

SENATE—Friday, March 19, 1999

The Senate met at 9:45 a.m. and was called to order by the President pro tempore [Mr. THURMOND.]

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, as this work-week comes to a close, we praise You for Your love that embraces us and gives us security, Your joy that uplifts us and gives us resiliency, Your peace that floods our hearts and gives us serenity, and the presence of Your Spirit that fills us and gives us strength and endurance.

We dedicate this day to You. Help us to realize that it is by Your permission that we breathe our next breath and by Your grace that we are privileged to use all the gifts of intellect and judgment You provide. Give the Senators and all of us who work with them a perfect blend of humility and hope, so that we will know You have given us all that we have and are and have chosen to bless us this day. Our choice is to respond and commit ourselves to You. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I thank you.

SCHEDULE

Mr. STEVENS. Mr. President, this morning the Senate will resume consideration of the supplemental appropriations bill. The pending amendment is the Enzi amendment regarding Indian gaming. Unless an agreement can be worked out on this amendment, I intend to move quickly to table it in an effort to keep this bill moving forward. If an agreement is not reached, all Members should expect the first vote of today's session to be approximately at 10 a.m.

Following that vote, it is my hope that Members with amendments will come to the floor to offer debate on those amendments. With the budget resolution scheduled beginning next week, it is imperative that the Senate complete action on the supplemental bill in a timely fashion. The cooperation of all Senators will be necessary to achieve that goal.

The leader has stated that on Monday the Senate is expected to debate a Kosovo resolution for several hours,

and then resume consideration of this supplemental appropriations bill. There will be no rollcall votes during Monday's session, according to the leader's statement.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, leader time is reserved.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR FISCAL YEAR 1999

The PRESIDING OFFICER. The Senate will now resume consideration of S. 544, which the clerk will report.

The bill clerk read as follows:

A bill (S. 544) making emergency supplemental appropriations and rescissions for recovery from natural disasters, and foreign assistance, for the fiscal year ending September 30, 1999, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hutchison amendment No. 81, to set forth restrictions on deployment of United States Armed Forces in Kosovo.

Stevens (for Enzi) amendment No. 111, to prohibit the Secretary of the Interior from promulgating certain regulations relating to Indian gaming and to prohibit the Secretary from approving class III gaming without State approval.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, it is my intention to ask unanimous consent to adopt the Enzi amendment, or to seek a vote on it.

I suggest the absence of a quorum for the time being.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I rise to introduce this amendment to the Supplemental Appropriations bill with my colleague, the distinguished Senator from Alabama, Mr. SESSIONS. This amendment is also cosponsored by Senator GRAMS of Minnesota, Senator BRYAN, Senator LUGAR, Senator REID, Senator VOINOVICH, and Senator BROWNBACK. This amendment has one very important purpose: to ensure that the rights of this Congress and all fifty

states are not trampled on by an unelected Cabinet official.

The amendment is simple and straightforward. It extends the current moratorium on the Secretary of the Interior's ability to finalize the rules that were published on January 22d, 1998 until eight months after Congress receives the report of the National Gambling Impact Study Commission. Since the Commission is due to deliver its report to Congress no later than June 20th of this year, this moratorium would give Congress until as late as next February to consider the findings and advice of the commission we established to study the impact of gambling. This amendment also prohibits the Secretary of the Interior from approving any tribal-state gambling agreement which has not first been approved by the tribe and the state in question during this moratorium.

Mr. President, it is imperative that the current moratorium, which expires on March 31st, be extended. If it is not extended and the rules in question are finalized, the Secretary of the Interior would have the ability to bypass all fifty state governments in approving casino gambling on Indian Tribal lands.

Mr. President, this is the fourth time in two years the Senate has had to deal with this issue of Indian gambling, and I regret that an amendment is once again necessary on this year's Supplemental Appropriations bill. However, I believe it is imperative that Congress considers the recommendations of our own commission on gambling before allowing an unelected Cabinet official to make a major policy change in the area of casino gambling on Indian Tribal lands.

For the last two years, I have offered amendments to the Interior appropriations bills prohibiting Secretary Babbitt from approving any new tribal-state gambling compacts that had not first been approved by the State in accordance with the Indian Gaming Regulatory Act. Both of those amendments passed the Senate on voice votes. Both of these amendments were agreed to by the House in Conference. Only at the eleventh hour during negotiations with the White House was the length of the moratorium on last year's bill shortened to 6 months. The message we sent to the Interior Department through these amendments was clear. Congress does not believe it is appropriate for the Secretary of the Interior to bypass Congress and the states in an issue as important as whether or not casino gambling will be allowed within the state borders.

Mr. President, for the past two years when we have debated this issue there have been lobbyists who have tried to paint this amendment as a Las Vegas protection bill. There are some lobbying groups that are trying that same tactic again this year. I want everyone to be perfectly clear on this point. This amendment is designed primarily for those states that do not allow gambling—particularly those that do not allow electronic gambling and especially those states that do not allow slot machines. The interest in this amendment from gambling states stems simply from these members' sincere desire to have the Indian Gaming Regulatory Act, or IGRA, enforced. Those states which have decided through their state legislatures or through the initiative process that they want casino gambling have also established regulations and procedures to monitor this activity. This amendment does not in any way minimize the serious need for proper enforcement of existing law.

Mr. President, the Chairman of the Indian Affairs Committee has introduced legislation to amend the Indian Gaming Regulatory Act. His committee has scheduled a hearing later this month to listen to testimony from a number of the parties involved in this debate. I applaud the senior Senator from Colorado for providing this forum. He has offered to consider my thoughts and recommendations as the committee goes through the proper legislative process of considering changes to existing law, and I look forward to providing some thoughts I have on possible changes to IGRA. I believe this is the proper manner to consider major changes to existing law. The committee should hold hearings and listen to the views of all the major parties involved, report a bill, and have a debate in the Senate and House on what legislation is most appropriate to fix any problems with the current statute.

