 percent by the Indian Gaming Regulatory Act, as all the revenue that we generate from our facilities has to go into social programs, educational programs, health and well-being. I would invite you to come to Bay Mills to see what we have done, amidst considerable competition, to provide benefits not only to the tribal community, but the entire surrounding community, non-Native as well, with our health facility, our community college, elementary school. Everything that we have done has been open to all people.

I think it is important to note that when you say Bay Mills Indian Community, you really are talking community, because we look at everybody as being in the same boat. Maybe it is because we are from the U.P. and things are a little tougher up there with the longer winters, but if you don't stick together, it makes for a long winter.

With that, I would like to, as I said, include the maps, the Royce maps that show the area, as part of my testimony, and also some research that was done and testimony that was done previously, talking about us going through the court systems that should resolve some of those issues.

With that, I would answer any questions that you may have.

[The Royce maps and other materials submitted by Mr. Parker have been retained in the Committee's official files.]

[The prepared statement of Mr. Parker follows:]

**Statement of Jeffrey D. Parker, President of the Executive Council, Bay Mills Indian Community of Michigan, Brimley, Michigan**

Mr. Chairman, and members of the Committee, I am pleased to be invited to present testimony on behalf of the Bay Mills Indian Community on H.R. 831. I speak here today in my official capacity as President of the Executive Council, which is the elected government of our Tribe. The legislation before you is extremely important to my people; its importance will be better understood by my description of the history of the Tribe and the origin of this controversy.

The Bay Mills Indian Community is comprised of the bands of Sault Ste. Marie area Chippewa who signed a series of treaties with the United States beginning in 1795. My Tribe's modern-day Reservation is located at the juncture of the St. Mary's River and Lake Superior, in the Iroquois Point area of Michigan's Upper Peninsula, and on Sugar Island, which is just east of Sault Ste. Marie, Michigan, in the St. Mary's River Channel. My Tribe is one of four in Michigan which has maintained continuous government-to-government relations with the United States since treaty times. We adopted a Constitution in 1936 under the Indian Reorganization Act, and codified as our form of government the traditional Chippewa public forum, in which all adult members comprise the General Tribal Council. I represent a direct democracy, which votes every two years to select officers, known as the Executive Council. Our total enrollment is approximately 1,500 members. It is on their behalf that I speak today.

I am very proud to testify in support of this legislation, as it represents the final step in obtaining redress of a great wrong done to our people over 100 years ago, a wrong that has imposed continuing consequences to the present day. The Bay Mills Indian Community is deeply grateful to Congresswoman Candice Miller for sponsoring H.R. 831, and to Congressman Don Young for co-sponsoring it. In addition I wish to acknowledge the assistance and support that our Congressman, Bart Stupak, has given to the Tribe in its efforts to achieve redress these many years. I also wish to express my thanks to Chairman Pombo and Ranking Member Rahall for understanding how important this legislation is to my people and for holding this hearing today.

Finally, I wish to thank Congressman Dingell for his efforts to resolve the Charlotte Beach land claim by introducing the companion bill, H.R. 2793. That legislation ratifies the settlement of the Sault Ste. Marie Tribe's claim to the same land. As you may know, resolution of both claims is necessary to clear the cloud on title of the current residents living in the claim area. By the explicit terms of the Sault settlement, ratification of the Bay Mills settlement is a precondition to the Sault Tribe's settlement becoming effective.

*History of Our Land Claim*

The Sault Ste. Marie area Chippewa bands participated in a series of treaty negotiations by which large tracts of land were ceded to the United States in 1807, 1817, 1820, and 1836. In return, the United States promised to reserve certain lands for the exclusive occupancy of the Chippewa, and to protect forever reserved lands from further white encroachment.

The Treaty signed by our ancestors in 1836 promised to set aside certain lands for us in perpetuity. When the 1836 cession Treaty was sent to Congress for ratification, however, the Senate unilaterally inserted a provision which limited protection of the lands reserved under it to a five-year term. As a result, over the course of a relatively short period of time the Chippewa lost hundreds of thousands of acres of land, in direct contravention of the express terms of the Treaty that had been signed by them.

In part to rectify the injustices done by the 1836 Treaty, the United States in 1855 entered into another Treaty with our ancestors by which new lands were to be reserved for our use. Among these lands was property specifically identified by legal description in the 1855 Treaty at Hay Lake (the area in modern times known as Charlotte Beach). My Tribe's ancestors signed the 1855 Treaty with the express understanding that the Hay Lake/Charlotte Beach land would be set aside for our exclusive use, and that it would be protected from alienation and white encroachment.

One day after the 1855 Treaty was concluded, however, the United States Land Office allowed that very land at Hay Lake to be sold to non-Indian speculators. Hence, despite the fact that the United States agents induced our ancestors to sign the 1855 Treaty on the understanding that the Hay Lake land would be included within our reserved lands, and despite the fact that the Senate ratified the 1855 Treaty with the legal description of the Hay Lake lands still in place, the Tribe lost that land by virtue of the United States Land Office's actions.

In order to recover the Hay Lake land, which was of central importance to us for historical, food gathering, and cultural reasons, my people used their annuity money to buy back what portion of it that they could. Upon advice of the Bureau of Indian Affairs agent at the time, trust title to the Hay Lake land was conveyed from the land speculators to the Governor of the State of Michigan, to protect the land from further alienation and encroachment. This method of protecting Indian lands was not uncommon in the nineteenth century, and it is well established under federal case law that such lands are protected by the Indian Trade and Intercourse Act's prohibition against the alienation of Indian lands without express Congressional consent.

My ancestors hunted and lived on the Hay Lake property for nearly thirty years unmolested by the State of Michigan. In the 1880s, however, Chippewa County determined that it would impose taxes on the property. Even though he held trust title, the Governor of the State of Michigan failed to respond to the tax assessment in any manner whatsoever. Despite repeated requests from our people to the Bureau of Indian Affairs for help, the federal government also took no action. Because neither the federal government nor the State of Michigan acted to protect our lands as was required by the Indian Trade and Intercourse Act, the County moved to foreclose on the property and our ancestors were evicted.

I want to make you aware of what the Bureau of Indian Affairs' own agent wrote in 1880 about the impending sale of our Hay Lake lands:

> At the "Sault", the Old Chief Shaw wa no is in very destitute circumstances, and much agonized as his land which amounts to some 300 acres bought by annuity money and deed in trust to the Governor of this State many years ago, has been sold for taxes...*The Old man wished me to do something for him or ask the Government to provide the means to cancel this claim for taxes,* He is Old, sick & Blind; and all his people are very poor, simply sustaining life by fishing, picking berries, or an odd days work which chance may throw in their way...

Emphasis added. G. Lee, Michigan Indian Agent, in a letter to the Commissioner of Indian Affairs dated August 1880.

In 1916, we again petitioned the Bureau of Indian Affairs for help when on behalf of the Community tribal member William Johnson wrote to the Bureau begging for assistance in regaining the Hay Lake lands. The Bureau rebuffed his petition.

In 1925, an attorney, John Shine, wrote again on the Tribe's behalf, begging the Bureau for help in recovering the Hay Lake property. The Bureau again rebuffed the Tribe's petition for help.

In the 1970s, the United States' own expert witness (widely considered to be the preeminent historian of Indians in the Great Lakes area) in the U.S. v. Michigan treaty fishing rights litigation highlighted the existence of the Hay Lake/Charlotte Beach claim in her expert report submitted to the Federal District Court for the Western District of Michigan. See Report of Dr. Helen Tanner, dated April 1974, for the United States in U.S. v. Michigan, Civ. Case No. 2:73 CV 26 (W.D. MI).

In the 1980s, the Bay Mills Indian Community repeatedly petitioned the Department of the Interior to include the Charlotte Beach claim on its list of protected historical Indian claims pursuant to 28 U.S.C. § 2415. Through a Field Office of the Office of the Solicitor, Interior erroneously denied our Tribe's petition for the simple and only reason that the Hay Lake/Charlotte Beach land was held in trust by the State rather than the federal government. The Field Solicitor's refusal was not legally supportable. Existing federal court opinions made clear that the Indian Trade and Intercourse Act protects Indian lands held by states, and Congress had specifically directed Interior to protect all historical Indian claims except those that "had no legal merit whatsoever." (See section 3(a) of Pub. L. 97-394.) Further, the Field Solicitor's refusal was inconsistent with general Interior policy because in fact Interior had included on the final list of protected historical claims a fair number of state-held lands, including some held for state recognized tribes.

In the 1990s, we tried to obtain redress in the courts. Our efforts were unsuccessful. Our federal court case was dismissed on a procedural technicality (the court found that the Sault Ste. Marie Tribe was an indispensable party). We fared no better in the state courts, which little understood the federal Indian legal issues before it.

By the late 1990s, we had been left with little choice but to enter into direct settlement negotiations with the Governor of the State of Michigan. To Governor John Engler's credit, the State determined that it would work with our Tribe to address our long-standing grievances. The settlement process was lengthy and often difficult. But as you will hear from others testifying today, we were able to forge a settlement that addresses the needs and concerns of the Bay Mills Indian Community, of the State of Michigan, of the people living within the Charlotte Beach land

claim area, and of the people living in the area in which we wish to acquire replacement land. That settlement, executed by the Bay Mills Indian Community and the State in August 2002, is the backbone of the legislation here before you today.

I underscore this history because I want the Congress to understand the long-standing importance that this land has held for my people. I want the Congress to understand that this land claim is not about gaming, not about forum shopping, not about modern-day business deals. This land claim exists because of negligence by Land Office staff, historical inaction by Department of Interior staff, and abandonment of trustee obligations by the Governor. Resolution of this land claim is about finally securing just compensation for my people, finally being able to close this painful chapter of our history, and finally being able to shift our focus to the future. It is about finally achieving justice.

*The Settlement*

In commencing settlement negotiations with the Governor of Michigan, the Bay Mills Indian Community well understood that no agreement would be possible without compromise. Because achieving closure to this long-standing wrong was very important to our community, we worked hard to reach an accommodation with the Governor by which a resolution to our claim would serve both our goals and those of the State.

Our goals were to recover lost lands, and to receive monetary compensation due us for having lost possession of those lands. As you may be aware, the federal courts have determined that such monetary compensation generally encompasses compensation for lost rent plus interest. (See, e.g., the Cayuga cases.)

The State's goals were to quiet title to the claim area property without displacement of the people living there, to construct a settlement that would not have an impact on the State's budget, and to ensure that any replacement lands would be located in a community desirous of our presence there.

The Settlement we reached with the Governor in August, 2002 accomplishes both the Tribe's and the State's goals in a fair and equitable manner. Indeed, we would like to think that the spirit of mutual respect and cooperation with which these negotiations took place should serve as a model for how such difficult and emotionally charged issues can be resolved. In addition, I note that the general structure of the Bay Mills settlement is consistent with other land claims settlements already enacted by Congress. (See, for example, the Torres-Martinez Desert Cahuilla Indians Claims Settlement ratified in the 106th Congress and codified at 25 U.S.C. § 1778, in which that tribe's claim for trespass damages was resolved with replacement lands and a related gaming opportunity.)

*Indian Gaming*

We understand that there is a reluctance to allow Indian land claim settlements to be used to as vehicles for the expansion of off-reservation Indian gaming. We share that concern. We think, however, that the United States owes it our people, particularly given the long and unfortunate history of our dealings with the United States, to take a hard look at the merits of this land claim, and to understand the proposed settlement in the context of our land claim rather than through the filter of modern controversies surrounding Indian gaming.

If we had never been severed from possession of our Hay Lake property, if either the United States government of the State of Michigan had honored and enforced the Indian Trade and Intercourse Act when Chippewa County sought to (and achieved) our dispossession through tax foreclosure sales, then everyone, everywhere, would understand the Hay Lake property to be "Indian lands" held by the Tribe prior to the enactment of the Indian Gaming Regulatory Act (IGRA). Had our ancestors never been evicted by county tax assessors, we would continue to live there to this day, and we would be entitled, under IGRA, to operate an Indian gaming facility there.

The Governor, acting for the State, made clear that he would not agree to my Tribe's recovery of the Hay Lake/Charlotte Beach land because it could result in the eviction of current landowners in the Hay Lake area. The Governor instead offered his support for the concept of finding new lands to replace the Hay Lake/Charlotte Beach property in return for our agreement that our trust title to the Hay Lake property would be extinguished by Congressional action. By agreeing to provide replacement land to the Tribe, the State has alleviated the anxiety of persons currently living in the Hay Lake/Charlotte Beach claim area that they might some day be evicted from their homes. By agreeing that such replacement lands should be eligible for gaming, the State has agreed that the replacement land should in fact have the same status as the lands we have agreed to give up—that is, the replacement

land should be treated as if it, too, had been held by the tribe since the mid-nineteenth century.

The Governor insisted that we locate replacement lands in a community that was desirous of hosting us. We have done that. As you will hear directly from the elected representatives of Port Huron today, that community affirmatively wishes our Tribe to locate its replacement lands there.

I also wish to underscore that the State insisted that it would not provide appropriated money from its own budget to compensate us for nearly one hundred and thirty years' back rent and interest. We have agreed to that; indeed, have agreed that we will try to achieve full compensation based on the money we ourselves make through economic development on the replacement lands. Those funds will generate the income we require in order to provide governmental services and programs to the Tribe's members and their families. Without that income, we would have no choice but to come back both to the State and the Federal Government, and insist that we be compensated for both parties' failure to protect our lands from alienation as required by the Indian Trade and Intercourse Act.

For these reasons, I strongly and respectfully urge you to consider this settlement not through the lens of Indian gaming, but rather in the context of the long and well-documented history of the wrong done to my people, and in the context of the overall wisdom of a settlement crafted to create the greatest good for the most people.

*The Department of the Interior*

We have tried to work closely with the Department of the Interior over the last few years, and have made every effort to address each of the concerns raised by the Department of the Interior about the structure and content of the proposed settlement. I wish to note here that we have appreciated Interior's efforts to work with us in this regard. We have proposed a modification to the draft language in Section 2 of H.R. 831 that would alleviate the Department's concerns about whether the replacement land would have to be acquired in trust if it is contaminated (it would not). We have submitted the settlement to the Department for its review so that the Department may satisfy itself as to the appropriateness of provisions in the settlement that the Department feels implicate the Tribe's Tribal-State Gaming Compact. And we have welcomed the inclusion of the Sault Ste. Marie Tribe into the settlement and legislative process so that landowners within the Hay Lake/Charlotte Beach claim area can be assured that their titles will be fully and completely cleared through the complete extinguishment of Indian title.

It is our belief that we have successfully addressed the Department's concerns, and it is our hope that, as a result, the Department will support our efforts and support enactment of H.R. 831.

*Conclusion*

I recognize that there are additional issues which may be of interest or concern to the Committee. I am happy to address any and all issues, and I welcome your questions today. I once again thank you for the opportunity to tell the Bay Mills Indian Community's story, and I respectfully urge you to support the efforts of the Bay Mills Indian Community, the citizens of Charlotte Beach and Port Huron, and the State of Michigan, by providing the necessary Congressional ratification of our settlement without further delay.

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The CHAIRMAN. Thank you.

Mr. Neal?

## STATEMENT OF HON. B. MARK NEAL, MAYOR, CITY OF PORT HURON, MICHIGAN

Mr. NEAL. Thank you, Chairman Pombo, Ranking Member Rahall, ladies and gentlemen of the Committee, distinguished guests.

My name is Mark Neal. I am the Mayor of the city of Port Huron. Our population is approximately 32,000 people. We are the county seat for St. Clair County. We are along the St. Clair River just across from Sarnia, Ontario. We currently have in our community an unemployment rate that is approaching 20 percent. We have many people that live below the poverty level. We are very much a blue-collar town.

We look at this possibility of having this land settlement taken care of so a casino could be brought to our city. We think it is important from the standpoint it provides employment opportunities. With the potential of having 3,000 to 3,500 jobs created by this casino/convention center, it would go a long way in providing employment opportunities for our community. We feel the high-paying jobs, that are going to be union, would turn over those wages in our community many times over and would support other industries in our community as well.

In our community, we have had, unfortunately, many employment opportunities dry up. We are very much dependent on the automotive industry, and the way the automotive industry in the State of Michigan has gone, it has disappeared. We have lost those jobs out of our State. And unfortunately, we haven't had any new industry move in to replace them. Our community is looking at this opportunity to create a whole other type of industry, a service industry, a tourism industry, that would enable us to be a destination for people not only from the State of Michigan but from the region as well.

I hear the comments from Congressman Rogers, and it disturbs me to hear him say that gaming does not bring economic opportunity. I disagree with that. We are affected in our community right now by gaming. The reason I say that, if you look to my left, your right, here is the Canadian casino. It is approximately 500 yards from the city of Port Huron, just across the St. Clair River. We have 75 to 80 percent of the patrons that go to that casino comes from the State of Michigan. So what happens is our money goes across the river to a Canadian-sponsored casino and stays there. It doesn't get back to our community. We feel if we have the casino in our community, it goes to a strong way of providing jobs and money back to our schools, our community, our social services, and many other services throughout our community.

I hear the comments also in regard to bankruptcies. In my day job, I have seen those bankruptcies go high, too, go higher than they normally are. But unfortunately, they are not tied to the casino or the gaming industry; they are tied to the economic conditions of our State, and that is where we have lost jobs. So we feel it is important that we have this opportunity to have a new industry come into our community and create employment opportunities.

