

**Testimony of Ernest Stevens, Jr., Chairman, National Indian Gaming Association
Legislative Hearing on Internet Gaming Proposals
Before the Subcommittee on Financial Institutions and Consumer Credit of the
House Committee on Financial Services Committee, July 24, 2001**

Good Morning, Mr. Chairman and Members of the Committee. My name is Ernie Stevens, Jr., and I am the Chairman of the National Indian Gaming Association (NIGA). I am also a member of the Oneida Tribe of Wisconsin. NIGA is a non-profit association of 168 Indian Tribes dedicated to preserving tribal sovereignty and the inherent right of tribal governments to operate gaming enterprises to raise governmental revenue.¹

Let me begin by thanking the Subcommittee for inviting me to testify this morning. Today, I will make four points. First, I will explain the Indian Gaming Regulatory Act (IGRA) and its purposes, and current tribal rights under the Act. Second, I will expand on the discussion of IGRA, explaining that Congress did not seek to limit tribal gaming to technology available in 1988, and discuss the current uses of technology by tribal governments. Third, I will then discuss the strength of tribal gaming regulatory systems, explaining that current federal oversight of Indian gaming makes Indian Internet gaming a workable industry. I will conclude by sharing our concerns with the various proposals to regulate and prohibit Internet gaming before this Committee.

At the outset, I would like to state that NIGA is not seeking legislation that would expand, promote, or prohibit Internet gaming. However, we do ask that any legislation that goes forward, preserves the rights of Tribal governments under existing law, and offers them the same opportunity to participate in Internet gaming as any other entity.

BACKGROUND: THE INDIAN GAMING REGULATORY ACT

The United States has recognized through the U.S. Constitution, Supreme Court cases, numerous Acts of Congress, and Presidential statements and executive orders, that Indian Tribes are sovereigns that possess governmental authority over their members and their territory. As governments, Indian Tribes strive to promote sound tribal economies, so that Indian lands may serve as permanent, livable homes for their residents (as the United States pledged in Treaties and Agreements with Indian Tribes).

With enactment of IGRA, Congress sought to promote tribal economic development, and recognized that Indian Tribes have the inherent authority to engage in gaming for governmental purposes. Congress also addressed concerns for state public

¹ 196 of the 561 Indian Tribes in the United States engage in Indian gaming to fund governmental services and promote economic development. In other words, somewhat less than 40% of Indian Tribes engage in gaming. By comparison, 37 of the 50 States employ gaming to fund governmental services and promote economic development. In other words, over 70% of the States engage in gaming.

policy through the Tribal-State Compact process. Accordingly, the Act intends that Indian Tribes may operate gaming that is permitted in a state “for any purpose by any person.” 25 U.S.C. § 2710(d)(1).²

Indian gaming has been an important source of employment and economic development for Indian Tribes, generating 250,000 jobs nationwide, and has proven to be an excellent welfare-to-work program. In Wisconsin, state records acknowledge that welfare payments have dropped sharply in counties that have Indian gaming facilities. Indian Tribes use gaming revenue to build basic governmental infrastructure including schools, hospitals, community centers, water and sewer systems, and roads. Tribes also use gaming revenues to fund education, health care, child care, elderly nutrition, police and fire protection, and other basic government programs.

In addition, tribal gaming has provided Tribes with capital necessary to diversify their economies and develop new enterprises. The Cabazon Band of Mission Indians, for example, has established a tire recycling facility that recycles 2 million tires annually.

Indian gaming also benefits neighboring communities. For example, the central New York region lost over 2,000 jobs with the closure of an air force base in the early 1990s. Shortly thereafter, the Oneida Nation opened its gaming facility and destination resort, creating over 3,000 jobs. In addition, tribal gaming generates substantial Federal, State, and local tax revenue through Indian gaming. A 1999 industry study by the Evans Group reports that:

Federal tax receipts, based on the rise in receipts from social insurance taxes, personal income taxes, and corporate income taxes, plus the decline in unemployment benefits, rose by over \$3.6 billion in 1998 because of Indian gaming.

Indian gaming casinos generated more than an additional \$1.0 billion in fees and related revenue sharing payments to state governments in 1998.

Evans Group, The Economic Impact of Indian Casino Gaming, (1999).

Of course, Indian gaming is not a panacea. Indian country is still struggling to develop viable economies. In 1999, for example, the FCC reported that only 49% of our Indian reservation households have telephone service. The Indian Health Service reports

² As the Justice Department noted in its testimony on Internet and Indian gaming before the Senate Committee on Indian Affairs, “The Constitution vests the United States with authority over relations with Indian tribes. Absent a delegation of authority to the states, federal law governs Indian commerce. IGRA ‘extends to the states a power withheld from the states by the Constitution,’” that is an opportunity to work with Indian Tribes in developing Tribal-State compacts for Class III gaming.

that 43% of Indian children under the age of 5 live in poverty. Indian gaming has been one of the very few bright spots in Indian economies. The National Gambling Impact Study Commission found after two years of studying gambling in general, Indian gaming is the only generally effective Indian economic development activity. Naturally, Indian Tribes work very hard to protect Indian gaming.