In contrast with this process, Secretary Babbitt is attempting to bypass Congress and all fifty states with his proposed rules. This is a slap in the face to Congress, to all the State governments, and to all the Indian Tribes which have negotiated legitimate Tribal-State compacts with the States in which they are located. The Secretary's rules effectively punish those tribes which have played by the rules, and as such, will open the floodgates to an approval process based more on political influence than on proper negotiations between the states and the tribes. Who will be the winners under Secretary Babbitt's new regime? Will it be the Tribes that donate enough money to the right political party? In contrast, our amendment will make sure that the unelected Secretary of the Interior, Bruce Babbitt, won't single-handedly change current law. This amendment will ensure that any

change to IGRA is done the right way—legislatively.

Actually, the timing of Secretary Babbitt's attempt to delegate himself new authority is rather ironic. Last March, Attorney General Janet Reno requested an independent counsel to investigate Secretary Babbitt's involvement in denying a tribal-state gambling license to an Indian Tribe in Wisconsin. Although we will have to wait for Independent Counsel Carol Elder Bruce to complete her investigation before any final conclusions can be drawn, it is evident that serious questions have been raised about Secretary Babbitt's judgment and objectivity in approving Indian gambling compacts.

The very fact that Attorney General Reno believed there was specific and credible evidence to warrant an investigation should be sufficient to make this Congress hesitant to allow Secretary Babbitt to grant himself new trust powers that are designed to bypass the states in the area of Tribal-State gambling compacts. Moreover, this investigation should have taught us an important lesson: we in Congress should not allow Secretary Babbitt, or any other Secretary of the Interior, to usurp the rightful role of Congress and the states in addressing the difficult question of casino gambling on Indian Tribal lands.

Mr. President, the Secretary has not given any indication in the 11 months since the independent counsel was appointed that he should be trusted with new, self-appointed trust responsibilities over Indian Tribes. On February 22d of this year, United States District Judge Royce Lamberth issued a contempt citation against Secretary Bruce Babbitt and Assistant Secretary of the Interior for Indian Affairs, Kevin Gover, for disobeying the Court's orders in a trial in which the Interior Department and the Bureau of Indian Affairs were sued for mismanagement of American Indian trust funds.

In his contempt citation, Judge Lamberth stated, and I quote,

The court is deeply disappointed that any litigant would fail to obey orders for production of documents, and then conceal and cover up that disobedience with outright false statements that the court then relied upon. But when that litigant is the federal government, the misconduct is even more troubling. I have never seen more egregious misconduct by the federal government.

This conduct has raised such concern that both the Indian Affairs Committee and the Energy Committee have held hearings to call Secretary Babbitt to task for his mismanagement of these funds and his disregard for the rulings of a federal court. The Secretary's continued violation of his trust obligations to Indian Tribes should serve as a wake-up call to all of us in the Senate. This is not the time to allow the Secretary to delegate to himself new, unauthorized, powers.

I should add that lobbyists for the various tribes and representatives in

the White House have made it abundantly clear that Secretary Babbitt fully intends to finalize his proposed rules once the current moratorium expires. Our only way to stop this effort is to attach another amendment on this Emergency Supplemental Appropriations bill. This is a real emergency! Let me assure you, if Secretary Babbitt has his way, there will be no need for the Tribes to resolve problems involving gambling and IGRA in and with their States.

I do believe that this issue could be resolved with hearings and a bill—actual legislation from Congress. But those hearings won't happen as long as the tribes anticipate the clout of a Secretary's rule that bypasses the states. Yes, the courts have ruled that current law—which was passed by Congress, not an appointed Secretary—gives an edge in the bargaining process to the States. But that process has worked. If there is a need to change that process, it should only be changed by a bill passed by Congress—not by rule or regulation.

I must stress that if we do not maintain the status quo, there will never be any essential involvement by the states in the final decision of whether to allow casino gambling on Indian Tribal lands. There will be no compromise reached. The Secretary will be given the right to bypass us, the Congress of the United States, and to run roughshod over the states.

Again, I would like to stress that this amendment does not amend the Indian Gaming Regulatory Act, but holds the status quo for another eleven months. Three years ago, Congress voted to establish a national commission to study the social and economic impacts of legalized gambling in the United States. One of the aspects the commission is currently analyzing is the impact of gambling on tribal communities. This commission is now winding down its work and is set to deliver its report to Congress no later than June 20th of this year.

It is significant that this commission—the very commission Congress created for the purpose of studying gambling—sent a letter to Secretary Babbitt last year asking him not to go forward with his proposed rules. I think it would be wise of this body to follow the advice of the very commission we created to study the issue of legalized gambling.

I want to emphasize again that we are the body that asked for this commission. We created the commission to look at all gambling. The American taxpayers are already paying for the study. The commission is nearing the end of its work. We need to let them finish. They have asked Secretary Babbitt not to make any changes while they do their work. My amendment would give them that time.

The Judicial Branch has already preserved the integrity of current law.

This amendment supports that. The President has twice approved my amendment, in the FY98 Interior appropriations bill, and in the FY '99 Omnibus Appropriations bill. I'm asking my colleagues to take the same "non-action" once again. The Committee on Indian Affairs must play a very important role here. They need to hold hearings and write legislation which specifically addresses this issue and then put it through the process. They will have time to do that if this amendment is agreed to. This amendment would support giving the Indian Affairs Committee and Congress, as a whole, time to develop an appropriate policy.

Mr. President, the Enzi-Sessions amendment is strongly endorsed by the National Governor's Association.

This amendment is also supported by the National Association of Attorneys General. We have also received a number of letters from individual state Attorneys General in support of this amendment. This amendment is also supported by the National League of Cities.

I want to point out that this amendment does not affect any existing Tribal-State compacts. It does not, in any way, prevent states and Tribes from entering into compacts where both parties are willing to agree on class III gambling on Tribal lands within a state's borders. This amendment does ensure that all the stakeholders must be involved in the process—Congress, the Tribes, the States, and the Administration.

