

Testimony of Vice Chairman Jonodev Osceola Chaudhuri
National Indian Gaming Commission
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Thank you Chairman Tester, Vice Chairman Barrasso, and members of the Committee for inviting me to testify today. It is an honor to appear before you for the first time in my capacity as Vice Chairman of the National Indian Gaming Commission (NIGC or Commission).

Over the past ten months, I have worked closely with Associate Commissioner Dan Little and Commission staff to build on the initiatives of the last four years.

Today I will provide you an overview of the status and future of Indian gaming with an emphasis on the regulation of the industry.

The National Indian Gaming Commission - Powers, Duties, and Responsibilities

The National Indian Gaming Commission (NIGC) was established by the Indian Gaming Regulatory Act (IGRA) in order to provide Federal civil regulatory oversight of Indian gaming. The NIGC is composed of three members—the Chairperson and two associate commissioners. The Chairperson is appointed by the President and must be confirmed by the Senate. The associate commissioners are appointed by the Secretary of the Interior. Under IGRA, at least two of the three commissioners must be enrolled members of federally recognized Indian tribes, and no more than two members may be of the same political party. Each commissioner serves a three-year term, but a commissioner may serve after the expiration of his or her term until a successor has been appointed.

IGRA establishes three classes of Indian gaming, each of which has a different regulatory structure. Class I gaming is defined as traditional and social gaming for minimal prizes. Class I gaming is regulated exclusively by tribes.

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) and, if played in the same location as bingo, pull tabs, punch boards, tip jars, instant bingo, or other games similar to bingo. Class II also includes non-banking card games, such as poker, if such card games: (1) are explicitly authorized by the laws of the State, or (2) are not explicitly prohibited by the laws of the State, and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

IGRA also specifies that Class II does not include slot machines or electronic facsimiles of any game of chance. A tribe may conduct, license, and regulate Class II gaming if the state in which the tribe is located permits such gaming for any purpose and the tribal government adopts a gaming ordinance which has been approved by the NIGC Chair. Class II gaming is regulated by tribes with oversight by the NIGC. States have no role in the regulation of Class II gaming.

Class III gaming includes all forms of gaming that are not Class I or II, such as black jack, slot machines and craps. Class III is generally referred to as full-scale casino style gaming. Class III gaming may be lawfully conducted by an Indian tribe if: 1) the state in which the tribe is located permits that particular type of Class III gaming for any purpose by any person or organization; 2) the tribe and the state have negotiated a compact that has been approved by the Secretary of the Interior; and, 3) the tribe has adopted a tribal gaming ordinance that has been approved by the NIGC. The Act contemplates that the regulation of Class III gaming will be negotiated by the tribes and states in a compact. However, given that the NIGC must approve and provide regulatory oversight of items in the tribe's gaming ordinance and Class III management contracts, it too has a role in the regulation of Class III gaming.

Under IGRA, the NIGC has several specific responsibilities. First, the NIGC Chairman must approve all tribal gaming ordinances before Indian tribes may operate gaming on Indian lands. Also, if a tribe wishes to use an outside contractor to manage its gaming operation, the NIGC Chairman must first approve the management contract. In conjunction with such review, the principals of each management company must pass a detailed background investigation conducted by NIGC investigators. IGRA also provides authority for the NIGC to inspect gaming operations and monitor the tribes' use of gaming revenue. The NIGC Chairman has the authority to bring enforcement actions and assess civil fines against tribes or outside managers for any violation of IGRA, the NIGC's regulations, or an approved tribal gaming ordinance. Appeals from the NIGC Chairman's decisions regarding tribal gaming ordinances, management contracts, and enforcement actions are heard by the full Commission. Regulations and subpoenas are also issued by the full Commission. IGRA also contains criminal provisions related to theft from gaming operations on Indian lands. However, since the NIGC has no criminal law enforcement authority, IGRA directs the agency to report any potential criminal violations to the appropriate law enforcement agency. These responsibilities enable the agency to fulfill its statutory mission to protect tribes from organized crime and other corrupting influences and ensure that tribes are the primary beneficiary of the gaming activity.

In addition to the duties assigned to NIGC, IGRA also provides a role for the Secretary of the Interior. Interior is charged with approving tribal-state gaming compacts, issuing Class III gaming procedures, and approving tribal revenue allocation plans. In many instances, the Secretary must take land into trust before a parcel of tribal land can be eligible for gaming under IGRA. Typically, Interior will only take land into trust for gaming purposes if it first determines that the land would be eligible for gaming. In 2008, Interior promulgated regulations establishing procedures for determining whether or not any of IGRA's exemptions for allowing gaming on trust lands acquired after October 17, 1988, would apply.

Under IGRA and the NIGC regulations, each Indian tribe must license every primary management official and key employee in its gaming operations, as NIGC regulations define those terms. Before issuing such licenses, the tribes must conduct individual background investigations that include a search of the FBI's criminal history database. One method of

accessing such files is through the NIGC. A tribe may enter an agreement with the NIGC whereby the tribe sends its fingerprint cards to the NIGC, and the NIGC then forwards all cards received to the FBI for criminal history searches. The NIGC and the FBI operate under a memorandum of understanding for these purposes.