TRIBAL INTERNET GAMING

Internet gaming is an expanding industry. In its 1999 Final Report, the National Gambling Impact Study Commission (NGISC) estimated that Internet gaming would generate between \$2.3 billion and \$10 billion annually by 2001. Foreign nations, such as the United Kingdom, are beginning to create legal regimes that recognize and regulate Internet gaming. Recently, the State of Nevada developed a state law system for licensing and regulating Internet gaming, and New Jersey is in the process of considering similar licensing legislation. Just yesterday, new reports indicated that the Virgin Islands approved legislation to legalize Internet gambling. If this industry is permitted in the United States, Tribal governments must be given an equal chance to participate.

In addition, to promoting Indian gaming as a means of generating tribal government revenue, the Indian Gaming Regulatory Act intended that Indian Tribes should have access to modern technology to facilitate the operation of games. When Congress enacted the IGRA in 1988, it was aware that the remote locations of many Tribes would make it difficult to operate successful gaming enterprises. Thus, IGRA permits Tribes to join forces to more effectively compete with other forms of gaming. As the legislative history accompanying IGRA explains:

[T]he Committee intends ... that tribes have maximum flexibility to utilize games such as bingo and lotto for tribal economic development. The Committee specifically rejects any inference that tribes should restrict class II games to existing games, sizes, levels of participation, or current technology. The Committee intends that tribes be given every opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. In this regard, the Committee recognizes that tribes may wish to join other tribes to coordinate their class II operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations in the same or different states, by means of telephone, cable, television, or satellite may be a reasonable approach for tribes to take.

S. Rep. No. 100-446 on S. 555, the Indian Gaming Regulatory Act, 100th Cong., 2nd Session (1988).

Accordingly, IGRA authorized Tribal gaming operations to use telecommunications and other technology to provide class II gaming products to a

broader audience. As a result, the use of technology such as computers, satellites and telephone lines to offer games such as bingo and progressive slot machines is not uncommon in Indian Country.

IGRA was enacted before the Internet was a significant factor in our daily lives. The Internet provides access to information and markets never thought of in 1988. It would thus be improper to interpret IGRA as placing physical limitations on Tribal governments, if Congress recognizes Internet gaming in this country.

THE NETWORK OF TRIBAL GAMING REGULATORY SYSTEMS

Indian gaming is the most highly regulated form of gaming in the Nation. Tribal gaming is subject to regulation from three jurisdictions: Tribal, State, and Federal. Tribes regulate their own gaming operations through Tribal gaming commissions, Compliance officers, Tribal law enforcement officers, and Tribal courts. States regulate Tribal gaming at a level negotiated through tribal/state compacts. And the Federal Government regulates Tribal gaming on several levels. The National Indian Gaming Commission is the primary regulator, providing a background level of oversight, reviewing the licensing of gaming management and key employees, management contracts, and tribal gaming ordinances. In addition, the Secretary of the Interior oversees the Tribal-State compact process, reviews and approves compacts provided that they are consistent with the Act and the Federal trust responsibility.

The Departments of Treasury and Justice also play a role in regulating Indian gaming. In 1994, Congress acted to protect Indian gaming through the Money Laundering Suppression Act, which applies the Bank Secrecy Act's protective provisions to Indian gaming operations. Under the Act, tribal operations report currency transactions in excess of \$10,000 to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN is the Federal Agency charged with preventing money laundering. NIGA has worked actively with FinCEN to ensure that Indian Tribes have the most up-to-date information on how to prevent money laundering. FinCEN representatives met with NIGA's Member Tribes at our April 2001 Trade Show. The FBI and the Justice Department also have responsibility for protecting Indian gaming. Under the United States Criminal Code, 18 U.S.C. § 1163, anyone who embezzles or steals money or property from an Indian gaming facility or any other Indian establishment is guilty of a federal felony, punishable by up to 5 years in prison.

Under IGRA, Tribes serve as the daily on-the-spot regulators of Indian gaming. Over the past decade, Tribes have developed world-class regulatory systems. In 1998, a NIGA survey indicated that 147 Tribes engaged in gaming spent over \$120 million on gaming regulation. NIGA is in the process of conducting a survey of current tribal government regulation of Indian gaming, which we hope to complete by September. We will provide the Committee our survey results at that time. However, data available today shows that Tribal gaming regulation is on par with or exceeds the resources spent on gaming regulation in New Jersey and Nevada.

According to a 1998 GAO Report, Nevada employed about 400 regulatory personnel with a budget of \$22 million to regulate 2,425 gaming locations (80% with less than 15 machines). New Jersey spent about \$54 million to employ 700 regulatory employees to cover 12 major casinos, with over 35,000 machines and 1,400 table games. U.S. GAO Report, Casino Gaming Regulation: The Roles of 5 States and the National Indian Gaming Commission, (May 1998).