Mr. President, a few short years ago, the big casinos thought Wyoming would be a good place to gamble. The casinos gambled on it. They spent a lot of money. They even got an initiative on the ballot. They spent a lot more money trying to get the initiative passed. I became the spokesman for the opposition. When we first got our meager organization together, the polls showed over 60 percent of the people were in favor of gambling. When the election was held casino gambling lost by over 62 percent—and it lost in every single county of our state. The 40 point swing in public opinion happened as people came to understand the issue and implications of casino gambling in Wyoming. That's a pretty solid message. We don't want casino gambling in Wyoming. The people who vote in my state have debated it and made their choice. Any federal bureaucracy that tries to force casino gambling on us will only inject animosity.

Why did we have that decisive of a vote? We used a couple of our neighboring states to review the effects of their limited casino gambling. We found that a few people make an awful lot of money at the expense of everyone else. When casino gambling comes into a state, communities are changed forever. And everyone agrees there are costs to the state. There are material

costs, with a need for new law enforcement and public services. Worse yet, there are social costs. And, not only is gambling addictive to some folks, but once it is instituted, the revenues can be addictive too. But I'm not here to debate the pros and cons of gambling. I am just trying to maintain the status quo so we can develop a legislative solution, rather than have a bureaucratic mandate.

Mr. President, the rationale behind this amendment is simple. Society as a whole bears the burden of the effects of gambling. A state's law enforcement, social services, communities, and families are seriously impacted by the expansion of casino gambling on Indian Tribal lands. Therefore, a state's popularly elected representatives should have a say in the decision about whether or not to allow casino gambling on Indian lands. This decision should not be made unilaterally by an unelected cabinet official. Passing the Enzi-Sessions amendment will keep all the interested parties at the bargaining table. By keeping all the parties at the table, the Indian Affairs Committee will have the time it needs to hear all the sides and work on legislation to fix any problems that exist in the current system. I urge my colleagues to stand up for the constitutional role of Congress—and for the rights of all fifty states—by supporting this amendment.

Mr. President, I ask unanimous consent that the letters I referenced be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL GAMBLING IMPACT
STUDY COMMISSION,
Washington, DC, August 6, 1998.

Hon. BRUCE BABBITT,
Secretary, U.S. Department of the Interior,
Washington, DC.

DEAR SECRETARY BABBITT: As you are aware, the 104th Congress created the National Gambling Impact Study Commission to study the social and economic impacts of legalized gambling in the United States. Part of our study concerns the policies and practices of tribal governments and the social and economic impacts of gambling on tribal communities.

During our July 30 meeting in Tempe, Arizona, the Commission discussed the Department's "by-pass" provision for tribes who allege that a state had not negotiated for a gaming compact in good faith. The Commission voted to formally request the Secretary of the Interior to stay the issuance of a final rule on Indian compacting pending completion of our final report. On behalf of the Commission, I formally request such a stay, and trust you will honor this request until you have had an opportunity to review the report which we intend to release on June 20, 1999. Thank you for your consideration.

Sincerely,

KAY C. JAMES,
Chairman.

NATIONAL GOVERNORS' ASSOCIATION,
Washington, DC, March 16, 1999.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. THOMAS A. DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR LOTT AND SENATOR DASCHLE: We are writing on behalf of the National Governors' Association to urge you to co-sponsor and support the Indian gaming amendment to the Supplemental Appropriations bill sponsored by Senator Michael B. Enzi (R-Wyo.) and Senator Jeff Sessions (R-Ala.). This amendment would extend the current moratorium on the secretary of the U.S. Department of the Interior using federal funds for approving tribal-state compacts that have not been approved by the state, as required by law. The amendment would also prohibit the secretary from promulgating a regulation or implementing a procedure that could result in tribal Class III gaming in the absence of a tribal-state compact or from going forward with any proposed rule on this matter in the near future.

The National Governors' Association is currently in discussions with Indian tribes and the U.S. Departments of Interior and Justice about negotiations on amendments to the Indian Gaming Regulatory Act of 1988. Meetings have already been held in Denver, Colorado and Oneida, Wisconsin. The nation's Governors strongly believe that no statute or court decision provides the secretary of the U.S. Department of the Interior with authority to intervene in disputes over compacts between Indian tribes and states about casino gambling on Indian lands. The secretary's inherent authority includes a responsibility to protect the interests of Indian tribes, making it impossible for the secretary to avoid a conflict of interest or to exercise objective judgment in disputes between states and tribes. To avoid protracted litigation, we respectfully urge Congress to adopt the Enzi/Sessions amendment to extend the current moratorium and prohibit the secretary from issuing a final rule.

Thank you for your support of this amendment. Please contact us if you have any questions about our position on this matter, or call Tim Masan of the National Governors' Association at 202/624-5311.

Sincerely,

GOVERNOR THOMAS R.
CARPER, Delaware.
GOVERNOR MICHAEL O.
LEAVITT, Utah.

NATIONAL ASSOCIATION OF
ATTORNEYS GENERAL,
Washington, DC, March 15, 1999.

Hon. MICHAEL B. ENZI,
Hon. JEFF SESSIONS,
U.S. Senate, Washington, DC.

DEAR SENATORS ENZI AND SESSIONS: We write in support of your proposed amendment to the FY '99 Emergency Supplemental Appropriations Bill, which would extend the existing moratorium on the Secretary of the Interior's proposed regulations on Indian gaming.

The Attorneys General continue to believe that there is no statutory authority for the Secretary's proposed procedures to allow tribes to obtain gaming compacts from Interior rather than by negotiations with the states. We believe that only amendments to the Indian Gaming Regulatory Act can create the power the Secretary asserts, and we believe that such amendments should occur only by way of agreement between states, tribes and federal interests.

Continuation of the existing moratorium on the proposed procedures will be a strong incentive for discussions on amendments, while allowing the moratorium to lapse would be likely to end the opportunity for mutually acceptable changes in the Act to emerge and instead set off another lengthy bout of litigation. The consensus of the Attorneys General is that discussions are preferable to litigation, and that continuation of the moratorium for as long as is necessary is the best incentive to achieve that goal.

Sincerely,

NELSON KEMPSKY,
*Executive Director,
Conference of West-
ern Attorneys Gen-
eral.*

CHRISTINE MILLIKEN,
*Executive Director and
General Counsel,
National Association
of Attorneys Gen-
eral.*

NATIONAL LEAGUE OF CITIES,
Washington, DC, March 16, 1999.