At this time, I also would like to thank Congresswoman Candice Miller for sponsoring this bill. We really appreciate the effort that she has gone through in trying to do what is right for her District. She has worked tremendously on this issue ever since she has taken office, and it is my gratitude, as the representative of the city of Port Huron, to express our appreciation for her efforts.

I will entertain any other questions. Thank you.

[The prepared statement of Mr. Neal follows:]

**Statement of The Honorable Mark Neal, Mayor, City of Port Huron, Michigan**

Chairman Pombo, Ranking Member Rahall, ladies and gentlemen of the committee, my name is Mark Neal, I am Mayor of the City of Port Huron, in the Great Lakes state of Michigan. Thank you for allowing me a few minutes of your time to share with you important facts about my city.

Port Huron is a city with a population of 32,000 people. We are the county seat for St. Clair County, which has a population of 175,000. We sit on the US/Canadian Border just across the St. Clair River from Sarnia, Ontario. We currently have an unemployment rate approaching 20 percent. In addition, we have many citizens that are below the poverty level. We are very much a blue collar community.

Our community has been devastated by the loss of employment opportunities; we had two industries that provided 7,500 jobs. One company had 5,000 employees and another had 2,500 employees. The one with 5,000 employees has reduced their workforce to 500 employees and the company with 2,500 employees closed their doors. We have an active Economic Development Alliance that helps promote our industrial park. Many of the tenants in our industrial park are suppliers for the auto industry. Unfortunately, when the Big Three (Ford, GM, and Chrysler) say they need to cut their costs, they turn to their suppliers, which means we are the first to suffer from any downturn and the last to recover. Whenever we get a new tenant in our park, another one closes its doors.

Our community is in desperate need of employment opportunities. That's why we asked the Bay Mills Tribe to consider resolving their land claim by accepting land in Port Huron for their economic development. With the proposed casino and their anticipation of employing 3,000 to 3,500 people at an above average wage, the economic benefit to our community would be tremendous. Those wages would be turned over many times in our community. You will probably hear from people who object to gaming and casinos. We have heard from those people as well. However, our community had an advisory vote in 2001 and the proposed casino won approval with over 54% of the vote. The main reason that the vote passed is because our area is already exposed to casino gaming. The Canadian government operates a casino just across the Blue Water Bridge (literally 500 yards from our site) in Port Huron. It takes less than ten minutes to get to the Canadian casino. 75-80 percent of their customers come from the States. So to hear people say they don't want another casino in Michigan, our people are already gambling and they are doing it in Canada. Unfortunately, our community doesn't receive any benefit. No jobs, no money for our local government, no money for schools and no money for our social services.

There are numerous entities that would benefit from a casino if it were located in Port Huron. I have included letters of support from my city council, the Economic Development Alliance of St. Clair County, the Superintendent of the Intermediate School District of St. Clair County, the United Way of St. Clair County as well as letters from local labor unions that support the casino. It is also important to note that Port Huron is the only border city in the northern tier that doesn't have a casino.

If the proposed Bay Mills Indian Community land claim settlement is given Congressional approval, the 3,000 plus jobs that would be created would make the casino the largest employer not only in Port Huron but in St. Clair County as well. The City of Port Huron needs these jobs. The region needs these jobs. I am here to speak on behalf of my community to request your support for immediate passage of H.R. 831, the Bay Mills Indian Community Land Claim Settlement Act. We cannot afford to wait any longer for this legislation to be enacted as it will result in a massive boost to our economy that will strengthen the Port Huron community and the lives of our citizens. I also wish to express my deepest gratitude to our Congresswoman, Candice Miller, for championing H.R. 831 and fighting so hard to do her part to turn the economy around for her constituents. I urge the chairman and the members of this committee to help her do right by our community.

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The CHAIRMAN. Thank you.

Mr. Shagen?

## STATEMENT OF PAUL W. SHAGEN, ESQ., SENIOR TRIBAL ATTORNEY, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS OF MICHIGAN, SAULT STE. MARIE, MICHIGAN

Mr. SHAGEN. Mr. Chairman and members of the Committee, thank you for the opportunity to testify today on behalf of the Sault Ste. Marie Tribe of Chippewa Indians and our chairman, Bernard Bouschor. As some of you may be aware, Chairman Bouschor looked forward to appearing before this Committee on this important piece of legislation, but was unable to attend because we are

in the process of concluding a tribal election today, so he is back in Sault Ste. Marie.

I am a Member of the Sault Tribe's Board of Directors. For a Sault Tribe, that is the Tribal Council. I was first elected in 1998. I am also a senior tribal attorney for Sault Tribe.

With nearly 30,000 members, we are one of the largest Indian tribes in the country and by far the largest in Michigan. The Sault Tribe and the Bay Mills Indian Community both hold claims to land in Charlotte Beach, Michigan, that was deeded in trust to the Governor in 1857 for the use and benefit of the tribes. The Charlotte Beach lands were later sold without the knowledge of either tribe. As a result, the tribes were denied their rights to their land and the current homeowners faced clouded title and greatly diminished property values.

In 2002, Michigan Governor John Engler reached separate land claims settlements with the Sault Tribe and Bay Mills. Under the settlements, the tribes agreed to relinquish all claims to the Charlotte Beach lands, and in return Governor Engler concurs in the provision of the alternative lands for the tribes. The settlements are the basis of the bipartisan legislation before the Committee today.

The Romulus site is of interest to the Sault Tribe in large part because the Detroit Metropolitan Wayne County Airport is located there. Many don't realize that Detroit Airport is one of the 10 busiest in the United States. We believe that a nearby casino would attract travelers and customers that are not now visiting downtown Detroit. The Romulus casino will also provide revenue for State and local Governments. We estimate that it would likely produce an additional $11 million a year in revenue to local Governments. In addition, we have agreed to pay an additional percentage of net gaming revenue from both the new casino and our casinos in the Upper Peninsula for a total of $32 million in revenue annually to the State. These additional fees are not currently paid by most competing tribes in Michigan.

We do not see a new casino in Romulus as a threat to Detroit. In fact, while we consider the possibility of a Romulus casino, we are planning to break ground on a permanent Greektown casino at a total cost of $450 million. A 2003 report by two Hillsdale College economists concluded that the addition of a Romulus casino would not saturate the Detroit market.

Nonetheless, we understand why our competitors in Detroit may raise concerns about a Romulus casino. We would, however, specifically ask Detroiters to understand the legal and historical circumstances that led to our settlement. We are committed to Detroit, and have indicated our willingness, as the Honorable John Dingell indicated, to work with the city and to ensure that Detroit's finances are not adversely affected by a Romulus casino.

Deputy Assistant Secretary Martin has raised a series of concerns both in her testimony today and in her letter that she submitted about this legislation. The Sault Tribe appreciates her comments and looks forward to working with Interior on addressing these issues, which we believe can be overcome. I would like to quickly address a couple of her concerns.

She argues that the gaming-related provisions of the agreements should be evaluated through compact amendments submitted to Interior. Unfortunately, compact amendments cannot resolve the Charlotte Beach land claims. Only Congress has the authority to extinguish tribal title to land.

Second, she suggested the revenue-sharing provisions of the agreements could violate IGRA. In response, I would note that Interior has approved compacts for every tribe in Michigan which include the exact same revenue-sharing provisions.

Third, she expresses concern about the impact of the settlements on Section 9 of the Michigan compacts. Section 9 was included in the compacts for the benefit of the Governor, and in this case, Governor has chosen to waive Section 9.

And also, just to talk briefly to the policy consideration that was raised by Secretary Martin, in 1994, the Department of Interior made a favorable finding which would have allowed tribal gaming by the Sault Tribe on after-acquired property in downtown Detroit. The reason that didn't occur was because the Governor of Michigan did not concur with that determination. It wasn't because of any objections from the Department of Interior.

We have also heard some concerns about the possible precedent of opening the casino on land at a distance from our reservation. And we don't view this as being an issue. Interior has reported that there are at least four tribes that have already done so, and one of these is in Michigan in the Upper Peninsula, Keweenaw Bay Indian Community. Another is in Wisconsin, where a tribe has a casino in Milwaukee, more than 200 miles from the tribe's reservation. Moreover, this is consistent with IGRA in that the settlement of a land claim exemption covers this exact situation before you today. Opponents may wish to graft a distance limit on the law, but it simply is not there.

In conclusion, we believe that H.R. 2793 and H.R. 831 deserve the support of the members of the Resources Committee. The bills will do several things. First, they will clear title and restore property values for the Charlotte Beach homeowners. Second, they will provide the tribes a fair compensation for the land to which they were entitled. And third, it will bring jobs and economic development to the communities that have voted to welcome tribal casinos.

Mr. Chairman, we look forward to working with you and the members of the Committees on this important piece of legislation and we thank you for the opportunity to testify today.

[The prepared statement of Mr. Shagen follows:]

**Statement of Paul W. Shagen, Esq., Member, Board of Directors and Senior Tribal Attorney, Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of the Sault Ste. Marie Tribe of Chippewa Indians and our Chairman, Bernard Bouschor. As you know, Chairman Bouschor looked forward to appearing before the Committee on this important legislation but is unable to attend because our tribe is concluding our election today. In his absence, I am pleased to be here to represent the Tribe.

I am a Member of the Sault Tribe's Board of Directors, which is our tribal council, and also a senior tribal attorney for the Sault. I was first elected to the Board in 1998. With nearly 30,000 members, we are one of the largest Indian tribes in the country and by far the largest in Michigan. Our territory is the eastern Upper Peninsula of Michigan, and our government is headquartered in the city of Sault Ste.

Marie. Although most of our members are in the Upper Peninsula, the next highest concentration of members are in Wayne County, in suburban Detroit.

We trace our roots to the Original Bands of the Sault Ste. Marie Chippewa Indians, which were organized tribes long before contact with white explorers in the 1600s. The Tribe's modern government began to take shape in the 1940s, when a group of Sugar Island residents began meeting to review their common history and develop a case for recognition. After more than 20 years of work, the Sault Tribe was recognized by the Secretary of the Interior in 1972. Land was taken into trust in 1974, and our Constitution was adopted in 1975.

Since the 1970s, the Sault Tribe has created a successful, business-based economy to provide programs, services, and jobs for tribal members. The Tribe controls five Kewadin casinos in Northern Michigan and 15 non-gaming businesses. We employ approximately 2,500 people and are northern Michigan's largest employer. We also own a majority interest in the Greektown Casino in Detroit, which is not an Indian casino.

*The Charlotte Beach Lands and the Settlement with State of Michigan*

The Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community both hold claims to land in Charlotte Beach, Michigan that was deeded in trust to the Governor of the State of Michigan in 1857 for the use and benefit of the Tribes and their predecessors.

The Charlotte Beach lands, approximately 125 acres total, were later sold without the knowledge or agreement of the Sault Tribe or Bay Mills. As a result, the Tribes were denied the rights to their land, and the current homeowners face clouded title, uncertain property rights, and greatly diminished property values. Litigation to resolve title was unsuccessful because the Sault Tribe, which was not a party to the central case, was found to be an "indispensable party." The Sixth Circuit court noted: "We are satisfied that the evidence establishes the existence of two separate tribes...both of which...have a potential interest in the Charlotte Beach property." Companion litigation in state court also failed to remove the cloud of title to the Charlotte beach parcels.

In 2002, Michigan Governor John Engler reached separate land claim settlements with the Sault Tribe and with Bay Mills. In short, under the settlements, the Tribes agree to relinquish any and all legal and equitable claims to the Charlotte Beach lands, and in return, the Governor concurs in the provision of alternative lands in Michigan for the Tribes. The settlements are the basis of the bipartisan legislation before the Committee today, and enactment of H.R. 2793 and H.R. 831 will ratify and implement the terms of the two settlements.

The agreements were the product of lengthy negotiations, during which Governor Engler embraced two priorities: 1) that any casino subsequently built on the alternative lands have no real impact on other tribes; and 2) that any new casino have prior local support. To accomplish the first goal, the Sault Tribe settlement limited the alternative lands to parcels in specific communities. To accomplish the second, our settlement explicitly requires the approval of local communities.

*Alternative Lands*

Our settlement provides for not more than two parcels of alternative lands, one of which could be in Otsego County, and the second of which could be in one of the following three locations: Monroe County; the City of Romulus; or the City of Flint. In each case, the settlement requires that the location be approved by the county or city, and in the case of Otsego County, it requires also the approval of the Little Traverse Bay Bands of Odawa Indians.

Notwithstanding the various options included in our settlement with the State—and the possibility of securing alternative lands in two locations—we have voluntarily elected to pursue only the possibility of alternative land in Romulus. We are excited at the prospect of bringing jobs and economic development to Romulus, and we have worked closely with Mayor Lambert to develop a plan that meets the needs of the City and its residents. We are also pleased that the voters of the city have already shown their support, approving a referendum last year to allow the casino gaming contemplated by our settlement agreement with the state to be conducted within the corporate limits of Romulus.

*Opportunity for Romulus and Its Residents*

A Sault Tribe casino in Romulus, if approved, would have an enormous positive impact on the community. It would result in scores of construction jobs while the casino is being built and add 3,500 permanent new positions at the casino once it is open. Other than supervisory personnel, the jobs will be high-paying, union jobs. We have already received more than 500 job applications from Romulus residents eager to work at the casino.

We expect that a casino in Romulus would be a magnet for other development in the city, including hotels, restaurants, and recreational facilities like a world-class golf course—all of which would bring jobs, taxes, and greater spending in the community.

The Romulus site is of interest to us in large part because the Detroit Metropolitan Wayne County Airport is located there. Many do not realize that the Detroit airport is one of the ten busiest in the United States, with more traffic than at JFK in New York or the airports in Newark, San Francisco, Seattle, or Miami. As Northwest Airline's primary international hub, millions of passengers travel through the Detroit airport on their way to or from international and domestic destinations. We believe a nearby casino, with shuttle service from the terminals, would attract travelers with short layovers—travelers not now visiting downtown Detroit or its casinos 20 miles away.

The Romulus casino will also provide revenue for the State and for local governments. We estimate that it would likely produce approximately $6 million in slot revenue to local governments and $5 million in property taxes for related development on land adjacent to the casino. In addition, the casino will generate about $24 million per year in revenues to the State, plus additional state revenues of about $8 million a year from our casinos in the Upper Peninsula under provisions of the agreement. The total increase in revenue to the State of Michigan will be approximately $32 million per year, not including additional revenue from the Bay Mills casinos.

Moreover, the revenue from the Romulus Casino will enable the Sault Tribe itself to provide needed services for our own people in our community, including health care, housing, law enforcement, education, and other social services.

*Impact on Detroit and Detroit Casinos*

Our friends from Detroit may express the concern that a casino in Romulus will have a negative impact on the non-Indian casinos that operate there. Obviously, as the majority owners of one of those casinos, Greektown, this is a subject to which we have devoted considerable attention.

The Sault Tribe joined with city leaders and developers in Detroit in the 1980s—before any other casino company took Detroit seriously—in an effort to bring gaming jobs, revenues, and tourists to the city. We took a risk in Detroit because we knew gaming there could benefit both the city and our Tribe. In the years since we opened Greektown, our vision has been proven correct. The Greektown Casino employs 2,300 people and pays them $100 million annually. We target a significant percentage of our $171 million spending on Detroit-based businesses, including small businesses and those owned by minorities. Greektown has paid more than $160 million in gaming taxes to the city and state.

We do not see a new casino in Romulus as a threat to Greektown. In fact, while we consider the possibility of a Romulus casino, we are also planning to break ground on a permanent Greektown Casino at a total project cost of about $450 million. The new casino-resort will have 3,300 employees and include a 400-room hotel, 100,000 square feet of gaming space, a spa, a 1,500-seat theater, and a 4,000-space attached garage.

The Sault Tribe has also commissioned studies to analyze the impact of a Romulus casino on the casinos in Detroit. A 2003 report concluded that the addition of a casino in Romulus would not saturate the Detroit market. The study, by two Hillsdale College economists, suggested that the potential size of the Detroit/Windsor market could approach that of the Chicago market. Even if a new casino in Romulus generated $325 million in revenue, the Detroit/Windsor market would remain nearly $500 million smaller than Chicago.

Nonetheless, we can understand why Detroit's leaders would raise concerns about a tribal casino about 20 miles from the downtown casinos. As in any metropolitan area, there is natural competition between businesses in the suburbs and the city. We would, however, respectfully ask Detroiters to understand the legal and historical circumstances that led to our settlement with Governor Engler. And we have indicated our willingness to work with the city to ensure that Detroit's finances are not adversely affected by the opening of a casino in Romulus.

*Need for Congressional Action*

The agreements will take effect when Congress approves the bipartisan legislation to ratify the settlements, extinguish the Tribes' land claims, and authorize the Secretary of the Interior to take the alternative lands into trust. Together, H.R. 2793 and H.R. 831 would accomplish these objectives. Only passage of both bills will clear title to the Charlotte Beach lands.

Recognizing this, the Sault Tribe is working closely with Bay Mills in support of the two bills. Last year, our Board of Directors passed a resolution in support of the Bay Mills legislation. The Bay Mills Executive Council considered and approved a similar measure with respect to our legislation. In a memorandum of understanding between the two tribes earlier this year, we reiterated our joint support for the enactment of the two bills that would resolve the Charlotte Beach issue.

In conclusion, we believe H.R. 2793 and H.R. 831 deserve the support of the Members of the Resources Committee. The bills will:

- Clear title and restore property values for the Charlotte Beach homeowners;
- Provide the Tribes with fair compensation for the land to which they were entitled; and
- Bring jobs and economic development to communities that have voted to welcome tribal casinos.

Mr. Chairman, we look forward to working with you and Members of the Committee on this important matter, and we thank you for the opportunity to testify today.