Indian gaming can only occur on Indian lands, which IGRA defines as: All lands within the limits of an Indian reservation; and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. Under IGRA, gaming is prohibited on lands acquired by the Secretary of the Interior into trust for the benefit of an Indian tribe after October 17, 1988, unless the land falls within certain exceptions listed in that provision.

To determine whether lands are Indian lands on which a Tribe may conduct gaming, the Department of the Interior and the NIGC entered into a memorandum of understanding which establishes a collaborative process for determining whether a Tribe may conduct gaming on specific parcels. Generally, Interior will determine whether lands are reservation lands and Interior and NIGC will collaborate on whether the Tribe has jurisdiction over those lands. If the lands are not within a reservation, then Interior and NIGC will collaborate to determine whether the lands meet the second test of trust or restricted lands. If the lands qualify as Indian lands under IGRA but are ineligible for gaming, the NIGC or the United States Attorney may close the facility. If the lands are not Indian lands, the state and local laws apply and jurisdiction over gaming on such lands is vested in the particular state where the parcel is located.

IGRA restricts the uses of tribal gaming revenues to primarily governmental purposes. However, if gaming revenues can adequately cover such needs, then the tribe also may make per capita payments to individual tribal members from the remaining proceeds (taxable as personal income), provided such distributions are made pursuant to a revenue allocation plan approved by the Secretary of the Interior. Many gaming tribes make no per capita payments at all.

The NIGC is funded entirely by fees paid from the Indian gaming. The NIGC's headquarters office is located at 90 K Street, NE, in Washington, D.C. The agency has six regional offices: Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa, OK; Oklahoma City, OK; and Washington, D.C. The NIGC's region offices house NIGC staff in the Compliance Division, making it possible to have regular contact with tribes at their gaming locations.

Over the last five years, the Commission has identified and launched a series of major initiatives consistent with its statutory mission. These included consultation and relationship building, conducting a comprehensive regulatory review, providing technical assistance and training, and improving agency operations. In advancing these initiatives, the agency has changed its consultation process to have a dialogue with tribes before regulatory changes are

implemented and before the rule-making process is initiated. Further, the Commission revised its training program to more closely align with the needs of the regulated community. To that end, the Commission reviewed more than 20 regulations or potential regulations, utilizing an informal pre-rulemaking process that respected tribal sovereignty by soliciting tribal involvement early in the process. Finally, the Commission created better communication systems, developed practices and policies that allow employees to better perform their duties, and created a line-item-specific budget that allows it to be more fiscally responsible.

The State of the Industry

Currently, Indian gaming is being conducted in 28 states by 243 of the 566, federally recognized tribes. Tribes have used gaming revenue both to generate jobs and to provide fundamental services to their communities, such as health care, housing, basic infrastructure and education, to name a few. In addition, tribes both through their compacts and charitable outreach regularly contribute to surrounding communities to support infrastructure, emergency services, and other community programs such as schools. While tribal gaming generates modest to considerable revenues for individual tribes, tribal gaming facilities in some regions provide jobs in areas otherwise suffering from high unemployment.

As the primary day-to-day regulators on the ground 24 hours a day, 7 days a week, tribal governments and their regulatory bodies have the greatest interest in safeguarding an industry that has greatly contributed to invaluable improvements to their communities. It is a testament to the leadership of tribal governments, their citizens, and the work of their dedicated employees that the Indian gaming industry has remained protected and stable. In 2013, tribal facilities generated \$28 billion in gross gaming revenue as compared to \$27.9 billion in 2012. With continued collaboration, the NIGC will work with tribal governments and their employees to ensure the continued protection and success of the industry through diligent, professional oversight and enforcement. Accordingly, while collaborative results are desirable, the agency is committed to upholding the statutory authority and responsibilities of my position to oversee the regulation of Indian gaming, and where appropriate, take enforcement action.

Indian Gaming – The Next 25 years

A fundamental policy of IGRA is “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments,” to ensure the regulatory and statutory compliance of all tribal gaming facilities, and to safeguard tribal gaming operations from organized crime and corrupting influences. To accomplish these goals the NIGC continues to be proactive in several areas including: Consultation and Building Relationships, ongoing Regulatory Review, Training and Technical Assistance, and Agency Accountability.

The NIGC realizes that constant technological advances are not only changing the face of Indian gaming, but also necessitate that the NIGC continue to adapt to meet the regulatory

needs of the industry. As tribal gaming evolves, the NIGC wants to continue to play a relevant role in tribal gaming and ensure that it can meet the demands of new regulatory issues in a timely manner.

Indian gaming is means by which tribes can achieve greater self-determination and self-sufficiency. The NIGC understands how important gaming is to tribal economic development and we are committed to maintaining our ability to safeguard the industry so that the policy goals of IGRA are fully met.