Hon. TED STEVENS,
*Chairman, Committee on Appropriations,
U.S. Senate, Washington, DC.*

Hon. ROBERT C. BYRD,
*Ranking Member, Committee on Appropriations,
U.S. Senate, Washington, DC.*

DEAR CHAIRMAN STEVENS AND SENATOR BYRD: I am writing to you on behalf of the National League of Cities (NLC) to urge you again to support the Enzi/Sessions amendment to the FY '99 Interior Emergency Supplemental Appropriations Bill which seeks to extend the moratorium on the implementation of procedures by the U.S. Secretary of the Interior until on or about February 20, 2000 or eight months after the national Gambling Impact Study Commission issues its report to Congress. It is of the utmost importance for Congress to hear and digest the Commission's findings prior to permitting any new regulations from becoming final. The current moratorium will expire on March 31, 1999.

NLC urges support of the Enzi/Sessions amendment in order to maintain the status quo of the Indian Gaming Regulatory Act (IGRA) and slow the creation of new trust land. While further legislation is required to remove the power of the Interior Secretary to administratively create enclaves that would be exempt from state and local regulatory authority, passage of this amendment would be an important first step in this process.

Because passage of the Enzi/Sessions amendment would slow the creation of new trust land in one narrow set of circumstances, NLC urges support of this amendment as a first step. The concept of allowing an appointed federal official to overrule and ignore state and local land use and taxation laws through the creation of trust lands flies in the face of federalism and intergovernmental comity.

The membership of the NLC has adopted policy which declares that: "lands acquired by Native-American tribes and individuals shall be given corporate, not federal trust, property status." This policy is advocated "in order that all lands may be uniformly regulated and taxed under municipal laws."

The Supreme Court has ruled that provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* (IGRA) violate certain constitutional principles that establish the obligations, immunities and privileges of the states. The Interior Department appears to

be determined to implement the remaining provisions of IGRA despite the fact that the Supreme Court decision really requires a congressional re-examination of the IGRA statute and the more general topic of trust land designation. For these reasons, the NLC strongly urges Congress to extend the current moratorium, as proposed by the Enzi/Sessions amendment at least until eight months after the National Gambling Impact Study Commission issues its report to Congress, or February 20, 2000.

Sincerely,

CLARENCE E. ANTHONY,
Mayor, South Bay, Florida.

CHRISTIAN COALITION,
Washington, DC, July 9, 1998.

PROTECT STATES' RIGHTS—VOTE FOR THE ENZI/SESSIONS AMENDMENT TO THE INTERIOR APPROPRIATIONS BILL

DEAR SENATOR: When the Senate considers the FY '99 Interior appropriations bill, an amendment sponsored by Senator Enzi (WY) and Senator Sessions (AL) is expected to be offered. This amendment would protect states' rights in negotiating tribal-state compacts, especially when negotiating casino gambling.

Under the Indian Gaming Regulatory Act, every state has the right to be directly involved in tribal-state compacts, without Federal interference. Every state also has the right, as upheld by the Supreme Court in the *Seminole Tribe of Florida v. Florida* decision, to raise its 11th Amendment defense of sovereign immunity if a tribe tries to sue the state for not approving a casino compact. However, in the wake of the *Seminole* decision, the Department of Interior has created new rules whereby a tribe can negotiate directly with the Secretary of Interior on casino gambling compacts and bypass a state's right to be involved. These new rules are a gross violation of states' rights. An unelected cabinet member should not be given sole authority to direct the internal activities of a state, especially with regards to casino gambling contracts.

Christian Coalition is also very concerned with the severe social consequences of casino gambling. There is much evidence that the rise of casino gambling leads to a rise in family breakdown, crime, drug addiction and alcoholism. With such staggering repercussions, it is vital that Tribal-State gambling compacts remain within each individual state and not be commandeered by an unelected federal official.

The Enzi/Sessions amendment would prohibit the Secretary of Interior, during fiscal year 1999, from establishing or implementing any new rules that allow the Secretary to circumvent a state in negotiating a tribal-state compact when the state raises its 11th amendment defense of sovereign immunity. It also prohibits the Secretary from approving any tribal-state compact which has not first been approved by the state.

Christian Coalition urges you to protect states' rights and vote for the Enzi/Sessions amendment to the FY '98 Interior appropriations bill.

Sincerely,

JEFFREY K. TAYLOR,
*Acting Director of
Government Relations.*

Mr. CAMPBELL. Mr. President, I am opposed to the Enzi-Reid amendment on Indian gaming because it will continue the "stand-off" that exists between the tribes and states, preventing them from reaching fair gaming agreements.

There are members in the Chamber who are downright against gaming. That is not what this debate is about.

Under Federal law, tribes are limited to the types of gaming allowed under the laws of the State in which they reside. In my own State of Colorado as an example, there are two tribes, the Southern Ute and the Ute Mountain Ute. They are limited to slot machines and low-stakes table games, just as the other gaming towns in Colorado.

In Utah, State law prohibits all gaming: tribal, non-tribal or otherwise. The intention of the Federal law, IGRA, was that in States where gaming is limited or prohibited, tribes would be limited or prohibited from operating gaming as well.

But today's debate is about whether a Governor of a State can limit a type of business activity to certain groups simply by refusing to negotiate. That is unfair and un-American.

There are many tribes and States that have sat down and negotiated such agreements that are binding and effective.

There are some States that refuse to negotiate at all with tribes—leaving those tribes without the ability to conduct gaming and without the ability to generate much-needed revenues.

This is the core problem: whether accomplished through legislation, through the kind of secretarial procedures we are talking about today, or whether through tribal-State negotiations, these impasses should be brought to an end.

Let's not forget how we got here. In 1987, the Supreme Court ruled in *Cabazon* that unless a State prohibited gaming entirely, such as Utah and Hawaii now do, the State's regulations would not apply to gaming conducted on Indian lands within that State.

This caused a clamor by the States and a year later the Congress responded by passing the Indian Gaming Regulatory Act.