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The CHAIRMAN. Thank you.

Mr. Lambert?

**STATEMENT OF HON. ALAN R. LAMBERT, MAYOR, CITY OF ROMULUS, MICHIGAN**

Mr. LAMBERT. Thank you, Mr. Chairman, Committee members and distinguished guests. My name is Alan Lambert and I am the Mayor of the city of Romulus. Romulus is best known for being the home to Detroit Metropolitan Airport. If you have ever flown by commercial airline into Detroit, you have landed in our city. It is a pleasure to be here this afternoon to discuss a very important piece of bipartisan legislation introduced by Republican Congresswoman Candice Miller and Democratic Congressman John Dingell. In this election year, we are glad members of both parties agree that our city and the city of Port Huron should be able to vastly expand our economies by developing casinos that will add 3,500 new jobs to my city and thousands more to Port Huron.

In 2002, Michigan Governor John Engler took steps to settle a land dispute involving land in Charlotte Beach, Michigan to which the Sault Ste. Marie Tribe of Chippewa Indians and Bay Mills Indian Community have claims. To settle the claim, the Land Settlement Agreement signed by Governor Engler provided that the Bay Mills Tribe would be allowed to develop a casino in Port Huron and Sault Ste. Marie would be allowed to develop a casino in Vanderbilt in northern Michigan as well as one in Romulus, Flint, and Monroe.

The Sault Tribe has decided not to seek a casino in Vanderbilt and has chosen Romulus, my city, to be the location of the casino. Under Governor Engler's Land Settlement Agreements, the casino cannot be developed without the approval of the host cities and without the approval of Congress. Our City Council first provided host community approval through a resolution passed by a 5-2 vote. However, we felt this was too important to move forward without a voice of the people. Therefore, a referendum election was held on December 3, 2003, resulting in approval of the casino project in the city of Romulus.

As Mayor, I was a strong supporter of this referendum, for reasons that I will share with you. My reasons for support were simple. The casino will bring 3,500 new, high-paying, permanent jobs to our city of 23,000 people. A casino can be a beautiful

destination-style development that will include a hotel, convention center, and other amenities. It will also draw additional commercial development, such as retail stores, movie theaters, and offices, which our city needs very badly. The referendum also had the support of various local organizations, including unions, the Romulus Police Officers Association, Police Officers Association of Michigan, and the Southern Wayne County Regional Chamber of Commerce.

This casino is a real opportunity for our city and, actually, for all of southeast Michigan. Romulus Casino will provide revenue for the State and for local Governments, including approximately $6 million in slot revenue to the local Governments and $5 million in property taxes for development near the casino. The casino is a tremendous opportunity for the people of our city and for the region.

Because of the proximity to the airport, we have a responsibility to generate a positive economic climate for hotels and airline companies located within our city limits. Our airport is among the largest in the United States and the city of Romulus has the third-highest number of hotel rooms in the State of Michigan. Since 9/11, these businesses have suffered great losses. The casino will open up new opportunities that we could have never dreamed of and generate new businesses for them.

The average household income in Romulus is about $31,000 per year. These casino jobs will average about $40,000 per year, including benefits. We have had interest not only from residents, from our city, but also from people throughout southeast Michigan. At a job fair held last year for 2 days—these are some the applications I would like to show you—we had well over 500 people in the 2 days interested in jobs.

There have been some questions asked about what the impact of a Romulus casino would be on the existing Detroit casinos. A study was commissioned to examine the impact of the proposed casino on our community, including the economic impact of Romulus Casino on Detroit. Professor Gary Wolfram of Hillsdale College conducted the study. He is a noted economist and has real-life experience well beyond the classroom. He has served as deputy director of the Michigan Department of Treasury, appointed by Governor Engler, and also served on the Hill as chief of staff to Congressman Nick Smith.

The study, which I include as an attachment to my written testimony, concluded that a casino in Romulus would not have negative impact on the Detroit casinos. The analysis suggested that the Detroit casino market still has substantial room for growth. The study also concluded that if additional casinos can make Detroit a destination location to out-of-state travelers, the entire Michigan economy may substantially benefit.

In conclusion, a casino in Romulus would be a huge economic generator for our city and all of southeast Michigan, provide 3,500 permanent high-paying jobs, and would generate other types of commercial development that we need, such as offices, retail, and other forms of entertainment. Tax revenue to Romulus, southeast Michigan, and the State of Michigan will be significant. Finally, it would not be a detriment to the city of Detroit.

I urge you to support this very important bipartisan legislation introduced by Congresswoman Candice Miller and Congressman

John Dingell. Our residents supported it via referendum, our elected officials supported it through a host community resolution, and Governor John Engler supported it in the terms of Land Settlement Agreements. Now it needs your support as well. This is very important bipartisan legislation to our city, county, and State.

We thank you very much for your consideration.

[The prepared statement of Mr. Lambert follows:]

**Statement of The Honorable Alan R. Lambert, Mayor, City of Romulus, Michigan**

Mr. Chairman, Committee Members, Distinguished Guests:

I am Alan Lambert, Mayor of Romulus, Michigan.

Romulus is now best known for being the home to Detroit Metropolitan Airport. If you've ever flown by commercial airline into Detroit, you have landed in our city.

It is a pleasure to be here this afternoon to discuss a very important piece of bipartisan legislation introduced by Republican Congresswoman Candice Miller and Democratic Congressman John Dingell. In this election year, we're glad that members of both parties agree that our city and the City of Port Huron should be able to vastly expand our economies by developing casinos that will add 3,500 new jobs to our city and another 3,000 jobs to Port Huron.

In 2002, Michigan Governor John Engler took steps to settle a land dispute involving land in Charlotte Beach, Michigan to which the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian Community have claims. To settle the claim, the Land Settlement Agreements signed by Governor Engler provide that the Bay Mills Tribe would be allowed to develop a casino in Port Huron and the Sault Tribe would be allowed to develop a casino in Vanderbilt, in Northern Michigan, as well as one in either Romulus, Flint or Monroe.

The Sault Tribe has decided not to seek a casino in Vanderbilt and has chosen Romulus, my city, to be the location of its casino.

Under Governor Engler's Land Settlement Agreements, the casinos cannot be developed without the approval of the host cities and without the approval of Congress.

Our City Council first provided host community approval through a resolution passed by a 5-2 vote. However, we felt this was too important to move forward without a vote of the people. Therefore, a referendum election was held on December 3, 2003 resulting in approval of a casino project in the City of Romulus.

As Mayor, I was a strong supporter of the referendum—for reasons I will share with you today.

My reasons for support were simple. A casino will bring 3,500 new, high paying permanent jobs to our city of 23,000. A casino can be a beautiful destination style development that will include a hotel, convention center and other amenities. It will also draw additional commercial development such as retail stores, movie theaters, and offices.

The referendum also had the support of various local organizations, including unions, the Romulus Police Officers' Association, the Police Officers' Association of Michigan, and the Southern Wayne County Regional Chamber of Commerce.

This casino is a real opportunity for our city and all of Southeast Michigan.

The Romulus casino will provide revenue for the State and for local governments, including approximately $6 million in slot revenue to local governments and $5 million in property taxes for development near the new casino.

A casino is a tremendous opportunity for the people of our city and the region.

Because of proximity to the airport, we have a responsibility to generate a positive economic climate for our hotels and airline companies located within our own city limits. Our airport is among the largest in the United States, and the City of Romulus has the third highest number of hotel rooms in the State of Michigan. Since 9/11 these businesses have suffered great losses. A casino will open up new opportunities that we could have never dreamed of, and generate new business for them.

The average household income in Romulus is $31,000 per year. The casino jobs will average $40,000 per year, including benefits. We have had interest, not only from residents from our city, but also from people throughout Southeast Michigan. At a job fair held last year, more than 500 Romulus residents submitted applications for jobs at the casino.

There have been some questions asked about what the impact of a Romulus casino would be on the existing Detroit casinos. A study was commissioned to exam-

ine the impact of the proposed casino on our community, including the economic impact of a Romulus casino on Detroit.

Professor Gary Wolfram of Hillsdale College conducted the study. He is a noted economist who has real-life experience well beyond the classroom. He has served as Deputy Director of the Michigan Department of Treasury, appointed by Governor Engler, and also served here on the Hill as Chief of Staff to Congressman Nick Smith (R-MI).

The study, which I include as an attachment to my written testimony, concluded that a casino in Romulus would NOT have a negative impact on the Detroit casinos. The analysis suggested that the Detroit casino market still has substantial room for growth. The study also concluded that if additional casinos can make Detroit a destination location for out-of-state travelers, the entire Michigan economy may substantially benefit.

In conclusion, a casino in Romulus will be a huge economic generator for our city and all of Southeast Michigan. It will provide 3,500 permanent high paying jobs, and it would generate other types of commercial development that we need, such as offices, retail stores, and other forms of entertainment.

The tax revenue to Romulus, Southeast Michigan, and the State of Michigan will be significant, and finally it would not be detrimental to the City of Detroit.

I urge you to support this very important bi-partisan legislation introduced by Congresswoman Candice Miller and Congressman John Dingell. Our residents supported it via referendum. Our elected officials supported it through a host community resolution. And Governor John Engler supported it in the terms of the Land Settlement Agreements Now, it needs your support as well. This is very important bi-partisan legislation to our city, county, and state.

Thank you very much.

NOTE: The Wolfram study attached to Mr. Lambert's statement has been retained in the Committee's official files.

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The CHAIRMAN. Thank you. I thank the entire panel for your testimony.

Any of you can answer this. How close together in terms of miles are these two sites?

Mr. NEAL. I think, Mr. Chairman, I would estimate we are probably about 75 miles from each other.

The CHAIRMAN. That is pretty close.

In trying to settle this, why were these two sites chosen?

Mr. PARKER. I can answer that to some extent. This is what the Governor of the State of Michigan wanted at the time of negotiations. And as I stated earlier, he really wanted something in Port Huron to compete with what was happening across the border and to try to stem the flow of cash going from Michigan into Ontario, Canada.

The CHAIRMAN. And the other site, was there a specific reason why that was chosen?

Mr. LAMBERT. If I could, Mr. Chairman. I note that he had given a choice of the three locations, Romulus, Monroe, and Flint, and I believe the Sault picked our location because of the airport and thought it could be a new way to get people to fly in.

Mr. SHAGEN. And obviously another component of that is that these are two communities that have consented to this and that want this and are excited about this opportunity. So that is another reason for this.

The CHAIRMAN. Was there a reason why both of these were not put in the same city?

Mr. PARKER. I would imagine that Governor Engler may be a person who could answer that question. We were negotiating with the State of Michigan to settle the Bay Mills claim to lands that were taken from us. So our settlement was specific to us.

The CHAIRMAN. And were all the negotiations separate?

Mr. PARKER. Yes.

The CHAIRMAN. And obviously, this is something that has been going on for a number of years in trying to come up with a settlement. And we have had testimony in the other body that was not the agreement that there is today on supporting both bills. And there are some concerns amongst members of the Committee as to why the opinion has changed over the last couple of years in terms of support of the different land claims. I think we need to explore that a little bit in terms of why opinions have changed in the last couple of years with it.

Mr. SHAGEN. Is that question directed at myself?

The CHAIRMAN. Predominantly, yes.

Mr. SHAGEN. OK, thank you. In the past I know that Chairman Bouschor testified before the Senate Committee on Indian Affairs. And, you know, at that point in time, we hadn't entered into a settlement agreement with Governor Engler yet. And we understood, and so did the landowners, that this would not clear their title, that, as the Sixth Circuit has ruled, we are an indispensable party, we have a claim. And, you know, we could not support the legislation at that point in time because, quite frankly, it didn't include us and it wasn't going to resolve the issue, from our perspective. So now that we have worked, the two tribes have cooperated since then and we now have a settlement agreement similar to what Bay Mills has, and we feel now that these two bills together, jointly, will resolve this land claim issue. So that is the reason why Sault Tribe is now supporting this measure, because we are included in it when we should have been included initially.

The CHAIRMAN. All right. Thank you.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Shagen, do you have a petition before the Department of Interior now on this land settlement and taking the land into trust?

Mr. SHAGEN. I don't believe that we do at this point. I understand that Bay Mills has submitted their settlement agreement to the Department of Interior. That is not something that we have done. That is something that we are amenable to and that we can go forward with and work with Interior to resolve some of these issues. We don't object to that. But we haven't done that up to this point.

Mr. KILDEE. And I would suggest that it would probably be a prudent thing to do, to have at least two venues there to pursue your petition. And that is the more appropriate venue, particularly for this type of petition. You mentioned four, and there may very well be four. I can only find three where the land not contiguous to the reservation was taken into trust for the purpose of gaming. That is one in Wisconsin, one in Washington, and of course the Keweenaw Bay in Michigan. But whether it be three or four, all of those, those three or four, were all done through the administrative process. None were done through the Congressional process. So I think it would be just a prudent thing to do the same as Bay Mills has done, is to use both avenues or venues for that purpose.

Mr. SHAGEN. I believe the fourth was the Seneca Nation of New York on a location in Niagara Falls.

Mr. KILDEE. I wasn't aware of that one. I was aware of the there. The Mayor of Romulus—

Mr. LAMBERT. Yes, sir.

Mr. KILDEE. I fly into your city every week. I do know that Romulus has gone through similar things to Flint, Michigan, right, it has had its great days and not so great days and some changes in automotive industry and manufacturing in general.

Mr. LAMBERT. Yes, sir.

Mr. KILDEE. You are convinced, I am sure, then, that Romulus could compete in that market? You really will have, if you are successful in getting a casino getting a casino there, you will have four casinos in Wayne County, right—the three in Detroit and the one in Romulus?

Mr. LAMBERT. That is correct, sir.

Mr. KILDEE. How many miles away from Detroit is Romulus, roughly?

Mr. LAMBERT. Approximately 25.

Mr. KILDEE. Twenty-five miles?

Mr. LAMBERT. Yes.

Mr. KILDEE. And you think you could compete with the other three in Wayne County?

Mr. LAMBERT. Yes, we do.

Mr. KILDEE. Can you tell us why you think, what factors have gone into that?

Mr. LAMBERT. I think what is going to be a major key is having new business, actually people flying into the airport. This is going to be a resort-style with a convention center. We believe we are going to be able to have a lot of fly in traffic that doesn't come to Detroit right now. In fact, we believe when they do fly in, they will visit the Romulus site and also go to Detroit and visit the sites there.

Mr. KILDEE. So you think the three in Detroit—one of which is not trust territory; the Sault Ste. Marie is primarily owned by the tribe but it is not trust territory—if they and the other two, MGM and the other one, would be able to succeed also along with yours?

Mr. LAMBERT. We believe that to be correct, sir.

Mr. KILDEE. And there are market studies on that?

Mr. LAMBERT. That is right, there are.

Mr. KILDEE. All right. Well, I helped write IGRA and I tried to fair in IGRA. This is a difficult time for me, because I have friends all over. Jeff, you and I have been friends for a long time, and I hope that will persist before, during, and after this discussion here. But several things that I pushed in IGRA which I think have been helpful to the Native Americans, one was the Land Claims Settlement Exemption. We pushed that in there because we foresaw that things like this could happen where there were claims. And I am very aware, Chairman Taylor, of your claim at Charlotte Beach there. And we put that in, and I think we probably assumed, however, that that would be done more through, as the other four had been done, through the administrative process rather than a Congressional process. But I did help put that in because I could see situations that both Sault Ste. Marie and Bay Mills have.

Another thing I pushed to put in the bill at that time, because I was on the Committee then, on IGRA, was the fact that if States

are not bargaining in good faith, then the Secretary of Interior could intervene and bargain for that. And Bruce Babbitt came close to promulgating the rules on doing just that. So we tried to be fair to everyone, tried to be fair to the Indian tribes. And after the Cabazon decision, I am proud of the fact that I helped write IGRA, and I want IGRA to work. And I would prefer, certainly, however, obviously with my position being what it is today, that you use the administrative process rather than the Congressional process because I am just a little fearful of the precedent that we may create here by other people coming to Congress asking to bypass that administrative process.

But otherwise, Mr. Chairman, I have no questions. I think all the witnesses have testified very well.

The CHAIRMAN. Thank you.

Mr. Gibbons?

Mr. GIBBONS. [Presiding.] Thank you, Mr. Kildee. And since it is my turn to ask a question, I think I will take advantage of this opportunity.

I would like to ask Mr. Shagen, since he is the resident expert on IGRA—

Mr. SHAGEN. Oh, I don't—let's not get carried away here.

Mr. GIBBONS. Well, we are going to assume that because you are the senior attorney for the tribe.

One of the core requirements of IGRA, in order to establish a casino on non-ancestral land, is to get the consultation and approval of the other nearby tribes. Is that correct?

Mr. SHAGEN. I don't believe that to be the case.

Mr. GIBBONS. It is not?

Mr. SHAGEN. Yes.

Mr. GIBBONS. Then I have been misled into my understanding of what IGRA requires as well. So you are telling this Committee that it is not a requirement? Is that correct?

Mr. SHAGEN. It is not under—I have been advised it is not under IGRA, but it is under the Indian Reorganization Act, the land to trust requirements. So there is nothing in IGRA as far as requiring—

Mr. GIBBONS. All right, that is—you are right. You are right. I take back my statement about that. But you have identified the issue that if it is going to be taken into trust by the Government for a casino, it requires consultation and approval of the neighboring tribes, does it not?