By way of comparison, 15 Arizona Indian Tribes operate medium-sized facilities, with between 400 to 1,500 machines. These Tribes invest \$21 million annually to employ over 200 tribal regulatory employees, and pay an additional \$5 million for state regulation to the Arizona Department of Gaming, which employs 60 state regulatory staff. Report of the Udall Center for Public Policy (2001). The Oneida Nation of New York spends approximately \$9 million on regulation, of which \$3.3 million goes to the State of New York as part of their regulatory presence. The Nation employs over 200 personnel to regulate their gaming operation, and has a three-member gaming commission.

Against this background of strong Tribal, State, and Federal regulation, the FBI and the Justice Department have repeatedly reported that there has been no substantial organized crime infiltration of Indian gaming. After a two years of public hearings held throughout the Nation, the National Gambling Impact Study Commission confirmed this finding.

RECENT INTERNET GAMING PROPOSALS

H.R. 556, the Unlawful Internet Gambling Funding Prohibition Act
H.R. 3125, the Internet Gambling Prohibition Act of 2000

In our view, any Internet gambling legislation must treat Indian Tribes fairly and equitably. Accordingly, as a first step, we ask that any legislation addressing Internet gaming include a savings clause to ensure that it does not disturb existing rights of Indian Tribes under the IGRA. The Senate recently took this first step when it briefly considered Internet legislation.

On May 2, 2001, the Senate Commerce Committee marked up Senator McCain's NCAA sports betting bill, S.718. During markup, Senator Breaux introduced an amendment that was essentially the same as Representative Leach's H.R. 556. Like H.R. 556, the Breaux amendment defines unlawful Internet gambling as placing, receiving, or otherwise making a bet over the Internet where such bet is unlawful under Federal or State law in the State which the bet or wager is initiated, received, or otherwise made. Also like H.R. 556, the amendment contains a civil enforcement provision with a subsection on Indian lands that authorizes the United States to enforce against violations alleged to have occurred on Indian lands. This provision also acknowledges enforcement authorities specified in tribal-state compacts. Recognizing that this amendment did not

acknowledge Tribal governmental rights under IGRA, Senator Inouye introduced a second-degree amendment that preserves Tribal rights under IGRA (a savings clause). The Senate Commerce Committee adopted the Breaux amendment and the Inouye second-degree amendment by voice vote without opposition. Inclusion of similar language in any of the bills before this Committee would be a positive first step in addressing the most basic concerns of our Member Tribes.

In the last Congress, proposals, such as Representative Goodlatte's H.R. 3125 and Senator Kyl's S. 692, sought a general Federal prohibition on Internet gaming coupled with a number of exceptions for state lotteries, horse and dog racing, jai alai, and fantasy sports betting. If Internet gambling legislation takes this form in the 107th Congress, we Indian Tribes should be acknowledged to have the right to make similar use of the Internet.

This year Internet proposals such as Representative Leach's H.R. 556, permits States to determine whether to authorize Internet gaming in their jurisdictions, but does not close the door to federal regulation or prohibition. We ask that Indian Tribes be afforded the option to determine whether to permit Internet gaming in tribal jurisdictions, and to access markets where Internet gaming is permitted by state law.

TRIBAL ACCESS TO FOREIGN MARKETS

Finally, in our view, Internet gambling legislation should also acknowledge the authority of Indian Tribes to offer Internet gaming where such gaming is lawful in foreign markets. Internet gaming can be a great boon to rural Indian Nations and Tribes that have not yet been able to utilize IGRA to generate tribal government revenue because of their isolate circumstances, by enabling these Tribes to reach a global market. Gaming is lawful in many foreign jurisdictions, and some foreign nations are positioning themselves to offer Internet gaming internationally. Indian Tribes should not be denied this opportunity. Everything Native American is in great demand in Europe and Asia. For example, the Yakima Nation exports much of its world famous apples harvest overseas. Native artisans from the southwest cannot make enough rugs and pottery to satisfy the demand overseas. We believe that a Tribal Internet site that combined governmental gaming with tribal commodities would be met with great demand.

Tribal government access of foreign markets does not raise the concerns that some may have with Tribal gaming domestically. A Tribal government engaged in Internet gaming with foreign participants would not affect state public policy concerns. And finally, as stated above, Tribal gaming regulators already work with the Department of Treasury's Fin-CEN to prevent money laundering, and also work with the NIGC, the FBI, and the IRS, and the Interior Department at the Federal level.

CONCLUSION

In sum, we ask that any Internet gambling legislation that moves through this chamber treat Indian Tribes fairly and equitably. Any Internet gambling legislation should include a savings clause to ensure that the new law does not disturb existing tribal rights under IGRA to use modern technology and wire communications.

If the Internet gambling legislation takes the form of state option legislation, then Indian Tribes should be afforded their own option to participate in Internet gaming with customers in jurisdictions that also permit Internet gaming. On the other hand, if internet gambling legislation takes the form of a general federal prohibition with exceptions, such as state lotteries, horse racing and dog racing, jai alai, or fantasy sports betting, Indian Tribes should be afforded a fair and equitable treatment by being included in such exceptions.