This act was a compromise and for the first time gave State governments a role in what kind of gaming would occur on Indian reservations within a State's borders.

In 1996, the High Court ruled in *Seminole* that tribes cannot sue States and require them to negotiate for gaming compacts. Some States, have used the *Seminole* case to refuse to talk to tribes completely.

That is unfair at the very least. As my colleagues know, I am a big supporter of tribal-State negotiations on matters from business development, to jurisdictional issues, to taxes. If it is good enough for tribes to have to negotiate, it is good enough for States as well.

So while I think that each State's public policy should determine the scope of all gaming conducted in that State, I also believe the current State of the law gives States what is in reality a veto over tribes in this field.

I was here in 1988, in fact, and helped write the IGRA legislation, and I can tell you it was never the intent of Congress to provide such a veto.

I should point out to my colleagues that in many cases non-Indian gaming is promoted and even operated by State governments, so there is an element of competition. I believe some States have refused to negotiate in order to preserve their monopoly on gaming.

To begin to address this situation, the Department of Interior has proposed a process that is based on the IGRA statute. Though the process does need refinement, I do not believe the secretary should be stopped from developing alternative approaches to these impasses.

Coming from a Western State, I am as supportive as anybody in this chamber of States rights, but those who say this process overrides the States are wrong.

Under the proposal, if a State objected to a decision made by the Interior Secretary, that State could challenge that decision in Federal court.

For those who fear the department is acting without oversight, I point out that Congress will have the authority to review any proposed regulations before they take effect.

As the proposal comes before the authorizing committees, any new regulations will get a careful review and if those regulations are found to be unacceptable, they simply will not pass. We will legislate a new approach if they do not pass.

I urge my colleagues to vote against this amendment and allow the regulatory and legislative process to work.

I yield the floor, Mr. President.

Mr. INOUE. Mr. President, I rise in opposition to the amendment proposed by Senators ENZI, SESSIONS, GRAMMS, BRYAN, LUGAR, REID, VOINOVICH and BROWNBACK, which would impose a moratorium on the Interior Secretary's authority to promulgate final regulations or to issue a notice of proposed rulemaking related to procedures which would provide a means for securing a tribal-state compact governing the conduct of class III gaming on Indian lands.

Mr. President, in 1988, I served as the primary sponsor of the bill that was later enacted into law as the Indian Gaming Regulatory Act. That Act provides a comprehensive framework for the conduct of gaming on Indian lands, including a means by which the state and tribal governments, as sovereigns, may enter into compacts for the conduct of class III gaming on tribal lands.

The Act further provides that should a state and tribal government reach an impasse in the negotiations that would otherwise lead to a tribal-state compact, a tribal government or a state government could initiate a legal action in a federal district court pursuant to which a court could: (1) rule on

the parties' substantive interpretations of law that gave rise to the impasse, thereby resolving the matter; or (2) order the parties to either resume negotiations or enter into a process of mediation.

However, in the intervening years, the United States Supreme Court has ruled that a state may assert its sovereign immunity to suit if a legal action is initiated by a tribal government, thereby divesting a federal court of its jurisdiction, and that the Congress lacks the authority to waive a state's Eleventh Amendment immunity to suit.

Since that time, various members of the Committee on Indian Affairs have proposed an array of alternatives to the Act's compacting process, but each time, either the states or the tribes have opposed these measures. So the Interior Secretary stepped into the breach, and invited comments on his authority to promulgate rules for an alternative means of securing the authority to conduct class III gaming on Indian lands.

This has been a constructive effort on the Secretary's part, for which he is to be commended.

Mr. President, twenty-one states have entered into compacts with tribal governments over the last eleven years. There are only a few states in which tribal-state negotiations have been frustrated, and this amendment effectively precludes those tribal governments that have yet to secure a compact, from exploring an alternative route, as prescribed by the Secretary, and gives the states an absolute veto power over tribal gaming—a result that the Act was clearly intended to avoid.

Not only does this amendment cut off the rights that tribes have under the Supreme Court's ruling in *California v. Cabazon Band of Mission Indians*, the amendment ties the Secretary's authority to the submittal of a Commission report that has no legal on these matters. The National Gambling Impact Study Commission was authorized to examine and assess all forms of gaming in the United States, as well as gambling-related issues, including the conduct of state lotteries.

Mr. President, there are many of us in the Congress who are opposed to gaming, and as Indian country well knows, I include myself in the ranks of those members. Hawaii is one of only two states in our Union that prohibits all forms of gaming. But I don't see anyone in this body proposing to impose a moratorium on the conduct of state lotteries until eight months after the Commission submits its report to the Congress.

Nonetheless, tribal government-sponsored gaming is most analogous to the lotteries operated by state governments. Federal law—the Indian Gaming Regulatory Act—clearly and un-

equivocally provides that tribal gaming revenues may only be used to support the provision of governmental services by tribal governments to reservation residents—both Indian and non-Indian.

Mr. President, I must take exception to some of the representations that have been made about this amendment. For instance, that the amendment "protects States' rights without harming Indian Tribes".

A right to conduct gaming free of any State involvement was confirmed by the United States Supreme Court in May of 1997. Let us be clear about this—what this amendment does is take away that right.

The proponents of this amendment also assert that their amendment would maintain "the status quo of the Indian Gaming Regulatory Act". However, we should be also equally clear about this—this amendment does not preserve the status quo. Rather it strips tribal governments of rights that have been confirmed by the Supreme Court, and rather than preserving the status quo, it vests the states with a right they never had under the rulings of the Supreme Court or any other Federal law—namely, a veto power over the conduct of gaming on tribal lands—lands and activities over which the states do not have the right to exercise their jurisdiction. This is what the Supreme Court has ruled. This amendment would subvert the rulings of the Supreme Court in this area, and I believe our colleagues in the Senate should be aware that the amendment does precisely that.

I would urge my colleagues to reject this amendment.

Mr. SESSIONS. Mr. President, I thank the Senator from Wyoming for allowing me to introduce this important amendment with him. I want to congratulate him for his good work on an issue that is, at its heart, a matter of great concern to those of us who believe that the Federal Government often goes too far in exerting its will on the individual States. I think that the legislation that we have adopted today is good legislation that recognizes the importance of protecting the ability of States to regulate gambling within their borders.