Mr. SHAGEN. It does, for the land to trust. And that was one of the primary concerns of Governor Engler in adopting the settlement agreement, that it, one, there is the local approval from the local community; two, that it not adversely impact another tribe. In the case of the Vanderbilt site, we had a consent requirement, if we had gone forward with that, that we got the consent of the Little Traverse Bay Bands of Odawa Indians. However, we have foregone that.

Mr. GIBBONS. So there are some tribes that are here in the audience today, I am sure you are aware, who are not in support of this idea.

Mr. SHAGEN. Yes.

Mr. GIBBONS. What efforts have you taken on behalf of this tribe to see that the essential component that we are talking about here has been met with to assure fairness to those other tribes?

Mr. SHAGEN. Well, what I have been told is that it is actually—the requirement is consultation with the other tribes for the land to trust, not necessarily—

Mr. GIBBONS. Is it consultation with the BIA, or actually agreement with the other tribes as well?

Mr. SHAGEN. It is consultation—not agreement. Consultation with the other tribes is the requirement. And as far as the other tribes, what attempt we have taken, it is no secret that we are business competitors. You know, the Saginaw Chippewa Tribe is located north of Detroit and I am sure that they will be here today testifying in opposition to that. And, you know, a casino in Port Huron may impact them in some way. But we are business competitors and, you know, that is the reality of the situation.

Mr. GIBBONS. So you don't feel at all averse to the idea that you could install or put this casino in place without the consent or approval or acceptance of your project by those neighboring tribes?

Mr. SHAGEN. I mean, I think in the best-case scenario it would be nice to always be able to—

Mr. GIBBONS. Well, that is in the best-case scenario. This is what you are doing today—

Mr. SHAGEN. Exactly.

Mr. GIBBONS. Let me ask the Mayor of Romulus, Mr. Lambert. Sir, welcome before the Committee.

Mr. LAMBERT. Thank you.

Mr. GIBBONS. I know that Mr. Kildee talked about the three other casinos in Detroit. This would be a fourth. Those other three casinos pay a nine-something, 9.9 percent tax on the gaming revenues to those communities.

Mr. LAMBERT. Right.

Mr. GIBBONS. What steps are being taken should that revenue drop off dramatically by those communities and those Government agencies for that share of revenue that you are going to take from there?

Mr. LAMBERT. Actually, I think I should refer back to Mr. Shagen, because the Sault had said that they were going to work with Detroit on lost revenue. Actually, the city of Romulus would have nothing to do with it. Detroit maybe would get 9 percent of whatever percent they get, we would get 2 percent, out of the compact. So that money would be for the city of Romulus. The Sault had mentioned they would work with Detroit on any kind of revenue loss.

Mr. GIBBONS. All right.

Mr. LAMBERT. Are in negotiations with them at this point, I believe.

Mr. GIBBONS. And if we do this, would you have a problem with us granting a trust status for a casino development right next-door to your property?

Mr. SHAGEN. I guess that is something that I am not prepared to answer at this point.

Mr. GIBBONS. Well, what would you—just throw it up as a ballpark kind of concept idea. If we got one on either side of you, right

next-door, would you—it certainly would be OK with Romulus, because they are going to get the revenue from it. But would you be OK with it?

Mr. SHAGEN. We probably would be in the same situation as some of the other tribes in trying to protect our market.

Mr. GIBBONS. That is all I wanted to know.

Mr. Kildee, do you have any further questions?

Mr. KILDEE. Yes, thank you, Mr. Chairman. I appreciate that.

Mr. Parker, if I may ask you, if we would pass this law as written now, we would in effect put the compact terms into law. How, then, would you be able to modify or renegotiate that compact if it is part of Federal law?

Mr. PARKER. That is an interesting question simply because we are not asking you to modify or approve our existing compacts. Our existing compacts have already been approved. They were approved in 1993. They were published in the Federal Register. And they allow us to game on the site we have now and also on the site in Port Huron. What we are asking now for Congress to do is to relinquish our claim to the Charlotte Beach area by Congressionally approving the settlement agreement we have with the Governor of the State of Michigan—a totally separate document from the compact.

Mr. KILDEE. I am wondering if, dealing with your attorneys—and Mr. Shagen, yourself, you are an attorney—if it might be better, if this bill is to move forward, to take the language put in the compact into a Federal law out, because it seems to me that in the future you would have a difficult time changing that compact without changing Federal law.

Mr. PARKER. But the compact is not being modified or addressed in any way through this legislation.

Mr. KILDEE. No, but if you wanted to modify it in the future—

Mr. PARKER. There are provisions in the compact to do this. Because the compact itself is not a part of the pertinent law, nor is it as an attachment modifying this. This is just simply a settlement agreement. We were told by Interior that in order for us to resolve our claim, we had to have an Act of Congress.

Mr. KILDEE. I would just advise you—and I am not an attorney, I am a Latin teacher—just to make sure that you haven't locked yourself in in the future, just to review that again.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you very much, Mr. Kildee. And to each of our panel members, I want to thank you—Oh, excuse me. Mr. Cole has a question. I am sorry.

Mr. COLE. Thank you very much, Mr. Chairman. I will try and be brief because I know it is late.

I just wanted to make a point, actually. First of all, I wanted to thank you, gentlemen, for, frankly, the cooperative spirit. I am always impressed when I see—I live in a State that has a lot of disputes between the State, the localities, and the tribes. And to see them all come together around an agreement I think is always a very impressive achievement. There are very legitimate policy and process issues here, and I have not made up my mind about those, but I very much appreciate the manner in which you have tried to settle a problem and help a community and, frankly, take a tribe,

which I think is an asset to a community, and turn it into something that is good for all concerned.

Insofar as opposition to what you are trying to do is focused on legitimate concerns about process and are we setting precedents here that are bad, I think that is fair and we ought to look at that very carefully. On the other hand, if the opposition is simply economic—you know, we have it here, we don't want you to have it there, that cuts in—that is not legitimate. I mean, every tribe has a right to develop its assets, and to do so in a cooperative and conciliatory way with the other governmental entities with which you are dealing is really very impressive. And you are to be commended.

So I hope we will try and find ways to work with you to resolve the problems, as opposed to taking an approach—and I am sure we will try to work with you, but as opposed to letting, you know, competing economic interests drive this. It ought to really be about the process and what is right. And again, I would tell you there are a lot of communities in the country, and a lot of States, that could learn a lot from the process that you developed to get to this point. So thank you for your efforts in that regard.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you very much, Mr. Cole.

Mr. Stupak?

Mr. STUPAK. Mr. Chairman, thank you.

Mr. Parker, when did the Bay Mills Community first seek assistance from the Department of Interior for help in pursuing its land claim here on Charlotte Beach? And has it been a long-time venture, or is it something that mostly has come up with the expansion of gaming opportunities?

Mr. PARKER. This goes back to 1925. We made reference to the Interior Department to assist us in getting the property back. Land claims—that was going through a while back, meaning Land Claims Commission was reviewing the stuff, we submitted it to them. They let it go, though, because it was with the State not the Federal Government, although in other instances where tribes had claims with the State, they were allowed to go forward. So this is something we have been working on for quite some time. And your predecessor Mr. Davis, Congressman Davis, was working on this also.

Mr. STUPAK. Was the Port Huron area ever part of your aboriginal land? And if so, was this land ever ceded under treaties with the United States?

Mr. PARKER. It is our belief from our research that, yes, it was. In 1807 there was a treaty that ceded that portion of the land to the Federal Government. And I briefly touched on this before. And when they talked about the larger Chippewa Tribe, what they were talking about was the Chippewa Nation that was located in the Michigan area. After that treaty and that negotiation, that is when they started breaking—the Federal Government started breaking a nation up into tribes and smaller bands to facilitate the cession treaties that were going forward. And as I had stated earlier, the post-secondary educational opportunities that Michigan tribal representatives enjoy are based on that treaty of 1807. And that is open to all tribal Indians in Michigan.

Mr. STUPAK. When you mention universities, are you saying that secondary education is for Chippewa Indians available through Michigan universities based upon the treaties?

Mr. PARKER. And it is Odawa— This was Indian population of Michigan. It is open to everybody.

Mr. STUPAK. And that admission is to all State universities, or certain ones?

Mr. PARKER. State universities and State community colleges.

Mr. STUPAK. Have members of your tribe been able to take advantage of that?

Mr. PARKER. I did.

Mr. STUPAK. You did?

Mr. PARKER. Mm-hm.

Mr. STUPAK. Anyone currently?

Mr. PARKER. Quite a few.

Mr. STUPAK. OK.

Mr. Shagen, there has been some discussion today about Section 9 of the Michigan compact with the Community. Could you explain to the Committee what Section 9 is and why it is or is not a problem? It seems to be perceived a problem, at least by BIA.

Mr. SHAGEN. Section 9 of the compact required that gaming revenues from a casino on newly acquired land be shared among all of the Indian tribes of Michigan. And it is my understanding that Section 9, and I believe that the Governor's counsel at the last hearing testified to this, that Section 9 was included in the Tribal-State Gaming Compact for the benefit of the Governor. And in this case, Section 9 is not implicated, because the Governor chose to waive that requirement.

Mr. STUPAK. Well, then, do the tribes then pay money to the State of Michigan? I am not talking about local communities, but to the State of Michigan for the benefit of the people of the State of Michigan?

Mr. SHAGEN. I am sorry, I didn't catch the first part of that.

Mr. STUPAK. Do the tribes pay part of their casino revenues to the State of Michigan for the benefit of the State of Michigan?—and not necessarily local communities that may be around the reservation.

Mr. SHAGEN. We don't currently, but under the provisions of the settlement agreement with the State, we would pay 8 percent to the State from Romulus and, in addition, we would once again start paying the 8 percent from our northern casino properties to the State.

Mr. STUPAK. So by doing this agreement, this land transfer—the title of your property is extinguished and in exchange you get these two parcels of property, and if you do put up casinos, then 8 percent not only of the revenues from, in your case, Romulus or Bay Mills/Port Huron, but also 8 percent from your northern casinos would then go to the State of Michigan?

Mr. SHAGEN. Exactly. And we estimate that—

Mr. STUPAK. Would any other tribes be required to do that 8 percent?

Mr. SHAGEN. No.

Mr. STUPAK. So if there is some perceived advantage, economic advantage to you, you would still pay 8 percent, which would be

a disincentive to go through with this agreement because not only would you do it for your new locations, but also your current location. Is that correct?

Mr. SHAGEN. Yes, we would pay 8 percent on all locations across the board.

Mr. STUPAK. There has been some discussion about Detroit, and I think you hit it a little bit, but if you would take an opportunity, I would like to give you an opportunity to express or indicate how would the Sault Tribe make Detroit whole, or how it may or may not change if this bill is enacted?

Mr. SHAGEN. Well, I wasn't involved in those discussions, necessarily, with the city, but it is my understanding that there is a proposal on arrangement, that is being worked on, whereby the Sault Tribe from the Romulus property would make up any economic loss to the city, assuming that that occurred. It is our opinion that that won't occur and that the Detroit market can sustain an additional casino very easily. But in the event that that happened, we are in the process right now of working with the city to try to resolve the issue.

Mr. STUPAK. You are somewhat familiar with the city of Detroit and your casino down there, Mr. Shagen. Is there any requirement of consultation or permission of other casino owners before your new casino in Greektown rolls out their new casino? Or do you have to get permission from them to do something? Do you have to get permission from them to put in a new type of gaming? Do you have to get permission from them to increase the odds or lessen the odds?

Mr. SHAGEN. Well, we have to work with the Michigan Gaming Control Board and their restrictions, but not the other casinos.

Mr. STUPAK. With that, Mr. Chairman, I yield back.

Mr. GIBBONS. Thank you very much. And with that, if there are no further questions, I would excuse our third panel with a vote of thanks for your testimony here today. We have appreciated it. It has been helpful to us. And we will excuse you and call up the fourth panel.

The fourth panel is the Honorable George Bennett, Tribal Councilor of the Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan; Tribal Chief Audrey Falcon, the Saginaw Chippewa Indian Tribe of Mount Pleasant, Michigan; Mr. Richard Cummings, President of Michigan Machinists Council, Port Huron, Michigan; and Mr. William Black, Legislative and Community Affairs Director, Michigan International Brotherhood of Teamsters, Detroit, Michigan.

Before you would be seated, if you would all rise and raise your right hand.

[Witnesses sworn.]

Mr. GIBBONS. Let the record reflect that each of the witnesses answered in the affirmative.

And to each of our witnesses, let me begin by welcoming you to the panel here today. As we have explained to each of the panels before you, and I am sure you heard, there is a series of little lights in front of you that try to move the process along by giving you sort of a stoplight effect. If it is green, you can go; if it is yellow, we ask you to sort of try to slow down and sum it up; and when it is

red, it indicates that your 5 minutes time has come to an end and we would appreciate it if you would yield to courtesy and wrap up your testimony.

With that, I think we will just begin in the order that we listed you on the sign-up sheet. We will begin with the Honorable George Bennett. We would like to welcome you, and the floor is yours. We look forward to your testimony.

Mr. Bennett.

**STATEMENT OF GEORGE BENNETT, TRIBAL COUNCIL, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, SUTTONS BAY, MICHIGAN**

Mr. BENNETT. Good afternoon, Mr. Chairman, distinguished members of the Resources Committee. My name is George E. Bennett, and I am the Vice Chairman of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians located near Traverse City, Michigan. I am here on behalf of the Honorable Robert Kewaygoshkum, our chairman, who was unable to reschedule another commitment here and was unable to be here with us today.

With me today is my friend and colleague, the Honorable David Arroyo, who is on my left.

First, thank you, Mr. Chairman and members of the Committee, for the courtesy of inviting us to testify before your Committee today. We have focused our testimony directly on H.R. 831 and H.R. 2793, as introduced. I would request that if there are any changes under consideration to those bills that we be given a reasonable amount of time to review and comment on such changes before they are given serious consideration.

Mr. Chairman, we request that our written testimony and resolution be entered into the record and I will summarize my testimony in order to save time, and answer any questions you may have regarding my comments.

Mr. GIBBONS. Let me say, without objection it will be so entered into the record. Thank you.

Mr. BENNETT. Thank you, Mr. Chairman.

The proposed legislation is premised on a sham concoction of an unfounded land claim. While our tribe is for fair and rule-governing economic competition within the marketplace, these proposals would change the rules, relieve the tribes of their contractual obligations to other Michigan tribes, and create an exemption of Federal rules governing the establishment of new gaming facilities far from the traditional tribal lands. We respectfully, but forcefully, must oppose this legislation.

Mr. Chairman, the legislation pending before this Committee asks Congress to violate the Federal trust responsibility and notions of fundamental fairness by requesting that Congress write special rules favoring a few specific tribes over others, all in contravention of a clear agreement made that these specific tribes respect the rights of other Michigan tribes. If this legislation is enacted by Congress, it would establish a terribly destructive precedent that would unleash an avalanche of land claims before the Congress in Indian country and in our communities throughout the Nation.

As an alternative solution, Bay Mills and Sault Ste. Marie tribes are fully authorized and able to pursue Section 2719(b)(1)(A) applications under the Indian Gaming Regulatory Act with the Secretary of the Interior in order to advance their desire to game on off-reservation land, without involving a Congressionally imposed settlement of a sham land claim. And Bay Mills and Sault Ste. Marie are fully capable of honoring their obligations to Michigan tribes under Section 9 of our Michigan State Gaming Compact Agreement in process.

The Congress should reject these bills and not assist them in reneging on their obligations to the 10 other tribes in Michigan.

Mr. Chairman, again, "miigwech." Thank you for the opportunity this Committee has given our tribe to testify.

[The prepared statement of Robert Kewaygoshkum and the resolution follow:]

**Statement of The Honorable Robert Kewaygoshkum, Chairman, Presented by The Honorable George Bennett, Tribal Councilor, on behalf of The Grand Traverse Band of Ottawa and Chippewa Indians**

*Introduction.*

Good afternoon, Mr. Chairman and Members of this distinguished Committee. My name is George Bennett. I am a member of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, located near Traverse City, MI. I am here on behalf of our Tribal Council, and its Chairman, the Honorable Robert Kewaygoshkum, who was unable to reschedule another commitment he had for today. With me is my colleague and fellow Tribal Councilor, the Honorable Dave Arroyo.

I would like to thank this Committee for inviting the Grand Traverse Band to testify today. We have focused our testimony on H.R. 831 and H.R. 2793 as introduced and would request that if there are any changes under consideration to those bills that we be given a reasonable amount of time to review and comment on such changes before they are given serious consideration.

Both H.R. 831 and H.R. 2793, and a companion Senate bill introduced several years ago, S. 2986, attempt to provide a legislative remedy for an un-established and unfounded land claim of the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians. In so doing, these bills attempt to circumvent a very important promise made by seven Michigan Tribes, including Bay Mills, Sault Ste. Marie, and the Grand Traverse Band, when they entered into their IGRA Gaming Compacts with the State of Michigan in 1993. At that time, each of our seven Tribes pledged not only to the State but to each other that we would not engage in economic warfare over gaming. Each Tribe agreed that it would pursue proposals to establish casinos far removed from its traditional territory only if it had first reached a revenue-sharing agreement with the other six Tribes.