1. Consultation and Building Relationships

The agency supports the Administration's commitment to Indian country in terms of nation building, honoring tribal sovereignty and self-determination, and engaging in meaningful consultation with tribes. The Commission developed a new government-to-government consultation process in line with President Obama's November 5, 2009 Memorandum on Tribal Consultation, which directs federal agencies to comply with Executive Order 13175, "Consultation and Coordination with Tribal Governments."

It is through meaningful government-to-government consultation that the NIGC will be able to make well informed, fully considered decisions concerning regulations and policies. This year the Commission conducted four separate consultations sessions. These sessions were attended by representatives of more than 36 tribes.

The NIGC makes a point of attending the meetings and conferences held by national and regional tribal associations, such as the Great Plains Indian Gaming Association (GPIGA), the Oklahoma Indian Gaming Association (OIGA), the Washington Indian Gaming Association (WIGA), the California Nations Indian Gaming Association (CNIGA), the Midwest Alliance of Sovereign Tribes (MAST), New Mexico Indian Gaming Association (NMIGA), National Indian Gaming Association (NIGA), National Congress of American Indians (NCAI) National Tribal Gaming Commissioners/Regulators (NTCG/R) and United South and Eastern Tribes (USET).

The Commission is also committed to strengthening relationships and building new ones. In addition to working with tribes, we also will work with other regulatory bodies such as the Nevada Gaming Control Board and the New Jersey Division of Gaming Enforcement to promote the integrity of Indian gaming.

2. Regulatory Review

In November of 2010, the Commission commenced a full-scale regulatory review to examine the effectiveness of our regulations and identify any areas for improvement. Through a Notice of Inquiry followed by more than 50 consultations with tribes and numerous comments from the public, the Commission considered 20 regulations or potential regulations with 17 of those being adopted and implemented and one being repealed. It is our belief that

reviews of regulations should be done regularly so that the NIGC is responsive to changes in the gaming industry and not serve as a barrier to progress.

3. Training and Technical Assistance

Successful regulation depends upon a properly trained workforce, and the NIGC views training and technical assistance as a valuable component of the NIGC's mission. Further, the Commission is statutorily required to provide technical assistance to tribes. NIGC recognizes that Tribes have a vested interest in their gaming operations. They are an important source of funding for government programs and are often the largest employer of tribal citizens and their neighbors. We also recognize that in the 25--now 26--years since IGRA was passed, Tribes have responded to their new role by creating sophisticated gaming regulatory bodies of their own.

While the NIGC has an important regulatory role, Tribes are the on-the-ground regulators of gaming. With over 5,410 tribal gaming regulatory employees nationwide it is a much more efficient use of resources to build their capabilities through training, technical assistance, and coordination, than to go it alone.

To that end, we have been implementing the A.C.E. approach: Assistance, Compliance, and Enforcement. This approach prevents foreseeable problems through effective communication, training and technical assistance, and compliance efforts. The first step of this initiative is to provide assistance to achieve compliance with IGRA and the NIGC regulations. This means staying abreast of industry changes and communicating what they mean to gaming operators and regulators through more and better training. Last year, we provided 194 training events to 2751 participants. Currently this year we have provided 147 of training events to 2140 participants. . By working with tribal gaming regulators and sharing our knowledge, we increase the number of people who can extinguish issues before they become blazing problems.

The second prong is Compliance. The Agency communicates with Tribes early in the process if there is a potential compliance issue and works with them to resolve any issues voluntarily.

The Agency uses its final tool--enforcement action-- when necessary.

This three tiered approach ensures that the agency's statutory responsibilities are performed in an efficient manner by respecting the benefit of meaningful collaboration with tribes who are the primary regulators of Indian gaming and have a foremost interest in safeguarding tribal resources.

4. Agency Accountability

As you know, the NIGC is funded by fees paid by the tribes engaged in Indian gaming. Being a good steward of the fees paid by the tribes has been a top priority of the Commission. We are committed to complying with all applicable laws, regulations, rules and executive orders so as to give this Committee and the tribes confidence that the NIGC is as concerned with how it runs its own operations as we are about how the tribes run their operations. Recently, the Commission undertook a comprehensive review of its budget and spending priorities. A guiding principle of the review and budgeting decisions was that the NIGC has a responsibility to use tribal resources wisely. As such, our agency expenditures need to be both fiscally responsible and transparent. We strive, consistent with applicable law, to be transparent with regard to the expenditures of tribal fees for the accomplishment of the NIGC's statutory responsibilities. The Commission is working to ensure that the agency is operating in a manner that uses these tribal resources most efficiently and effectively.

Conclusion

The NIGC is committed to working closely with this Committee and Indian country to ensure the integrity of Indian gaming. Thank you again, Chairman Tester, Vice Chairman Barrasso and members of the Committee for your time and attention today. I am happy to answer any questions that you may have for me.