Allow me to briefly share some of my thoughts on the importance of this amendment. As Attorney General of Alabama, I cosigned a letter with 25 other Attorneys General that was sent to the Secretary of the Interior regarding his promulgation of the rules at issue today. Every one of the Attorneys General who signed this letter did so because we had come to the same legal conclusion: the Secretary of the Interior does not have the authority to take action to promulgate regulations allowing class III gambling in this manner. In fact, I believe that if the

Secretary of the Interior were to attempt to finalize this rule and take action, he would immediately be sued by States throughout this country in what would amount to expensive and protracted litigation. I feel the Secretary would lose these suits, and that this amendment offers us the opportunity to prevent such a waste of resources on both the State and Federal level from occurring.

This is an important issue for my State of Alabama, which has one federally recognized tribe and which has not entered into a tribal-State gambling compact. The citizens of Alabama have consistently rejected the notion of allowing casino gambling within the State. If the Secretary of the Interior is allowed to unilaterally provide for class III casino gambling for this tribe, where the State has not agreed to enter into a compact and against the expressed will of the people, he will also be unilaterally deciding to impose great burdens on local communities throughout Alabama. This is because the one federally recognized tribe in our State owns several parcels of property, and it is likely that once casino gambling was established in one area it would spread to others.

Let me share with you a letter that the Mayor of Wetumpka, whose community is home to one of these parcels of property, wrote me in reference to the undue burdens her town would face if the Secretary were to step in and authorize casino gambling. Mayor Glenn writes:

Our infrastructure and police and fire departments could not cope with the burdens this type of activity would bring. The demand for greater social services that comes to areas around gambling facilities could not be adequately funded. Please once again convey to Secretary Babbitt our city's strong and adamant opposition to the establishment of an Indian gaming facility here.

Mayor Glenn's concerns about the costs to her community if the Secretary were able to exert this kind of authority have been seconded by other communities. Let me share with you an editorial that appeared in the *Montgomery Advertiser*. Montgomery is the state capital, and is located just a few miles from Wetumpka. The *Advertiser* wrote:

Direct Federal negotiations with tribes without State involvement would be an unjustifiably heavy-handed imposition of authority on Alabama. The decision whether to allow gambling here is too significant a decision economically, politically, socially to be made in the absence of extensive State involvement. A casino in Wetumpka—not to mention the others that would undoubtedly follow in other parts of the State—has implications far too great to allow the critical decision to be reached in Washington. Alabama has to have a hand in this high stakes game.

Mr. President, the author of this editorial is correct. We should not allow the Secretary of the Interior to promulgate rules giving himself the authority to impose drastic economic, po-

litical and social costs on our local communities.

I would also like to address another issue in connection with the regulations the Secretary of the Interior has proposed. If the Secretary is allowed to exert this kind of power, he will be in a position to enrich selected tribes, potentially by millions of dollars, simply by stroking a pen. I do not think this is proper. This is a powerful capability. Imagine the conflict of interests that could arise as tribes lobby the Secretary to either approve, or disapprove, requests for class III casino gambling facilities. Indeed, the current Secretary of the Interior has already had his actions in similar instances brought under investigation to see if departmental decisions were influenced by campaign donations. This is unseemly, and unsound. I think we should ensure that States remain a vital part of the negotiating process to add legitimacy to decisions that are made.

Mr. President, this amendment has broad, bipartisan support. It has been supported by the National Association of Governors, the National Association of Attorneys General, the Christian Coalition and the National League of Cities. It is a reasonable, limited approach to this problem and, on a more fundamental level, ensures the proper respect for the role of States in deciding these issues. It reflects my public policy belief that gambling decisions should be made on a rational basis by the people of the State who would have to live with the results of that activity, rather than by the Federal Government. I am proud to be a cosponsor of this legislation, I welcome its inclusion in the Supplemental Appropriations legislation and I urge my colleagues to fight to preserve this provision during the conference negotiations with the House.

Mr. DOMENICI. Mr. President, last year, despite opposition from me, Senator CAMPBELL, Chairman of the Senate Committee on Indian Affairs and Senator INOUE, Vice-Chairman of our committee, the Enzi amendment succeeded in suspending Secretarial authority to establish a regulatory route for Indian gaming compacts until March 31, 1999. This prohibition prevents the Secretary of the Interior from proceeding with a regulatory route for tribes who have asked states to negotiate compacts and find the state to be unwilling.

Tribes lost their right to sue states under the Indian Gaming Regulatory Act, IGRA, in 1996, when the Supreme Court, in the Florida Seminole case, determined that IGRA was unconstitutional in its provisions allowing tribes to sue states. The Supreme Court upheld states rights under the 11th Amendment.

If a state refuses to negotiate for compacts and that state allows gambling by any person for any purpose

(all do in some form, except Utah and Hawaii), the Secretary of the Interior would have an alternative route to compacts, essentially negotiated through his Department, where he also has trust responsibility for Indian tribes.

New Mexico Indian tribes are opposed to the Enzi amendment, even though there is no immediate effect in New Mexico. As Governor Milton Herrera of Tesuque Pueblo wrote, "Section 2710 (d)(7)(B)(vii) of IGRA specifically allows tribes to go directly to the Secretary and ask for alternative procedures to conduct Class III gaming."

The Governor also objects to Congressional action on this issue without a hearing and as a violation of Senate Rule 16, which prohibits authorizing legislation in an appropriations bill.

Governor Herrera goes on to say,

Gaming is to Indian tribes what lotteries are to state governments. Indian gaming revenues are used to fund essential government services including law enforcement, health care services, aid for children and elderly, housing and much-needed economic development. Through gaming, tribal governments have been able to bring hope and opportunity to some of this country's most impoverished people. Contrary to popular opinion, gaming has not made Indian people rich; it has only made some of us less poor.