This inter-tribal agreement was critical to each Tribe's survival, because proposals to game far off-reservation in the more populous parts of the State posed then and pose today the real potential to choke off the revenues of casinos closer to home that the Tribes rely upon to fund essential governmental programs and for employment. H.R. 831 and H.R. 2793, as proposed by Bay Mills and Sault Ste. Marie, brazenly violate that promise. Rather than honoring their Compact pledge, Bay Mills and Sault Ste. Marie have asked the federal Congress to impose federal legislation—based on a land claim that has never been proven—that would excuse them from complying with their inter-Tribal promises and that would instead favor them to the great detriment of others, all in violation of the Federal trust responsibility to act with the interests of all Tribes in mind. Congress should reject the Bay Mills and Sault Ste. Marie request to legislatively impose such an unfair proposal. For these reasons, the Grand Traverse Band respectfully but firmly opposes H.R. 831 and H.R. 2793 and similar legislative provisions with false land claim premises and unfair results.

We take no pleasure in opposing legislation sought by two of our sister Indian tribes. We have worked with both the Bay Mills and the Sault Ste. Marie Tribes on many issues of common interest and concern over the years. We expect to do more of the same in the future. But as set out below, the rationale for the bills before this Committee is without foundation in fact or law or sound Indian policy.

H.R. 831 and H.R. 2793 would set a bad precedent and produce a grossly unfair result in violation of Compact agreements, the Indian Gaming Regulatory Act (the "Act" or "IGRA"), and a policy of fair dealings. We must therefore oppose their enactment.

*Background on the Grand Traverse Band.*

The traditional tribal territory of the Grand Traverse Band ("GTB" or "Band"), is located in the northwest portion of Michigan's lower peninsula. The Band operates two casinos under the provisions of IGRA, both of which are situated well within the traditional territory of the Band. Our Peshawbestown casino, Leelanau Sands, is located in the heart of our 1855 treaty reservation near the center of the Band's modern-day government operations in Peshawbestown, Michigan. Our Turtle Creek casino falls squarely within the Band's traditional territory near the exterior boundaries of our 1836 treaty reservation.

In a decision upholding the legality of our Turtle Creek Casino under the Act, the U.S. Court of Appeals for the Sixth Circuit very recently affirmed the finding of U.S. District Court Judge Douglas W. Hillman that the casino is located "...at the heart of the region that comprised the core of the Band's aboriginal territory and was historically important to the economy and culture of the Band." Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney,—F.3d—, 2004 WL 1144510, *1 (6th Cir. 2004) (quoting Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney 198 F.Supp. 2d 920, 926 (W.D.Mich. 2002)). [While the case name of the Sixth Circuit and district court Turtle Creek decisions reflects the fact that GTB originally brought a declaratory judgment action against the United States to establish the legality of its Turtle Creek Casino, the United States, in an opinion issued by the National Indian Gaming Commission and concurred in by the Secretary of the Interior, declared prior to trial its own view that the Casino was legal under the Act, again based on the casino's location in the Tribe's core territory. The Turtle Creek litigation accordingly proceeded only against the State of Michigan.]

*H.R. 831 and H.R. 2793 Would Establish a Devastating Precedent.*

H.R. 831 and H.R. 2793 are, at best, premature. They are both premised on purported land claims which have never been established in any court of law. It would be risky and ill-considered for the U.S. Congress to preempt normal judicial processes by wading into a dispute imposing a remedy before there is any adjudication of the claims. Yet this is what these two bills would do. They would by-pass the courts and force upon the local communities, Indian and non-Indian alike, remedies with all kinds of ramifications, both intended and perhaps unintended. Chief among these would be Congress's validation of the effort by Bay Mills and Sault Ste. Marie to evade the promise made in their IGRA gaming compacts that they would not pursue casino proposals far off-reservation without first taking into account the interests of other Michigan Tribes.

H.R. 831 and H.R. 2793 Are Premised on Land Claims That Have Been Rejected Both By the Courts and the Secretary of the Interior.

H.R. 831 and H.R. 2793 would ratify a land claim settlement where the underlying land claim has never been proven to be valid. In both state and federal court, the Bay Mills Indian Community has attempted to establish a valid land claim to the Charlotte Beach property. [See Bay Mills Indian Community v. Western United Life Assurance Co., No. 2:96-CV-275, 26 Indian L. Rep. 3039 (W.D. Mich., Dec. 11, 1998), aff'd, 208 F. 3d 212, 2000 WL 282455 (6th Cir., Mar. 8, 2000)); Bay Mills Indian Community v. Court of Claims, State of Michigan, 244 Mich. App. 739, 626 N.W. 2d 739 (2001), cert. denied, 122 S. Ct. 1303 (2002). Notably, the Charlotte Beach land claim site is located within Chippewa County, an Upper Peninsula county in which both Bay Mills Indian Community and Sault Ste. Marie Tribe have long resided and have their trust and reservation lands.] The essence of Bay Mills' land claim is that the United States issued patents to tribal land on or near Charlotte Beach to a non-Indian prior to the Congressional ratification of the 1855 treaty. [See 626 N.W.2d at 172.] Bay Mills claims that the land, which was eventually lost to county property tax foreclosure, remained in trust and should never have been subject to state or local taxes. [See id.]

From the beginning, the Grand Traverse Band has supported Bay Mills' attempts to prove the validity of its Charlotte Beach land claims in a court of law. We would strongly support further attempts by Bay Mills to establish its judicial claims, including a Congressional waiver of the sovereign immunity of any indispensable parties for the purpose of reaching the merits of the Charlotte Beach land claim.

To this point, however, on each of its attempts to judicially establish a land claim, Bay Mills has failed to affirmatively make its case. For example, in Bay Mills

Indian Community v. Court of Claims, State of Michigan, a case decided in the Michigan state courts and with respect to which the United States Supreme Court recently denied certiorari, the Michigan Court of Appeals held that Bay Mills did not establish a prima facie case that the State of Michigan and the United States violated the Non-Intercourse Act. [See id. at 173-174.] The same court also found that the land at issue was properly subject to county property taxes because the federal government intended for the land to be alienable when it issued the patents. [See id. at 172-73 (citing Cass Co., Minnesota v. Leech Lake Band of Chippewa Indians, 524 U.S. 103 (1998)).] The federal court litigation, entitled Bay Mills Indian Community v. Western United Life Assurance Co., also failed to establish a land claim as it was dismissed because of the refusal of the Sault Ste. Marie Tribe to waive its sovereign immunity and participate in the litigation. [See 26 Indian L. Rep. at 3041-42 (finding the Sault Ste. Marie Tribe indispensable to further proceedings in the Charlotte Beach land claims litigation).] As such, the liability of the State of Michigan or the United States has never been established by Bay Mills or Sault Ste. Marie, and Sault Ste. Marie has in fact affirmatively sought to preclude a judicial resolution of the issue on the merits. Moreover, the Secretary of the Interior has expressly rejected Bay Mills' Charlotte Beach land claim pursuant to the process established by 28 U.S.C. § 2415. [As this Committee knows well, section 2415 operates as follows: [Section] 2415(c) "provides that there is no limitations period for suits for possession or title brought by the United States." Title 28 U.S.C. § 2415(b) provides that Indian claims that are on a list published by the Secretary of the Interior pursuant to section 4(c) of the Indian Claims Limitations Act of 1982 are not barred until (1) one year after the Secretary publishes, in the Federal Register, a rejection of the claim, or (2) three years after the Secretary submits legislation to Congress to revoke the claim. Seneca Nation of Indians v. State of New York, 26 F. Supp. 2d 555, 573 (W.D. N.Y. 1998), aff'd 178 F. 3d 95 (2nd Cir. 1999), cert. denied, New York v. Seneca Nation of Indians, 528 U.S. 1073 (2000).] So, having lost each time in the court, or having sought to evade a judicial decision on the matter, Bay Mills and Sault Ste. Marie have now come to Congress to obtain what the courts and the Secretary cannot say is legally theirs. In sum, the Bay Mills and Sault Ste. Marie proposals would turn the accepted understanding of IGRA's land settlement provision directly on its head. For until now, as one academic recently put it, it has widely been understood that "[t]he viability of establishing gaming operations under the IGRA on lands taken into trust as part of a settlement of a land claim is, at the end of the day, directly related to the viability of the land claim itself." Blake A. Watson, Indian Gambling in Ohio: What are the Odds?, 32 CAP U. L. REV. 237, 292 (2003).

*H.R. 831 and H.R. 2793 Invite Groundless Land Claims and Sham Transactions.*

If enacted despite the fact that the validity of the Charlotte Beach land claims has never been established, H.R. 831 and H.R. 2793 would encourage other non-federal parties to conjure up sham transactions affecting Indian land claims deemed groundless by the Department of the Interior, and then settle those claims with a tribe and run to Congress to get a land-claim settlement exception under IGRA. We do not use the term "sham" lightly here. It was the very same term used by Sault Ste. Marie chairman Bernard Bouschor two years ago when he testified before the U.S. Senate Committee on Indian Affairs in opposition to Bay Mills' earlier attempt to obtain legislation based on the very same land claim and rationale at issue here. See October 10, 2002 record of the Hearing of the Senate Committee on Indian Affairs on S. 2986, a Bill to Provide For and Approve the Settlement of Certain Land Claims of the Bay Mills Indian Community, Michigan.

Allowing Bay Mills, Sault Ste. Marie and the State of Michigan to invoke a federal remedy for an Indian land claim in which there is no federal or state liability establishes an unprincipled precedent. The states are no more than outside parties to IGRA's land claim settlement exception. If Congress ratifies the Bay Mills and Sault Ste. Marie proposed Settlement Agreement, then any party—states, counties, local landowners—could settle a land claim of dubious validity with an Indian Tribe and demand to enjoy the benefits of the land claim settlement exception under IGRA. Large non-Indian gaming interests could see fit to acquire property with the cloud of potential Indian land claims, settle the claim with the Tribe, and then strike a deal with the Tribe to invoke the land claim settlement exception to IGRA's general prohibition. The result could be an all-out proliferation of gaming that would ultimately result in significant damage to the interests of Tribes and others throughout America, and would embroil the Congress in controversy after controversy that subject it to the manipulation of collusive local interests.

The Grand Traverse Band's recent litigation with the State of Michigan, the Michigan State Department of Natural Resources, and Mirada Ranch, Inc., provides

an instructive example of how the new Bay Mills and Sault Ste. Marie proposed precedent could be utilized to expand gaming operations. The Grand Traverse Band filed affidavits in our litigation that may have served to cloud title for some purposes on lands located on South Fox Island in Lake Michigan. The affidavits stated that Band members may have land claims to certain parcels on the Island. If the Congress were to enact H.R. 831 and H.R. 2793, the Grand Traverse Band and its members could use that bill as a precedent justifying us to cut a deal with the South Fox Island landowners to settle our land claim and then demand land far from South Fox for gaming purposes in accordance with the manner proposed by H.R. 831 and H.R. 2793. Indeed, unlike Bay Mills' and Sault Ste. Marie's land claims, which have been expressly rejected by the Secretary of the Interior, our South Fox Island claims remain valid and preserved under 28 U.S.C. § 2415.

Section 2415 presumably has a very important role to play here. Where the Secretary of the Interior, in the exercise of her expertise, has expressly rejected the validity of a land claim under that provision, a subsequent effort to settle that same "claim" in order to invoke the land settlement provision of IGRA seems suspect at best. Certainly Congress should not be about the business of over-riding both the Judicial and Executive Branches in order to render valid an otherwise invalid land claim. [The continued inability of Bay Mills to establish the viability of the Charlotte Beach land claim, and the repeated characterization of that claim as a "sham" by Sault Ste. Marie, render highly questionable the State of Michigan's claim that any need exists to "settle" that claim in order to protect land values or the ability to levy real property taxes.]

*H.R. 831 and H.R. 2793 Contravene Federal Indian Law and Expand IGRA.*

The Grand Traverse Band opposes the dramatic expansion of the exceptions to the general prohibition against gaming on after-acquired lands proposed in H.R. 831 and H.R. 2793.

Even if Bay Mills and Sault Ste. Marie had a valid land claim to land in Charlotte Beach, the Grand Traverse Band could not support those Tribes in a scenario where they exchanged purported rights to their traditional territory in Charlotte Beach for gaming lands hundreds of miles away as is proposed in H.R. 831 and H.R. 2793. Public policy, federal Indian policy, and federal case law are overwhelmingly arrayed against construing land claim settlements in the manner endorsed by H.R. 831 and H.R. 2793, and Bay Mills and Sault Ste. Marie have fostered such a construction only because of their desire to evade their obligations to other Michigan Tribes under Section 9 of our IGRA Gaming Compacts.

The policy enunciated by Congress in 1988 with the enactment of IGRA would be undermined by adoption of H.R. 831 and H.R. 2793. IGRA provides a general prohibition of gaming on lands placed into trust after the passage of IGRA on October 17, 1988. [See 25 U.S.C. § 2719.] Generally, Congress contemplated that gaming on after-acquired lands could only take place on lands located within or contiguous to the boundaries of the reservation of an Indian tribe. [See 25 U.S.C. § 2719(a)(1).] The general prohibition is subject to certain exceptions: Tribes may game on after-acquired lands either after successfully completing a rigorous administrative process resulting in approval by the Secretary of the Interior and the Governor of their gaming proposal (25 U.S.C. § 2719(b)(1)(A)), or after establishing that the after-acquired lands were taken into trust as part of the settlement of a land claim, the restoration of lands to a restored tribe, or in establishing the initial reservation of an administratively acknowledged tribe (25 U.S.C.§ 2719(b)(1)(B)). [See 25 U.S.C. § 2719(b)(1)(B)(i).] The three Section 2719(b)(1)(B) exceptions are meant to be limited in scope, and to apply only to lands located within or near a Tribe's traditional territory.

Congress did not intend for the land claims settlement exception to be exploited in the manner proposed by H.R. 831 and H.R. 2793. The three exceptions contained in Section 2719(b)(1)(B) should be read in the same context. One of the fundamental rules of interpreting statutes relating to Indian Tribes is that "Federal policy toward Indians is often contained in several general laws, special acts, treaties, and executive orders, and these must be construed in pari materia in ascertaining congressional intent." [Yellowfish v. City of Stillwater, 691 F. 2d 926, 930 (10th Cir. 1982), cert. denied, 461 U.S. 927 (1983).] The other two exceptions—the restored lands exception [See 25 U.S.C. § 2719(b)(1)(B)(iii).] and the initial reservation exception [See 25 U.S.C. § 2719(b)(1)(B)(ii)] "both have been interpreted by the courts as limiting gaming validated by these exceptions only to areas in which the Indian Tribe has a traditional, historical, and cultural connection and relationship. Grand Traverse Band, 2004 W.L. 1144510 (6th Cir. 2004); TOMAC v. Norton, 193 F.Supp 2d 182 (D.D.C. 2002); Sault Ste. Marie Tribe of Chippewa Indians v. United States; Confederated Tribes of Coos, Lower Umpgua and Siuslaw Indians 116 F.Supp 2d

155(D.D.C. 2000). H.R. 831 and H.R. 2793 would create precedent for courts to read all three exceptions in Section 2719(b)(1)(B) as including lands put into trust for purposes of gaming far from that Indian Tribe's traditional territory.

Contrary to Bay Mills' Port Huron and Sault Ste. Marie's Romulus or Otsego County proposals, the Grand Traverse Band's efforts to lawfully operate our Turtle Creek gaming facility properly followed the intent and underlying policy of § 2719(b)(1)(B). The Band established in federal court that the Turtle Creek site was within the historical and cultural center of the Grand Traverse Band's traditional territory. No additional federal action was necessary because our land was already held in trust and subject to the governmental authority of our Tribe.

*H.R. 831 and H.R. 2793 Attempt to Circumvent the Promises Made By Bay Mills and Sault Ste. Marie to Other Michigan Tribes Under Section 9 of the Tribal-State IGRA Compacts.*

The tribal-state IGRA gaming compacts negotiated in 1993 between seven Michigan Tribes (including Bay Mills, Sault Ste. Marie and GTB) and the State contain an identical provision, Section 9, which declares as follows:

> An application to take land in trust for gaming purposes pursuant to § 20 of IGRA (25 U.S.C. § 2719) shall not be submitted to the Secretary of the Interior in the absence of a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the § 20 application.

See, e.g., A Compact Between the Bay Mills Indian Community and the State of Michigan, § 9 (emphasis added).

The meaning of and intent behind Section 9 are clear. At the time that the 1993 Compacts were negotiated, each of the 7 signatory Tribes was operating casinos within its traditional territory. Under IGRA and the Compacts, each of the Tribes could continue to operate those casinos in separate, independent efforts to foster tribal self-government and economic development. Furthermore, pursuant to the three section 2719(b)(1)(B) exceptions described above, each of the Tribes could develop additional IGRA-governed gaming facilities within its traditional territory. However, if any Tribe sought to take land into trust for gaming purposes outside of its traditional territories, each Tribe agreed that it first had to work out revenue sharing agreements with the other Tribes. In this way, the Michigan Tribes pledged not to engage in a form of economic warfare that would ultimately injure all of them. They promised not to engage in an endless game of attempting to leapfrog over one another in moving closer to major population centers while cutting off revenues to their less aggressive brethren. Only once they had worked out cooperative arrangements among themselves would the Michigan Tribes then attempt to secure the approval of the Secretary of the Interior, and the concurrence of the Governor, for far-reaching off-reservation gaming proposals under Section 20 of IGRA.

Very shortly after the 1993 Compacts were finalized, the Michigan Tribes demonstrated their understanding of how Section 9 of the Compacts was meant to work. The Tribes worked cooperatively on a proposal to take land into trust for gaming under IGRA in the City of Detroit. They crafted an appropriate revenue-sharing agreement and only because the Governor, at the last minute, withdrew his support for the proposal did the collaborative effort not come to fruition. [After the tribal IGRA deal was blocked, the State issued licenses for three commercial (non-IGRA) casinos in Detroit. All operate under authority of state law and not the federal Indian Gaming Regulatory Act although one of the owner-operators is the Sault Ste. Marie Tribe.]