As written, the Enzi amendment before us today would delay any Secretarial actions to develop alternative regulations until 8 months after the expected report from the National Commission on Gambling (June 1999), or until February of the year 2000. If this amendment fails, lawsuits are expected over whether the Secretary has the legal right to develop these regulations that essentially skirt states rights to object to compacts.

Mr. President, given the delicate balances between sovereign states and tribes in IGRA, I would rather see a judicial determination of the Secretary's rights under IGRA to develop such regulations. Like Governor Herrera has pointed out, without a hearing, it is difficult for the Senator to make this judgment. For these reasons, I remain opposed to the Enzi amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I urge the adoption of the amendment. I ask for a voice vote on the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 111) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I was pleased to cosponsor the provision of the Senator from West Virginia for an Emergency Steel Loan Guarantee program when the Committee on Appropriations reported the bill to the Senate earlier this month. I felt then, as I do now, that many steel companies have suffered significant economic injury as a result of the illegal dumping of foreign steel. In my own State of Alabama, at least one steel mill I know of is now teetering on the brink of bankruptcy due to this illegal activity. I was, therefore, very pleased by the Senator from West Virginia's effort to address this problem and provide some short-term needed relief to our steel companies. I know Senator SESSIONS shares my support for this provision because of our concern with the plight of local steel mills in our State of Alabama.

Mr. SESSIONS. Mr. President, I too am concerned with the dilemma facing our local steel mills in Alabama and I want to commend the Senator from West Virginia for his leadership, working, in a bipartisan manner with Senators from all the steel-producing and other adversely affected states, to address the substantial economic injury that the illegal dumping of imported steel has caused across the country through an Emergency Steel Loan Guarantee program, which is to be part of the Emergency Supplemental appropriations bill, for the fiscal year ending September 30, 1999. My understanding is that the intent of the Emergency Steel Loan Guarantee program is to afford all qualified steel companies with the opportunity to obtain a loan guarantee, whether or not the company is now or is placed in a situation where it must seek to reorganize under Chapter 11 of the United States bankruptcy laws before the end of this year? Is my understanding of the program correct?

Mr. BYRD. The Senator is correct.

Mr. SHELBY. As you know, several companies have already been forced into bankruptcy because of the "critical circumstances" that these unprecedented levels of imports have caused—Acme, Laclede, and Geneva Steel come to mind—and that several other companies are in a distressed financial condition, including companies in West Virginia and Alabama. Senator SESSIONS and I have met with the workers of steel companies on numerous occasions since this crisis started last fall. We have been told that because of this dire situation, companies are no longer able to borrow money in the private sector because of the disruptive and uncertain market. In which they must operate and that the immediate implementation of the Emergency Steel

Loan Program is essential to the continued viability of these companies. It is my understanding that this program is specifically designed to encourage the private sector to make such loans available and that the Board will expedite its review of loan guarantee applicants that are in immediate need of such financial assistance.

Mr. BYRD. The Senator is correct. The Emergency Steel Loan program is designed to provide immediate access to necessary working capital and to allow companies to refinance long-term debt obligations on reasonable terms and conditions, which will improve their immediate cash flow positions so they can stay in business until this crisis passes. We do not want to have companies be deprived of an economic life-line when they are drowning and need a helping hand.

Mr. SESSIONS. As you know, the Senate Judiciary Committee, of which I am a member, spent a great deal of time last year examining the bankruptcy law and how to improve it for both doctors and creditors, I am particularly concerned that companies that seek to reorganize under Title 11 of the U.S. Code, are not precluded from obtaining a loan guarantee under this program since by definition the debts of such companies exceed their assets. Let me be specific, if a company does not have traditional forms of available "security," such as is defined in the 11 U.S.C. Sec. 101, would the Board consider an order of the federal bankruptcy judge finding that a guarantee is necessary to enable the company to operate its business or reorganize meets that requirement?

Mr. BYRD. The Senator is correct that the bill was written so that "security," as defined in the bill, would cover such a situation, however if further clarification is required we will work to address that and similar issues so that such companies are not excluded from the assistance provided in this emergency loan program.

Mr. SHELBY. Is it the Committee's intent that the Emergency Steel Loan Guarantee Program, established under S. 544, be made available to all qualified steel companies that satisfy the requisite security requirements in section (h)(2) at the time loan commitment is made as well as available at the time the loan becomes effective, regardless of whether or not a qualified steel company is now or could be required to reorganize under Chapter 11 of Title II of the U.S. Code?

Mr. BYRD. The Senator is correct, and if necessary we will clarify that further.

Mr. SESSIONS. The power of a United States bankruptcy court already provide that a court may issue any order that is necessary or appropriate to carry out its responsibilities of the bankruptcy law to protect the custody of the estate and its adminis-

tration. Specifically, 11 U.S.C. Section 364 requires a debtor to obtain the permission of the court as a prerequisite to incurring additional credit. If a United States bankruptcy court determines that a qualified steel company under its jurisdiction requires the immediate access to a guarantee in an amount less than \$25 million, would that company be precluded from participating in the program because it has an immediate need of a lesser amount of guarantee than specified in section f(4)?

Mr. BYRD. That was not the intent of the Committee and we would expect the Board to afford substantial deference to such a determination by a United States bankruptcy court and we will further clarify that if required.

Mr. BROWBACK. Mr. President, in yesterday's RECORD, it did not reflect that I was an original cosponsor of the Roberts-Brownback amendments regarding gas producers that was adopted. I want to inform my colleagues that I was an original cosponsor and I understand the permanent RECORD will reflect that fact.

Mr. GRAMS. Mr. President, I rise today to thank the bill managers for accommodating me—and more importantly the elderly and disabled residents of the St. Paul Public Housing Agency—by accepting an amendment I was prepared to offer which is intended to right a wrong which has been imposed by the Department of Housing and Urban Development (HUD) upon elderly and disabled public housing residents in St. Paul, Minnesota, as well as nearly 50 other cities in America. As you may be aware, the Service Coordinator Program administered by HUD has succeeded where many Federal programs have failed. It has enabled some of our nation's most vulnerable citizens—the elderly and disabled—to live independently in public housing with dignity. Mr. President, most elderly and disabled public housing residents are not helpless individuals, but rather are people who simply need a little assistance doing the day to day tasks we all take for granted. However, without someone to help with these tasks, many of these people may be forced to move into more expensive assisted living or nursing facilities. The Service Coordinator Program provides basic support services to these residents to enable them to live independently.

Unfortunately, but not surprisingly, HUD has again proven its incompetence by bungling a recent round of funding of this popular and highly successful program. In a June 1998, funding announcement, HUD stated that the \$6.5 million available for public housing agency service coordinators would be allocated through a lottery, but HUD also noted that expiring three year grants would be funded first before the general lottery. Unfortunately, the \$6.5 million HUD set-aside

was well short of the \$9.9 million in applications received and rather than funding all renewals at a prorated level, HUD quietly selected some applicants through a lottery and rejected others.

Although this may simply seem like an inconvenient administrative glitch, to the residents of the St. Paul public housing agency which have thrived under this program, it is devastating. That is because St. Paul PHA was one of the fifty or so PHAs which were passed over by HUD. As a result of HUD's blunder, the St. Paul public housing agency will have to release three of their service coordinators within the next month, resulting in the disruption of countless elderly and disabled residents' lives.

In order to correct this problem, my amendment transfers \$3.4 million from the Department of Housing and Urban Development administrative expenses account to fully fund the applications which HUD rejected due to their miscalculation. I believe this amendment appropriately keeps our promise to the elderly and disabled public housing residents with the burden being borne by the agency which created the problem.

MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak therein for not to exceed 10 minutes, and that this period expire at 11 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

KOSOVO

Mr. BENNETT. Mr. President, I had not thought to address this subject, but the opportunity presents itself here and I find that I have reactions to this morning's newspaper that I would like to share with the Senate.

There were two things that happened yesterday, both of which are reported in this morning's paper. I think they come together with an interesting connection. The first one was a briefing held here in this building, on the fourth floor, on the issue of Kosovo and what the United States is about to do there. Attending that briefing, appropriately reported in this morning's paper, were the Secretary of State, Secretary of Defense, the President's National Security Adviser and the Chairman of the Joint Chiefs of Staff. Basically, they told us we are on the brink of going to war; that is, that the United States is prepared, with its NATO allies, to attack a country within its own borders to resolve a dispute among its own people in a way that the United States feels is appropriate.

There are those who have advised us to stay out of a civil war, not go in the

borders of another sovereign nation in order to resolve the dispute within that nation. But let us assume the stakes here are high enough to justify disregarding that advice. The second piece of advice that we are given is, if you do go into a civil war, pick a side. It is not entirely clear to me, from attending the briefing, that we know exactly which side we are for and what outcome we want. Because the third advice that comes along is, if you are going to go into a civil war and you are going to pick a side, make sure it is going to win. Again, in the briefing we had yesterday I was not satisfied that those four representatives of the administration had demonstrated a compelling case.

But I do not rise to issue a challenge to them on those grounds. Instead, I rise because of the connection, as I say, between two events: No. 1, a briefing of the Senate of the United States on the eve of the United States committing an act of war; and, No. 2, a report as to what the President of the United States was doing last night. In this morning's newspaper we are told that the President conducted a boffo performance before a dinner made up of representatives of the press, that he received three standing ovations, and in the Style section of the Washington Post we are told some of his best one liners. This is why I find such a jarring disconnect between the President preparing one liners in the White House for a reporters' dinner and the President's advisers talking to the Senate about going to war.

During the briefing that we had in this building yesterday, prior to the United States committing an act of war, we were told that one of the reasons we had to go ahead with this action was because we had gone so far down the road, in consultation with our allies, it would damage our treaty obligations with our allies if we did not proceed. I must confess I was offended—indeed, perhaps outraged by that logic—not because of what it said about what the administration had done with respect to our allies, but because of what it said about what the administration had not done with respect to its constitutional responsibilities. In the Constitution of the United States, the power to declare war is vested in the Congress of the United States. Very clearly, very specifically, without equivocation, Congress shall declare war.

We are on the verge of actions that are the equivalent of the United States going to war. The justification we are receiving for taking those warlike actions is that the administration has made commitments to foreign governments. Why is the administration entering into conversations, consultations and other relationships with foreign governments about going to war and not talking to the Congress of the

United States about going to war, instead, preparing one liners for a dinner with members of the press so the President can get standing ovations for his comedic abilities, the President competing with Bob Hope and David Letterman, while the United States is on the verge of sending its young men and women into harm's way in a situation which, according to the President's advisers, will "take casualties"?

The phrase, "we will take casualties," is a euphemism to say that Americans are going to be killed. They are going to come home in body bags, and they will be killed in a war that Congress has not declared. They will be killed in a war that takes place because the administration has consulted with our allies and is worried about embarrassing themselves with our allies but cannot bother to bring themselves to fulfill their constitutional responsibility to come to the one agency that, under the Constitution, has the authority to declare war—that is, the Congress of the United States.

Indeed, in that briefing we were told that American forces will face the most serious challenge militarily that we have faced since the gulf war, and some said the most serious air defenses we would face since the Second World War. Yet the administration does not bother to talk to Congress about this and gain congressional authority for these actions. Instead, the administration spends its time talking to our allies.

Don't make any mistake, I am not objecting to the fact that the administration has consulted with our allies. I think that is right and proper that we should do that. Don't they have any sense of proportion or constitutional responsibility in this White House? Don't they understand that the Constitution says Congress has the right to declare war, not the President?

The last time we went into major military confrontation was over the gulf war. At that time, the White House was in the hands of a Republican President. That Republican President, whom I consider a good personal friend and for whom I have the highest affection, was going down this same road. He was preparing to take America to war without a congressional authorization to do so. There were those in this body who stood and said, "Mr. President, you cannot take us to war without the approval of Congress."

President Bush and his advisers resisted that logic for a while. Interestingly enough, one of the Senators who spoke out most vigorously, saying to the President you have no right to take us to war without congressional authorization, is now the Secretary of Defense. Then-Senator Cohen said repeatedly, to his own administration and his own party, you cannot take us to war without congressional authorization.