By contrast, the legislation being advanced by Bay Mills and Sault Ste. Marie would establish IGRA-authorized gaming operations far from the traditional territories of those two Tribes without involving the other Michigan Tribes and without any regard for their well-being. H.R. 831 and H.R. 2793 are nothing more than a naked attempt to circumvent Section 9 of the 1993 IGRA Compacts and the protection Section 9 offers for other Tribal signatories. Bay Mills and Sault Ste. Marie seek to establish casinos in parts of the State far removed from their traditional territories in violation of their pledge to first work out a revenue sharing arrangement with other Tribes. Under normal circumstances, the Bay Mills and Sault Ste. Marie proposals would fall squarely within Section 2719(b)(1)(A) of IGRA—the Tribes would have to convince both the Secretary of the Interior and the Governor that gaming proposals should move forward. However, because an application under Section 2719(b)(1)(A) would trigger the revenue-sharing requirements of Section 9, and because they seek to get a free pass from the Congress to avoid the revenue sharing and governmental cooperation underpinning that Compact provision, Sault Ste. Marie and Bay Mills have brazenly sought to characterize their land grab efforts

in southern Michigan as involving the settlement of a land claim in the Upper Peninsula. As detailed above, however, the validity of their land claims in Chippewa County has never been established and those claims have indeed previously been described by the Chairman of Sault Ste. Marie as a "sham" in public testimony opposing the very position being taken today by the Sault Ste. Marie Tribe. Moreover, no court of law has ever construed the "settlement of a land claim" provision in IGRA to authorize Tribes to establish casinos far removed from the traditional territory subject to the land claim being settled as is here proposed by Bay Mills and Sault Ste. Marie, even assuming the existence of a valid claim.

Congress should accordingly reject the legislative proposals of Sault Ste. Marie and Bay Mills as sham efforts to renege on their Compact obligations to avoid injury to other Tribes economically through off-reservation gaming proposals. The Sault Ste. Marie proposal, for example, would authorize the establishment of a casino in Otsego County. Were Sault Ste. Marie in fact to develop a casino in Otsego County, the casinos presently operated by the Little River Band of Ottawa Indians, the Little Traverse Bay Bands of Odawa Indians, and the GTB [these three Tribes operate their casinos within their traditional tribal territories under authority of the IGRA and the tribal-State Compacts], would all stand to suffer significantly, as Otsego County falls in-between the major population centers downstate and the casinos run by those Tribes. All three Ottawa Tribes have invested tremendous resources in the development of their casinos, and as Judge Hillman expressly found and the Sixth Circuit expressly affirmed in the case of the GTB Casino, those casinos not only provide tribal members with valuable employment opportunities but also fund "a variety of governmental programs, including health care, elder care, child care, youth services, education, housing economic development and law enforcement." Grand Traverse Band, 198 F.Supp.2d at 926. Grand Traverse Band, 2004 WL at *2.

*Conclusions*

The Sault Ste. Marie and Bay Mills legislative proposals are premised upon a sham concoction of an unfounded land claim. While GTB is for fair and rule-governed economic competition in the market place, the Bay Mills and Sault Ste. Marie proposals would change the rules, relieve Bay Mills and Sault Ste. Marie of their contractual obligations to other Michigan tribes, and create an exception to the rules governing the establishment of new tribal gaming facilities far from traditional tribal territories. We respectfully but forcefully must oppose H.R. 831 and H.R. 2793.

Mr. Chairman, the legislation pending before this Committee asks Congress to violate the federal trust responsibility and notions of fundamental fairness by requesting that Congress write special rules favoring a few specific Tribes over others, all in contravention of a clear agreement made by those specific Tribes to respect the rights of other Michigan Tribes.

If the Congress enacted H.R. 831 and H.R. 2793, it would establish a terribly destructive precedent that would unleash a flood of land claims mischief in Congress, in Indian Country, and in communities throughout the United States. Bay Mills and Sault Ste. Marie are fully authorized and able to pursue Section 2719(b)(1)(A) applications under IGRA with the Secretary of the Interior in order to advance their desire to game far off-reservation without involving a Congressionally imposed settlement of a sham land claim, and Bay Mills and Sault Ste. Marie are fully capable of honoring their obligations to other Michigan Tribes under Section 9 in the process. The Congress should reject these bills and insist that these two Tribes abide by their obligations. At the very least, the Congress should not assist them in breaching their obligations to the Grand Traverse Band and other Tribes in Michigan.

For these reasons, the Grand Traverse Band respectfully urges this Committee and the Congress to reject as unwise and unfounded the provisions of H.R. 831 and H.R. 2793, and all provisions similar to them which would purport to resolve unresolved land claims and implicate lands far from the land claims in question.

Mr. Chairman, thank you for the opportunity this Committee has accorded the Band to testify on these matters and to note for the record the Grand Traverse Band's strong opposition to H.R. 831 and H.R. 2793.

I ask that a copy of my written statement and a copy of the recently-enacted resolution of the Tribal Council of the Grand Traverse Band, "Resolution 04-22.1402—Opposition to H.R. 831 and H.R. 2793", be included in the record of this hearing I would be pleased to try to answer any questions you may have.

**The Grand Traverse Band of Ottawa and Chippewa Indians**

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COPY

**TRIBAL COUNCIL RESOLUTION**
**Resolution #04-22.1403**

**OPPOSITION TO H.R. 831 & 2793**

**WHEREAS:** The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) became federally-recognized as an Indian Tribe having a government-to-government relationship with the United States effective May 27, 1980 (see 45 Fed. Reg. 18321-322 (March 25, 1980)); and

**WHEREAS:** GTB is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and

**WHEREAS:** GTB has a full governmental Tribal Council currently consisting of Robert Kewaygoshkum, Tribal Chairman; George Bennett, Vice-Chair; Joseph "Buddy" C. Raphael, Treasurer; Derek J. Bailey, Secretary; John D. Concannon, Councilor; David Arroyo, Councilor; and, Sandy Witherspoon, Councilor; and

**WHEREAS:** Article IV, Section (1)(a) of the Tribal Constitution provides that a power of the Tribal Council is "[t]o promote and protect the health, education, and general welfare of the Band and its members;" and

**WHEREAS:** The House Resources Committee of Congress is reviewing H.R. 831 and H.R. 2793 and related legislation on the implementation of a remedy under 25 U.S.C. § 2719 (b)(1)(B)(i) which provides that the general prohibition on gaming on Indian land after October 17, 1988, does not apply when land is taken into trust as part of a settlement of a land claim; and

**WHEREAS:** Previous Senate and House Bills, S. 2986 and H.R. 5459, H.R. 831, and H.R. 2793 have proposed to alter the standards for the implementation of the § 2719 (b)(1)(B)(i) provision; and

**WHEREAS:** The Grand Traverse Band of Ottawa and Chippewa Indians has opposed S. 2986 at a Senate Committee on Indian Affairs hearing on October 10, 2002, principally on the issue that a "settlement of a land claim" under 25 U.S.C. § 2719 (b)(1)(B)(i) must represent a valid Indian land claim where there is liability of the state or federal governments; and

WHEREAS: The liability of the state or federal government has never been established by a Federal or State court for the Indian land claim generally known as "Charlotte Beach Land;" and

WHEREAS: The Sault Ste Marie Tribe established that they "have a potential interest in the Charlotte Beach property," Bay Mills Indian Community v. Western United Life Assurance Co., 2000 WL 282455 (6th Cir March 28, 2000); and

WHEREAS: The Sault Ste Marie Tribe testified in opposition to the Charlotte Beach settlement claim at the October 10, 2002, hearing by strongly arguing the following:

> The agreement recites that the Governor "desires to settle the land claim for the benefit of ...the affected Charlotte Beach landowners," and goes on to state that the parties believe that the settlement will "lead to a clearing of title of the Charlotte Beach lands.[1]" These statements are a sham. The bill does nothing for the landowners, and both the State and Bay Mills know it...The landowners themselves have reached that conclusion. They have prepared a statement for the Committee through their attorney, which we have attached; at page 100, *Senate Hearing Report*; [2] and

WHEREAS: The Sault Ste Marie Tribe further argued in its testimony at the October 10, 2002, hearing that all State and Federal courts have rejected the validity of the Charlotte Beach claim; and

WHEREAS: Testimony of the State of Michigan at the October 10, 2002, hearing confirmed the following:

> The Chairman. Just as a matter of curiosity, I believe I know the answer, is it true that the State of Michigan has no liability for this claim, but you have initiated the settlement. Why so?
> Mr. Bouldrey. That is correct. At this point, the State has no liability because the tribe's claims against the State were extinguished in State court because they were untimely filed; at page 24, *Senate Hearing Report;* and

WHEREAS: The testimony of the federal representative at the October 10, 2002, hearing was the following:

> My understanding is that the United States has not certified the claim on behalf of the Bay Mills Indian Community, nor has the Sault Ste. Marie Tribe sought to pursue the land claim, so that has not been certified as

[1] *Settlement of Land Claim,* attached as Exhibit B. Attached as Exhibit C.
[2] Bay Mills Indian Community Land Claims Settlement Act: Hearing before the Committee on Indian Affairs United States Senate, One Hundred Seventh Congress Second Session on S. 2986.

well. But I think a congressional approval of this land claim settlement would provide evidence that the claim is indeed valid and could affect our legal position with regard to that claim; at page 15, *Senate Hearing Report*; and

**WHEREAS:** The House Resources Committee hearing to be held on June 9, 2004, is to address substantially the same bill as represented by S. 2986 by allowing casino gaming under the provisions of §2719 (b)(1)(B)(i); and

**WHEREAS:** The gaming compacts negotiated in 1993 between seven Michigan Tribes (including Bay Mills, Sault Ste Marie and Grand Traverse Band) and the State contain an identical provision, §9, which declares as follows:

> An application to take land in trust for gaming purposes pursuant to §20 of IGRA (25 U.S.C. §2719) shall not be submitted to the Secretary of the Interior in the absence of a prior written agreement between the Tribe and the State's other federally recognized Indian Tribes *that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the §20 application;* and

**WHEREAS:** The intent of §9 of the Gaming Compact was to ensure that the Tribes operating casinos within their traditional territory would not attempt to wage economic warfare by leapfrogging other Tribes to major metropolitan areas that would ultimately inure to the detriment of all Tribes by cutting off revenues to less aggressive Tribes; and

**WHEREAS:** Shortly after the 1993 Compacts the Tribes negotiated a revenue sharing agreement under §9 and all tribes participated in a §2719 (b)(1)(B) process of taking land into trust pursuant to the Secretary of the Interior "best interest finding" and the "concurrence" of the Governor for a series of casinos in Detroit, which was ultimately not concurred in by the Governor; and

**WHEREAS:** H.R. 831 and 2793 is an attempt to circumvent §9 and the protections in offers other Tribal signatories to the 1993 revenue sharing requirements of §9.

**NOW THEREFORE BE IT RESOLVED** that the Grand Traverse Band of Ottawa and Chippewa Indians opposes federal legislation to settle the Charlotte Beach land claims under the provisions of 25 U.S.C. § 2719 (b)(1)(B)(i) (settlement of a land claim) provision on the grounds that all principal parties in this claim recognize that no liability has been established against the federal or the state government and that the settlement would not allay the concerns of the private property owners of Charlotte Beach and that this settlement by 2719 (b)(1)(B)(i) has been properly characterized by one of the principal tribes, Sault Ste Marie Tribe of Chippewa Indians, "as a sham transaction" to access a loophole under the Indian Gaming Regulatory Act.

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**AND BE IT FURTHER RESOLVED** that the Grand Traverse Band opposes H.R. 831 and 2793 under consideration by the House Resources Committee on June 24, 2004 on the basis articulated in the Grand Traverse Band of Ottawa and Chippewa Indian's October 10, 2002, statement in opposition to the provisions of 2719(b)(1)(B)(i) and testimony presented by George Bennett, Councilor, at the June 24, 2004, hearing of the House Resources Committee and the written statement of the Grand Traverse Band of Ottawa and Chippewa Indians submitted at that hearing.

**AND BE IT FURTHER RESOLVED** that Congress should recognize that H.R. 831 and 2793 are attempts by Sault Ste Marie and Bay Mills Indian Community to renege on the promises contained in §9 of the 1993 Compacts, and therefore, Congress should not establish a precedent where it acts in the interest of two Tribes to the detriment of other tribes in violation of the federal trust responsibility and notions of fundamental fairness by favoring SSM and BMIC over all other Tribes in Michigan in clear contravention of the §9 agreement made my Michigan Tribes to demonstrate respect for one another.

**APPROVED:**

Robert Kewaygoshkum, Chairman

**ADOPTED:**

Derek J. Bailey, Secretary

**CERTIFICATION**

As Secretary of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, I hereby certify that the above resolution was approved and adopted at a special session of the Tribal Council held in Peshawbestown, Michigan, on June 7, 2004, by a vote of 6 FOR, 0 AGAINST, 0 ABSTAINING, and 0 ABSENT.

**ATTEST:**

Derek J. Bailey, Secretary

Mr. GIBBONS. Mr. Bennett, thank you very much. I think what we will do is just go through the complete list of witnesses here with their testimony and then ask questions. And to each of you let me say that, without objection, your full and complete written testimony will be entered into the record. You may feel free to summarize as you see fit.

Now we will hear from Tribal Chief Audrey Falcon. Ms. Falcon, welcome. The floor is yours.

## STATEMENT OF TRIBAL CHIEF AUDREY FALCON, SAGINAW CHIPPEWA INDIAN TRIBE, MT. PLEASANT, MICHIGAN

Ms. FALCON. Thank you.

Mr. Chairman, members of the Committee, my name is Audrey Falcon and I am the Chief of the Saginaw Chippewa Indian Tribe. I appreciate the opportunity to testify today against legislation that will cause great harm to our tribe, its members, other tribes in Michigan, and Indian tribes across the country.

With me today are Tribal Subchief Bernie Sprague and Tribal Treasurer Charmaine Benz.

Mr. Chairman, the two bills before this Committee would allow the Bay Mills Tribe and the Sault Ste. Marie Tribe to build two casinos hundreds of miles from their reservation and in the treaty territory of the Saginaw Chippewa Tribe.

Mr. Chairman, it is important to understand the treaty history of the Michigan Indian tribes and the U.S. Government. I have brought a map showing the different treaty areas of the Michigan Indian tribes. Between 1795 and 1864, the United States negotiated several treaties with the Michigan Indian tribes. Of greatest import to this discussion is the 1807 Land Cession Treaty signed by Chippewas, Ottawas, and Potawatomis. The Chippewa leaders who signed the 1807 treaty are ancestors of my tribe, the Saginaw Chippewa Indian Tribe. It is important to note that there is no historical evidence that shows that any Chippewa from the Upper Peninsula signed the 1807 treaty.

The land ceded to the United States in 1807 includes almost all of southeast Michigan. If you look at the map, it is the area shaded in green. These are the lands that my tribe's ancestors hunted and fished for hundreds of years. These are also the lands that my ancestors ceded to the U.S. Government almost 200 years ago. And these are the same lands on which Bay Mills and Sault Ste. Marie Tribe want to build additional casinos despite the fact that their traditional lands and reservations are several hundred miles away in the Upper Peninsula of Michigan. That is why my tribe and so many other tribes in Michigan oppose these bills.

Mr. Chairman, our tribe does not believe the land exception provision in the Indian Gaming Regulatory Act was intended to allow tribes to move hundreds of miles from their traditional territories and reservations and build casinos under the guise of settling land claims that have been invented solely for that purpose.

Mr. Chairman, if the Congress were to pass this legislation, it would distort the intent and meaning of IGRA and open the door for every tribe in the United States to petition Congress to settle moral claims against various States even where no viable legal claims exist and allow them to build casinos in every corner of the United States where gaming is viable. Our tribe does not believe Congress should be doing that, and we believe that IGRA does not allow it.

These bills do not settle the kinds of land claims contemplated by IGRA. The alleged claims of the Bay Mills and Sault tribes have not been accepted by the judiciary and there is no pending litigation awaiting settlement. These bills ask Congress to substitute itself for the judiciary and simply declare the existence of land claims which Congress then supposedly settles by allowing the tribes to build casinos hundreds of miles away from their reservation and territorial lands. Such action would make a travesty of the IGRA process and should not be allowed to happen.

These bills would also create great problems for existing Tribal-State compacts in Michigan. Our tribe, the Bay Mills Tribe, and Sault Ste. Marie Tribe are all signatories of the 1993 Gaming Compact with the State of Michigan. The compact at Section 9 provides that if a tribe acquires other lands to expand its gaming operations to another location, it has to get the concurrence and approval of all the other federally recognized tribes of Michigan. The same pro-

vision applies to our tribe and all other compacted tribes in Michigan. The Bay Mills and Sault Ste. Marie tribes are trying to bypass this important compact provision by getting Congress to overrule it because they do not have approval of the other compacted tribes as required by the compact. They are pursuing this legislation in an attempt to evade their obligations to the other tribes under their gaming compact. Congress should not be a party to such an attempt.

On behalf of the Saginaw Chippewa Indian Tribe, I ask the Committee to reject these bills and to stop every effort to get them enacted into law.

Today we met with representatives from the city of Detroit, and they do not support H.R. 2793, and asked me to express that they are in the room.

Thank you for the opportunity to testify, and I am available for any questions you may have.

[The prepared statement of Ms. Falcon follows:]

**Statement of Audrey Falcon, Chief, Saginaw Chippewa Indian Tribe**

Mr. Chairman, Members of the Committee, my name is Audrey Falcon and I am the Chief of the Saginaw Chippewa Indian Tribe. I appreciate the opportunity to testify today against legislation that will cause great harm to our tribe, its members, other tribes in Michigan, and Indian Tribes across the country.

With me today are Tribal Subchief Bernie Sprague, and Tribal Treasurer Charmaine Benz.

Mr. Chairman, the two bills before this committee would allow the Bay Mills tribe and the Sault Ste. Marie tribe to build two casinos hundreds of miles from their reservation and in the treaty territory of the Saginaw Chippewa Indian Tribe.

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Of greatest import to this discussion is the 1807 land cession treaty signed by Chippewas, Ottawas and Potawatomis. The Chippewa leaders who signed the 1807 treaty are ancestors of my tribe, the Saginaw Chippewa Indian Tribe. It is important to note that there is no historical evidence that shows that any Chippewa from the Upper Peninsula signed the 1807 treaty.

The lands ceded to the United States in 1807 includes almost all of southeastern Michigan. If you look at the map, it is the area shaded in green. These are the lands that my tribe's ancestors hunted and fished for hundreds of years. These are also the lands that my ancestors ceded to the United States Government almost 200 years ago. And these are the same lands on which the Bay Mills and Sault Ste. Marie tribe want to build additional casinos despite the fact that their traditional lands and reservations are several hundred miles away in the Upper Peninsula of Michigan. That is why my tribe and so many other tribes in Michigan oppose these bills.

Mr. Chairman, our tribe does not believe the land exception provision in the Indian Gaming Regulatory Act (IGRA) was intended to allow tribes to move hundreds of miles from their traditional territories and reservations and build casinos under the guise of settling land claims that have been invented solely for that purpose.

Mr. Chairman, if the Congress were to pass this legislation it would distort the intent and meaning of IGRA and open the door for every tribe in the United States to petition Congress to settle moral claims against various states even where no viable legal claims exist and allow them to build casinos in every corner of the United States where gaming is viable. Our tribe does not believe Congress should be doing that and we believe that IGRA does not allow it.

These bills do not settle the kinds of land claims contemplated by IGRA. The alleged claims of the Bay Mills and Sault Ste. Marie tribes have not been accepted by the judiciary and there is no pending litigation awaiting settlement. These bills ask Congress to substitute itself for the judiciary and simply declare the existence of land claims, which Congress then supposedly settles by allowing the tribes to build casinos hundreds of miles away from their reservation and territorial lands.

Such action would make a travesty of the IGRA process and should not be allowed to happen.

These bills would also create great problems for existing tribal/state compacts in Michigan. Our tribe, the Bay Mills tribe and Sault Ste. Marie tribe are all signatories of the 1993 gaming compact with the state of Michigan. The compact at section 9 provides that if a tribe acquires other lands to expand its gaming operations to another location it has to get the concurrence and approval of all other federally recognized tribes in Michigan. The same provision applies to our tribe and all other compacted tribes in Michigan. The Bay Mills and Sault Ste. Marie tribes are trying to bypass this important compact provision by getting Congress to overrule it because they do not have approval of the other compacted tribes as required by the compact. They are pursuing this legislation in an attempt to evade their obligations to the other tribes under their gaming compact. Congress should not be a party to such an attempt.

On behalf of the Saginaw Chippewa Indian Tribe, I ask the Committee to reject these bills and to stop every effort to get them enacted into law.

Thank you for the opportunity to testify and I am available for any questions you may have.

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Mr. GIBBONS. Ms. Falcon, thank you very much for your testimony. We certainly appreciate the added information that you have brought to us today.

We turn now to Mr. Richard Cummings, President, Michigan Machinists Council. Mr. Cummings, welcome. The floor is yours. We are looking forward to your testimony.

**STATEMENT OF RICHARD CUMMINGS, PRESIDENT, MICHIGAN MACHINISTS COUNCIL, PORT HURON, MICHIGAN**

Mr. CUMMINGS. Thank you, Mr. Chairman.

In addition to my complete testimony, I would like to enter into the record several letters of endorsement from our community, from the St. Clair County AFL-CIO, Machinists Union, Greater Port Huron Chamber of Commerce, Economic Development Alliance, St. Clair County Intermediate School District, Blue Water Convention Tourism Bureau, and the United Way of St. Clair County.

Mr. GIBBONS. Without objection.

Mr. CUMMINGS. Thank you.

[NOTE: The letters submitted for the record have been retained in the Committee's official files.]*** insert

Mr. CUMMINGS. Mr. Chairman, I represent 11,300 machinists in the State of Michigan, of which 400 are located in St. Clair County, along with 4,500 in the city of Romulus at the Detroit Metropolitan Airport, of which currently there are 1,500 machinists at the Metro Airport laid off due to downsizing, new technology, and elimination of jobs. I am here to support Candice Miller, our Congresswoman's Bill 831 along with the H.R. 2793 from Romulus.

Before I forget, I would like to agree with Mr. Young's opening statement, the fact that we elected Congresswoman Candice Miller to represent the constituents in Port Huron. And I believe Mr. Young's statement to be the way the average voter feels. We don't feel that Mr. Rogers's effect in his community affects our community. The difference being—I looked up the statistics, and they are also in package, the unemployment statistics we sent here today—in my community, we are talking about 14 to 20 percent unemployment. It is so high because a lot of people have run out of benefits and the statistics stop when you are out of benefits.

We are right across the river, as the picture indicates and you will see in the packet that was given to you, from the Canadian casino. We are not here to take business away from any other gaming community; we are competing with Sarnia, Ontario. There are over $200 million U.S. dollars, which is 5,000 visitors a day going to Sarnia, right across the river from the city of Port Huron, of which there are about $200 million, like I said, 76 percent of the patrons of two casinos located three miles across the river from us goes on a daily basis.

In our community in the last 3 years, we have lost over 20 manufacturing facilities in the city of Port Huron. As you all know, tourism is number two in the State of Michigan, the number two industry. We are right up here in the thumb, where we have the lake, we have a beautiful situation. We are competing with Canada, and they are taking even our tourist business.

We think this agreement would settle this long-standing dispute concerning the Charlotte Beach land dispute, we think it would keep U.S. dollars and jobs in Port Huron, and we think the impact because of the way the people voted in Port Huron—in fact, this Saturday will be 3 years ago that the residents of the city of Port Huron have voted by a 54 percent margin to get this casino.

As far as some of the other tribes testifying about competing, as far as I know, Mt. Pleasant is a 2-hour drive away from Port Huron. The other factor that enters in here with the city of Detroit that I disagree with, Congressman Rogers testified earlier, he said that this casino gaming in the three casinos in Detroit cost in excess, I thought he said, of a million dollars in fire protection and police protection. But he did not state the fact of the millions of dollars of revenue that is created by the excess of 5,000 jobs by those three casinos in Detroit.

It is an important point to make, that we are not competing with the city of Detroit. The people that are going to the Canadian casino from the United States already have that option to go to Mt. Pleasant, other casinos, along with Detroit. They don't choose to go to that area, so therefore they are taking our jobs out of the country.

Now, we are losing all of our manufacturing capabilities. In St. Clair County, when I say 14 to 20 percent, in a community of 170,000 people, we have 9,000 people right now out of work. We have 22,000 people that don't even have insurance.

I have been on the Economic Development Committee up there for 25 years. This is the first project of any significance that I have seen come along the way not asking the Government and not asking the city of Port Huron and St. Clair County to give tax abatements. Where generally we give millions and millions of dollars for 12, 15, 20 jobs, these people come in here with substandard wages. Then when their tax abatements run out, they leave our community. I think that is terrible to the citizens of the United States.

I think this casino would create much-needed revenue and good jobs and good benefits for our people, along with helping the revenue for the State and the Federal Government.

Thank you. I would be glad to answer any questions.

[The prepared statement of Mr. Cummings follows:]

**Statement of Richard W. Cummings, President, Michigan Machinists Council, International Association of Machinists and Aerospace Workers**

Chairman Pombo and Members of the House Resources Committee, I appear before you today on behalf of the 11,300 machinists in the state of Michigan and in particular the 397 in St. Claire County and 4500 in Romulus who work at the Detroit Metro Airport of which 1500 are currently laid off and without jobs.

Specifically, my testimony is focused on Congresswoman Candice Miller's bill, H.R. 831—the settlement of the Bay Mills Indian Community Land Claim and Congressman John Dingell's bill, H.R. 2793—the settlement of the Sault Ste. Marie Tribe of Chippewa Indian Land Claim and its anticipated economic impact on our community and state. I am not that familiar with employment statistics of the proposed Romulus casino, however, I did some checking and 1500 of the machinists at the airport along with employees of other unions have been downsized and their jobs eliminated. I will address the following four points:

- The ability of this bill to settle a long existing Native American land claim dispute while providing in excess of 3,000 employment opportunities for a community with severe employment needs. Thus, positively affecting the economic well-being of both U.S. populations without the necessity of governmental funding.
- The retention of otherwise lost U.S. dollars for the growth and development of the economy of communities in the United States.
- The impact of the development project which this settlement will allow on the ability to provide charitable services on a local level for residents of St. Clair County, Michigan.
- The endorsements attained and necessary for the positive development of a joint venture between the two populations involved.

The passage of this bill would allow the Bay Mills Indian Community to establish a casino in Port Huron, Michigan at the site of the current Thomas Edison Inn, within 500 yards of the Blue Water Bridge international border crossing. This casino will provide significant income for both the Bay Mills Indian community and the residents of Port Huron and the surrounding area.

As you can see from my supporting documentation, Port Huron is experiencing real unemployment rates estimated to be as high as 14%. Compared to other areas of the state the Port Huron area consistently has a higher rate. It is important for you to know that these are now permanently lost jobs. They are primarily the result of plant closings, not lay- offs.

Currently, in the Port Huron area employers that have even a few job openings are hesitant to even put an ad in the paper or advertise that there is an opening. The reason for this is that within two days they will be overwhelmed with hundreds of applicants causing confusion and lost time to the company.

The consistent and escalating unemployment situation was the genesis of a joint project by residents of Port Huron and the Bay Mills Indian Community to develop and construct a casino in Port Huron. This casino will provide an opportunity for the Port Huron community to develop its geographic potential as a tourist destination and allow it to become a viable piece of the tourist industry of the state. The proposed casino would provide 650 construction jobs for one year and 2,500 to 3,000 permanent jobs. These jobs will have living wages that will support families and promote economic development of the entire community.

There are already casinos taking in a $100 million a year from Port Huron, on the other side of the boarder in Canada. Each day 5,000 U.S. residents cross the bridges to utilize the two Canadian casinos located within 3 miles of this border crossing. They spend over $100 million U.S. dollars at these facilities annually. Seventy-five percent (75%) of these casinos' customers are from the U.S. These travelers are the target market for a casino in Port Huron. The people who are frequenting these gaming establishments do so because it meets their needs in distance and accessibility. They are not customers that normally frequent other Michigan casinos nor do surveys indicate they would. We want to stop this loss of U.S. revenue and bolster our local economy.

For those who are concerned about the proliferation of casinos in Michigan, they should know that Port Huron is the only boarder crossing in Michigan with a Canadian Casino and no facility on the United States side. We believe that this is the major reason that our community suffers while others prosper. Our neighbor to the north in Sarnia, Ontario flourishes while we remain stagnate in an economic recession.

In addition to revenue for the state; the proposed casino project includes the provision of 5% of the net revenues to be paid to the City of Port Huron to enhance and develop the City. As you are well aware, an increased local economic base that

has the potential for consistent returns reduces the need for governmental subsistence programs at any level individual, governmental or corporate. This project will not require the governmental funding for job creation or retention normally present in any major job creation project. In fact by recapturing our own U.S. dollars being spent elsewhere it will provide revenue for government.

Also, the casino project developed in Port Huron has taken the charitable and human service needs into account with 3% of the net revenue distributed to local charities through the United Way. This would mean a sustained environment for human services to reach all age levels and to once again contain prevention programs for the at-risk.

Finally, I wish to list the endorsements for this casino project for your consideration. Without these endorsements this project could not exist and this appeal would not occur:

- The International Association of Machinists and Aerospace Workers
- The St. Clair County AFL-CIO Central Labor Council
- The Greater Port Huron Chamber of Commerce
- The Economic Development Alliance of St. Clair County
- St. Clair County Intermediate School District
- The Blue Water Convention and Tourism Bureau
- The United Way of St. Clair County

For all the reasons I have discussed, the residents of Port Huron who approved this casino project three years ago by a 54% majority support it now more than ever.

Please take the necessary action to pass H.R. 831 and H.R. 2793 submitted by Congresswoman Candice Miller, 10th District of Michigan and Congressman John Dingell, 15th District of Michigan. Our residents in Port Huron have patiently waited for three years, as economic conditions have worsened, for legislation to approve this well developed plan to help our community help itself. Your action now is imperative.

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Mr. JONES. [Presiding.] Thank you.

Mr. Black, we now recognize you.

**STATEMENT OF WILLIAM BLACK, LEGISLATIVE AND COMMUNITY AFFAIRS DIRECTOR, MICHIGAN INTERNATIONAL BROTHERHOOD OF TEAMSTERS, DETROIT, MICHIGAN**

Mr. BLACK. Thank you, Mr. Chairman and members of the Committee. Thank you today for this wonderful opportunity to testify in front of this honorable body.

I am pleased to be here this afternoon on behalf of the Michigan Teamsters and President Lawrence Brennan and International Brotherhood of Teamsters and our president, James P. Hoffa.

I am here to testify in favor of H.R. 2793 and H.R. 831, which would bring thousands of needed jobs to Michigan. These measures, if enacted, will have a profoundly positive effect on the communities of Romulus and Port Huron.

The Michigan Teamsters represent over 99,000 active and retired members in the State of Michigan. We currently represent over 300 members currently employed at the casinos.

One of our priorities is to encourage job creation and economic development, particularly in communities such as Romulus, which, like many other communities in the State of Michigan, has been negatively impacted by manufacturing jobs leaving the State. Michigan has suffered over 180,000 manufacturing jobs permanently lost in the last 3 years.

The creation of a new Indian casino in Romulus is central to our plans and the plans of the Mayor of the city of Romulus to bring new jobs and new development to Romulus, and the Sault Ste. Marie casino in Romulus would create over 3,500 or more new jobs, including 3,350 jobs in the casino and another 150 that would be

in the hotel and restaurant. Most of these jobs will be union jobs paying a decent living wage and providing much-needed benefits such as health insurance, 401(k)'s, and vacations.

In other States, studies have shown that casino employment can spur economic growth, reduce unemployment, and reduce welfare and dependence—much demonstrated in the revitalization that we are seeing in downtown Detroit.

Moreover, the creation of casinos and a resort in Romulus will spur additional development near the casino and elsewhere in Romulus. Millions of passengers pass through the Detroit Metropolitan Wayne County Airport, the airport located in Romulus, which is a major hub for Northwest Airlines, which is currently facing layoffs of both flight attendants, pilots, and other crews. Romulus is roughly 20 miles from downtown Detroit.

Finding a way to entice the millions of passengers who travel through the Detroit hub to leave the airport and visit the surrounding communities is a key to promoting economic development of the area. A casino would draw many of those passengers, and the casinos in turn would prompt other recreational and business developments in the region. We believe that, with the coming of the hotel, it would enhance business meetings and conventions to take place as well.

The new casinos would also bring revenue for the community in which they will be located. The Romulus casino is expected to generate slot revenue for local Government of $6 million annually. In Romulus, with a city budget of $19 million, this new revenue stream would enable the city to do much more for its citizens, expanding social services and programs for all the residents.

It is difficult to measure, Mr. Chairman. The legislation before you simply ratifies a settlement reached by Governor Engler 2 years ago. H.R. 2793 settles a century-old land claim in the interests of homeowners in Charlotte Beach area and provides the Sault Tribe an opportunity to acquire alternative lands in Romulus on which the tribe would have the ability to build a casino. H.R. 831 does the same thing for the Bay Mills Indian Community, which would acquire land in Port Huron. In each case, these new casinos would bring vital new jobs to communities that need them and that have voted by referendum to welcome casino gaming.

Thank you again for your invitation to speak before you today. If you have any questions, I will be more than glad to answer them. Thank you, Mr. Chairman.

[The prepared statement of Mr. Black follows:]

**Statement of William Black, Legislative and Community Affairs Director, Michigan Brotherhood of Teamsters, Detroit, Michigan**

Mr. Chairman and members of the committee, thank you for the opportunity to testify today. I am pleased to be here on behalf of the Michigan Brotherhood of Teamsters, President Lawrence Brennan, International President James P. Hoffa, and our members throughout Michigan.

I am here to testify in favor of H.R. 2793 and H.R. 831, which would bring thousands of needed jobs to Michigan. These measures, if enacted, will have a profoundly positive effect on the communities of Romulus, Port Huron, and Charlotte Beach.

The Michigan Brotherhood of Teamsters represents 99,000 active and retired members in Michigan, including over 300 casino workers in Michigan.

One of our priorities is to encourage job creation and economic development, particularly in communities such as Romulus, which has had two major companies

close over the past five years. Over 180,000 manufacturing jobs have been lost in Michigan in recent years.

The creation of a new Indian casino in Romulus is central to our plans, and the plans of Mayor Lambert and the city, to bring new jobs and new development to Romulus. A Sault Tribe casino in Romulus would result in 3,500 or more new jobs, including 3,350 casino jobs and another 150 hotel and restaurant jobs. Most of them will be union jobs. In our experience, casino jobs tend to be high-paying, desirable positions. In other states, studies have shown that casino employment can spur economic growth, reduce unemployment, and reduce welfare dependence.

Moreover, the creation of a destination casino and resort in Romulus will spur additional development near the casino and elsewhere in Romulus. Millions of passengers pass through Detroit Metropolitan Wayne County Airport each year. The airport, located in Romulus, is 20 miles from downtown Detroit.

Finding a way to entice the millions of passengers who travel through the Detroit hub to leave the airport and visit the surrounding communities is a key to promoting economic development of the area. A casino would draw many of those passengers, and the casino, in turn, would prompt other recreational and business development in the region, bringing more jobs and revenue for the community.

The new casinos would also bring revenue for the communities in which they will be located. The Romulus casino is expected to generate slot revenue for local governments of $6 million annually. In Romulus, with an annual city budget of $19 million, this new revenue stream will enable to city to do much more for its citizens, expanding social services and programs for all residents.

Mr. Chairman, the legislation before you simply ratifies settlements reached between Governor Engler and the tribes two years ago. H.R. 2793 settles a centuries-old land claim in the interest of homeowners in the Charlotte Beach area and provides the Sault Tribe an opportunity to acquire alternative lands in Romulus on which the Tribe will build a casino. H.R. 831 does the same thing for the Bay Mills Indian Community, which would acquire land in Port Huron. In each case, the new casinos would bring vital new jobs to communities that need them and that have voted by referenda to welcome casino gaming.

Thank you again for the invitation to appear here today. I would be happy to answer any questions you may have.

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Mr. JONES. I thank the panelists. I am sorry that I was late getting here today. I am not the Chairman, but I am filling in. But I am a member of this Committee, and this is an issue that is of great interest to those of us in North Carolina. I am not going to take your time by talking about our situation down in North Carolina.

But I do have one question for Mr. Bennett. Is it common for tribes to establish land claims through a judicial process before seeking a resolution of such claims in Congress?

Mr. BENNETT. My answer would be yes. I think that you have to have a judicial decision before you come before Congress, I would think. Otherwise, why create the courts?

Mr. JONES. Right.

The other panelists are from Michigan. I assume they have statements—so I will stop with that question. Thank you for the answer.

Mr. KILDEE. Mr. Chairman, I was going to grab the chair when Mr. Gibbons left, but you grabbed it first.

Mr. JONES. Well, maybe next year.

[Laughter.]

Mr. KILDEE. First of all, each one of the panelists sitting right now I feel very close to, as I felt close to Chairman Parker and to Bernard Bouschor, who could not be here today. This is where some honest people disagree as to process. Again, I think every Native American in this room knows that I have been a staunch advocate of their rights of sovereignty and their rights to game. I think

our main point of differences here is whether we run this through the Congressional process or the process that we put into place in many bits of Federal legislation, including IGRA itself. My feeling is that we run a real danger for the country, various places throughout the country, by running this through the Congressional process, where, as I have said earlier, there would be no place in America that could not be a subject of Indian gaming. So I think we have to proceed most cautiously and that is why we, in other Federal laws and IGRA, we did put in place an administrative process. So we are all people of good will trying to do what is right here.

If I may ask a question of both the tribal leaders. What other tribes in Michigan might be adversely affected if these bills were enacted? Mr. Bennett, you can start first and then Chief Falcon.

Mr. BENNETT. Thank you, Mr. Kildee, for the question. I took the liberty of calling each of the tribes, with the exception of Sault Ste. Marie and Bay Mills. Of that, we had 10 tribes—nine tribes of the 10 were in opposition. The one that didn't oppose it didn't have a feeling one way or the other. And so we took a survey about how this legislation might impact their community and they were strictly opposed to it because it leaves them out of the—under Section 9 of the compact agreement, they get the Governor to waive it. So they play no party into what goes on within the State. So I think, in all fairness to all the tribes of the State, I think we have a right to say something about what goes on in the State. Thank you.

Mr. KILDEE. Chief Falcon?

Ms. FALCON. I haven't called all the tribes, but there are, I believe, three that I know I have spoken to that are opposed. Also, Laura Spurr, the chairwoman of the Huron Potawatomi Tribe, is asking that she be associated with the Saginaw, Chippewa, and Grand Traverse testimony today in agreement.

Mr. KILDEE. Thank you. Mr. Bennett, we have known each other for about 40 years, right?

Mr. BENNETT. I am not that old, Dale.

Mr. KILDEE. OK. Well, I am.

[Laughter.]

Mr. KILDEE. What happens to Section 9 of the 1993 compact if we pass this law?

Mr. BENNETT. Well, it is still in force, in my opinion. Whether the State has the discretion of waiving it or not, it is their business. But if they are going to do that, I say we need some consultation with it. I mean, we could very well lose a lot of revenue and not follow the process that has been put in place by the State of Michigan.

Mr. KILDEE. All right, I really have no further questions and refer to my colleague, Mr. Stupak.

Mr. STUPAK. Thank you.

Mr. Bennett, you just said that if the State of Michigan wants to waive Section 9, that is their business.

Mr. BENNETT. Well, it is our business. I mean, it affects all the tribes in the State. We all have the compact.

Mr. STUPAK. Well, you said it is their business. If the State of Michigan, and its representative would be the Governor of the

State, wants to waive it for this tribe or that tribe, that is really between the State of Michigan and that tribe, is it not?

Mr. BENNETT. Yes.

Mr. STUPAK. And the only interest you would have is not because the Governor doesn't have the right to do it but because of the economic impact it may have on your tribe. Correct?

Mr. BENNETT. That is correct.

Mr. STUPAK. In fact, these tribes you talked to, their opposition is based upon economic interest, is it not?

Mr. BENNETT. No, I would not say so, Bart.

Mr. STUPAK. What other interest would they have?

Mr. BENNETT. They would have not only economic but I think policy issues that would be taken for granted by the State, the agreement that we had with the State of Michigan.

Mr. STUPAK. What policy decisions would this—

Mr. BENNETT. Well, if you enter into a compact agreement with all of the tribes, it seems to me—I am not here to speak on behalf of the State, but I am here to speak on behalf of my own tribe—we think it is just poor policy, and certainly this legislation doesn't help it any.

Mr. STUPAK. And when you enter into a compact, that is the Grand Traverse Band of Chippewa and Ottawa Indians with the State of Michigan, right?

Mr. BENNETT. That is correct.

Mr. STUPAK. So you have your own compact with the State of Michigan, correct?

Mr. BENNETT. It was signed with all of those tribes in August of 1993.

Mr. STUPAK. True. But each tribe has their own compact—

Mr. BENNETT. That is correct.

Mr. STUPAK.—which is then signed and published in the Federal Register.

Mr. BENNETT. That is correct. You are correct.

Mr. STUPAK. So there could be differences in them, too, could there not?

Mr. BENNETT. No, I don't believe so.

Mr. STUPAK. OK. But you have your own separate compact?

Mr. BENNETT. We do.

Mr. STUPAK. OK. So if there is a violation of compact, that is really between the Governor's Office and that tribe and their individual compact.

Mr. BENNETT. I would say that, but if you are harmed, I think there is legal recourse given consideration.

Mr. STUPAK. Sure, and the legal recourse here would be economic damages if you are economically—

Mr. BENNETT. That is correct.

Mr. STUPAK. So your objection, then, is based on economic grounds.

Mr. BENNETT. Well, I would go beyond that. I think legal grounds as well.

Mr. STUPAK. Did your tribe or anyone else object to the Governor for signing this?

Mr. BENNETT. Well, Mr. Stupak, I think it was done at the 11th hour as Mr. Engler was going out the back door.

Mr. STUPAK. Well, Bay Mills signed their in September. I think maybe Sault Tribe was December, after they got the two together. And you just weren't aware of it, because—

Mr. BENNETT. Well, we get information like that through the newspaper. I mean, I think there is more of a relationship that needs to be developed between the State and the tribes.

Mr. STUPAK. So from September to the end of the year, while Governor Engler was still there, did Grand Travers or the Saginaw Chippewas object to the Governor or try to get him to change his mind before this became law?

Mr. BENNETT. No, because we didn't feel it was right.

Mr. STUPAK. When we speak of—and Ms. Falcon, I guess I would address this question to you. You indicated that, on your map there, and there has been testimony from BIA that there was a Greater Chippewa Tribe or Chippewa Nation, and you are all descendants of that Greater Chippewa Nation, is that correct?

Ms. FALCON. Yes.

Mr. STUPAK. So Chippewa Nation really had all of Michigan and went into Canada, even Wisconsin, did it not?

Ms. FALCON. Yes, it did.

Mr. STUPAK. And the signators to those treaties, when they ceded land, would be your ancestors and also ancestors of the Bay Mills and the Sault Tribe, correct?

Ms. FALCON. The 1807 was just the Saginaw Chippewa Tribe, and we were paid—that is the lands that we were paid, that were ceded.

Mr. STUPAK. That is the part that you ceded, right?

Ms. FALCON. My ancestors.

Mr. STUPAK. Your ancestors. Correct?

Ms. FALCON. Correct.

Mr. STUPAK. And your ancestors were part of this Greater Chippewa Nation, correct?

Ms. FALCON. Yes, they were.

Mr. STUPAK. In fact, if you take a look at it, you have the Saginaw Tribe of Chippewa Indians, you have the Sault Tribe of Chippewa Indians, you have the Bay Mills Tribe, which is also Chippewa Indians, you have the Grand Travers Tribe of Chippewa and Ottawa Indians. You were all part of one nation at that time, much like we are all 50 States of one Nation. But what the Federal Government did here was individually, if I can use the words, break down that Greater Nation in the smaller bands and tribes so they could get you to cede land to the United States. Isn't that correct?

Ms. FALCON. Yes.

Mr. STUPAK. And that would be like some nation, like Canada trying to negotiate strictly with Michigan to the disadvantage of the rest of the United States, but to their advantage. Correct?

Ms. FALCON. Correct.

Mr. STUPAK. Not a very good way of doing business, as we look back now a couple of hundred years, right?

Ms. FALCON. Right.

Mr. STUPAK. So when you say that these casinos would be going into land not owned by Bay Mills or Sault Ste. Marie, it really was owned by their forefathers who may have signed these treaties way back in 1807 or even before that time. Isn't that correct?

Ms. FALCON. Yes, but 1807 was the land that was paid to the Saginaw Chippewa Tribe. The treaty was with the Saginaw Chippewa Tribe.

Mr. STUPAK. Sure. That was your part of it. And Bay Mills and Sault did theirs about 1856, and you go to the western part of the U.P., the other Chippewas did theirs a little bit later. Then you go down to the Potawatomis and all that. The point being, they are all part of one nation. You derived your rights in being a sovereign nation, in being a recognized tribe, based upon the first treaties made in Michigan with the Chippewas. Is that not correct?

Ms. FALCON. That would be correct.

Mr. STUPAK. OK. Did the Saginaw Chippewa Tribe disagree at any time when the Bay Mills gave up land in the Higgins Lake area to the Federal Government to help provide habitat to the Kirtland warbler back in the early 1990s?

Ms. FALCON. I think I would need to research that, or go back and look. I am not aware of that.

Mr. STUPAK. OK. So do you know of any other way, without Congress acting, that you can extinguish rights to your property whether it is Charlotte Beach or down there in Saginaw Midland area where you are located? Do you know of any way in which we can extinguish title to Native American land?

Ms. FALCON. No, I don't.

Mr. STUPAK. There are no administrative ways, there is no court or anything. The only way you can do it is through an Act of Congress, right?

Ms. FALCON. I would have to look into that and research it and come back with an answer. But I know that our tribe has unsettled land claims also.

Mr. JONES. If the gentleman—excuse me, one more question after she completes this, Mr. Stupak.

Mr. STUPAK. I will stop right there. Thank you, Mr. Chairman.

Mr. JONES. I want to thank the witnesses today on behalf of the Committee for their valuable testimony and the members of the Committee and Mr. Stupak for joining us today on this important issue.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. The hearing record will be held open for these responses.

If there is no further business, the Chairman again thanks the members of the Committee and our witnesses. The Committee stands adjourned.

[Whereupon, at 4:58 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mr. Carson follows:]

**Statement of The Honorable Brad Carson, a Representative in Congress from the State of Oklahoma**

Mr. Chairman, thank you for holding this hearing today to consider these two pieces of legislation. Since taking office, I have fought to protect and strengthen the sovereign rights of Indian nations. However, I have concerns with the precedent these bills will set in Indian country.

From what I understand, they would enable the Bay Mills Indian Tribe and the Sault Ste. Marie Tribe to settle land claims and build new casinos hundreds of miles

from their reservation, on land they have no historical ties to; and the measures put Congress in the position of ratifying a tribal/state gaming compact for the first time in history.

It is my understanding these bills are opposed by a number of tribes in Michigan, some members of the Michigan Congressional Delegation, and even the Administration does not support these bills. For these reasons, I am very concerned with H.R. 831 and H.R. 2793, and I look forward to hearing and reviewing the testimony from the interested parties here today.

Thank you.

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[A letter submitted for the record by The Honorable Kwame M. Kilpatrick, Mayor, City of Detroit, Michigan, follows:]

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June 22, 2004

The Honorable Richard W. Pombo
Chairman, House Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20215

Re: Legislative Hearing on H.R. 2793

Dear Chairman Pombo:

I am writing to express the position of the City of Detroit on H.R. 2793, scheduled for legislative hearing on June 24, 2004. Please accept this letter in lieu of my direct testimony before your Committee.

On behalf of the City of Detroit and my Administration, I wish to express my strong opposition to H.R. 2793, a bill that would permit the Sault Ste. Marie Tribe of Chippewa Indians to establish a tribal casino in Romulus, Michigan less than 20 miles from Detroit.

By way of background, Detroit has three casinos located within its city limits. These casinos were approved by a majority of Michigan voters in 1996 pursuant to a ballot initiative. In order to implement the will of the voters, the City of Detroit issued a Request for Proposal/Qualifications ("RFP/Q") in June 1997. The introduction to that RFP/Q stated, in part:

> "Entertainment and hospitality industries must and will play a major role in this redesign of Detroit's city center for the next millennium.... With a synergistic and critical mass of diverse contemporary entertainment experiences, it will become the premier entertainment center of the Midwest. The fulfillment of this vision demands a casino development that would proceed with nothing short of world-class standards...our casino facilities must be designed and built to the highest standards of quality.... The operators of these facilities, who should be carefully chosen for their integrity and past successes, must also become active responsible citizens in our community."

What I am attempting to demonstrate by quoting the above passages from the RFP/Q is that the City envisioned its three casinos to be a major focus of its downtown revitalization. Because of this, Detroit proceeded with the utmost caution in selecting the three casino developers, established a meaningful partnership between the casinos and the City, participated in the site selection, approved the critical design elements of the casinos and assured itself of their financial integrity. These tasks took countless hours of time and substantial effort by City officials and employees and outside professionals and consultants at a cost of millions of dollars. This careful planning and hard work has paid off handsomely, creating well over a $1 billion industry. The three casinos employ over 7,500 hardworking Detroit residents all of whom pay taxes, purchase goods, make rent and mortgage payments and contribute to the overall economic and social well being of our City. Just as important, in 2003 these three casinos paid Detroit over $175 million in gaming taxes, fees and other payments. Like many other urban centers in a

rapidly changing world, Detroit relies heavily on these casino revenues in order to provide its residents with the services they require.

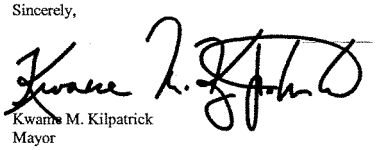
I wish to make it clear that my Administration has only the highest regards for the Sault Ste. Marie Tribe of Chippewa Indians. Indeed, the Tribe is an 80% owner of one of the three Detroit casinos and is responsible in large part for creating the industry of which we are so proud. They have been good corporate citizens and welcomed members of our business community. Nonetheless, their attempts to develop a Native American casino just outside the City's limits would have a significant adverse impact on the Detroit casino industry and the overall revitalization of our City. Detroit is the only location anywhere in the United States where a Native American Tribe has waived sovereignty and subjected itself to State regulation. The possibility of having a non-state regulated casino in this same market puts Detroit at a distinct disadvantage. Detroit can't control which casino the Tribe will choose to promote. This will cost Detroit and Michigan jobs and needed revenue.

It is my understanding that H.R. 2793, which allows the Tribe to develop a casino in Romulus, is based on a land claim "settlement" approved by the former Governor of the State of Michigan on the last day of his administration. The Governor approved this deal notwithstanding the fact that the courts had conclusively rejected the land claim. In addition, my lawyers inform me that the agreement with the Tribe appears to suffer from a number of serious legal infirmities under both federal and state law.

I will let others testify as to the public policy wisdom of allowing Tribes to randomly sue landowners in the hopes of obtaining a settlement, which includes "off reservation" land to build a casino in addition to circumventing the authority of the State legislature in the compacting process. However, as both a citizen of the State of Michigan and as the Mayor of the City of Detroit, it is my view that creating a new "off-reservation" casino undermines the express will of Michigan voters who voted to allow only a limited number of casinos in the area and drives an economic stake in the heart of a vital Detroit industry, siphoning off casino revenues while not returning one dime to the City.

On behalf of the City of Detroit, I urge you to oppose any legislation that would permit the development of a Tribal casino in Romulus, Michigan. Thank you for your attention in this matter.

Sincerely,



Kwame M. Kilpatrick
Mayor

Cc: Honorable Dale E. Kildee
Honorable Carolyn Cheeks Kilpatrick
Honorable John Conyers