

Testimony of:

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Oversight Hearing on Internet Gaming

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I. INTRODUCTION

Good Morning Mr. Chairman and Members of the Committee on Indian Affairs. My name is Richard Williams, and I am the elected Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. Thank-you for the opportunity to provide you with testimony regarding Internet gaming in Indian Country and about our Class II Internet Bingo game. As you know, Senate Bill 692 and the Kyl Bill, which is intended to prohibit Internet gaming, is steadily progressing through the Senate process, and no Hearings have been held on the effects of this Bill on Indian Nations. As I will demonstrate, the Kyl Bill amends the Indian Gaming Regulatory Act in a harmful manner, and will disrupt the balance between Tribes and States that the IGRA was designed to protect. For my Tribe in particular, the effects of the Kyl Bill as it is currently drafted would bankrupt my Tribe and devastate my people.

Chairman Campbell, my Tribe has invested millions of dollars and countless hours developing a Class II Bingo game that utilizes Internet technology to expand its participation levels. As you know, my Tribe-like most Tribes around the United States- does not have the economic viability to invest such a large amount of money into developing a Class II Bingo game haphazardly. Instead, we developed this game because you and the rest of Congress encouraged us to do it. As you know, the Indian Gaming Regulatory Act, in its legislative history, encouraged the Tribe to expand its Class II Bingo

participation levels by using the latest in technology and telecommunications, such as the Internet.

In making this statement, I will divide my testimony into three areas. First, I will discuss how the Indian Gaming Regulatory Act treats Class II Bingo differently from other types of gaming. Second, I will demonstrate how our Class II Bingo game is entirely played on the Reservation, and therefore legal under the Indian Gaming Regulatory Act. And finally, I will discuss why Class II Bingo should be given an exception from a Congressional policy perspective.

A. Class II Bingo and the Indian Gaming Regulatory Act.

First, while IGRA anticipates that Tribal gaming occurs on Indian lands, it does not require that players be physically located on Indian lands. Class II Bingo conducted with the use of the Internet occurs entirely on Indian lands. Specifically, all three elements of gaming-consideration, chance and prize-occur on the Reservation.

IGRA specifically authorizes the use of electronic, computer and other technologic aids in conjunction with Bingo. In its legislative history, IGRA encourages Tribes to expand Bingo audiences with the use of the latest technology and telecommunications, such as the Internet. IGRA further provides a specific exemption from the anti-lottery statutes. Finally, IGRA provides that the player need not even participate directly in the game, but rather a “holder”, which acts as the player’s agent, can legally play Bingo for the player.

The National Indian Gaming Commission has ruled that a “holder” can play Class II Bingo for a player so long as the holder performs the functions of the player and is located on Indian lands. U.S. Courts also have held that Class II Bingo games that utilize technological “holders” to play Bingo on behalf of a player is legal under the terms and conditions of IGRA.

B. How the Bingo Game Is Played Legally.

The language, design and object of IGRA provides the unique ability for a Tribe to expand its Class II Bingo participation with the assistance of the Internet. In order to explain how all of the elements of Internet Bingo can occur on Indian lands, a brief example of how our Internet Bingo operates is warranted.

First, players access the Tribe’s Class II Bingo web site by entering the Tribe’s address on the Internet browser and establishing an account. When the player establishes an account to play Class II Bingo, the player provides the “holder” physically located on the Reservation with his or her preferences for playing bingo, such as how many Bingo cards to purchase and what games to play.

The holder on the Reservation then acts as the player’s agent and purchases Bingo

cards, selects games to play, and marks the Bingo cards. The Internet Bingo game is then conducted live by the Tribe in accordance with the standards and qualifications of a Class II device as defined by IGRA. The numbers are pulled from a standard Bingo ball blower and announced by a Caller.

Thus, the holder allows the player to participate in the game without the player actually purchasing the Bingo cards, making strategic decisions or marking the Bingo cards. Thus, the elements of consideration, chance and prize all occur entirely on Indian lands and in complete conformance with IGRA.

By the way, the legislative history of Class II Bingo and the provision of a “holder” for the play of Bingo, are the two caveats that distinguish completely from the Class III Lottery game of Couer D’ Alene, thereby distinguishing us from the recent court case against them.

C. Congressional Policy Considerations for an Exception.

Even if you do not completely agree with the legal analysis set forth above, I appeal to you to view our Bingo game from a policy standpoint. The Kyl Bill is essentially creating two groups: i) gaming groups that are prohibited (such as off-shore gaming companies), and ii) gaming groups that are granted exceptions (such as horse and dog pari-mutual wagering, state lotteries, and authorized state gaming). Once you step back and look at the similarities in these respective groups, I do not believe that Congress intends to prohibit Class II Bingo.

For example, the gaming groups that are prohibited-such as off-shore gaming companies-have certain common characteristics. First, they are unregulated, or are regulated off-shore under questionable jurisdictions such as Antigua. Second, they have questionable policies such as accepting any bets from any person. Third, the companies have poor reputations for paying customers for legitimate winnings. Fourth, because the companies are off-shore, the U.S. can not protect consumers from fraudulent company practices. Fifth, the games also consist of Class III games such as slot machines, video poker and video blackjack therefore appealing to problem gamblers. Finally, because the companies are unregulated, there is no way to measure the integrity or results of the games.

On the other hand, the gaming groups that are given exceptions by the Kyl Bill-such as horse racing, fantasy sports leagues, and state lotteries-also have common characteristics. First and foremost, the federal government regulates the gaming ensuring the integrity of the games, protecting consumers from unscrupulous operators, and guaranteeing payment. Second, the gaming is pari-mutual in nature, meaning that the players play against each other trying to win a money pool, rather than against a machine. Third, the gaming is conducted live, whereby players may witness the results. Fourth, the gaming requires skill thereby deterring problem gamblers.

Now that you see the two groups-and have identified policy reasons for placing gaming in each of the two groups-I ask you one simple question: Which group does Indian Tribal Class II Bingo belong? Like the gaming interests given exceptions in the Kyl Bill, Class II Bingo is regulated by the Federal government ensuring integrity. Like horse racing, it is pari-mutual wagering. Players do not play against a machine, but rather against each other in a live setting and Bingo requires skill in order to win. The game is not Class III gaming.

When one looks at the characteristics of the Tribe's Class II Bingo, it very simply fits better into the gaming groups that are given exceptions and not the groups that are being prohibited. Therefore, if you find it necessary to prohibit the Tribe's Class II Bingo-even in light of its similarities to excepted game-then I ask you to provide reasons for placing Class II Bingo in the prohibited group and not the excepted group.

II. CONCLUSION

As demonstrated, Congress contemplated the use of technological aids to link participating individuals to play Bingo from remote locations in order to increase player participation for Tribes. It is clear the use of telecommunication devices, including the Internet, are technological aids available to Class II Bingo operations on Indian lands. In summary, when applying Class II Internet Bingo to the language, design, and object of IGRA, the statute clearly demonstrates that Class II Internet Bingo is protected by the preemptive effect of IGRA. Indeed, the Tribe followed Congress' advice in developing this game.

As also demonstrated, Bingo from a policy perspective is similar to other gaming interests receiving exceptions, and less like gaming interests that the Kyl Bill aims to prohibit. For example, state lotteries, the horse and dog racing industry, fantasy sports leagues and contests, and the gaming states of New Jersey and Nevada are all presumably excepted from the Bill to protect their interests. I have demonstrated to you that the Tribe's Class II Bingo is very similar to the games given exceptions. It is extremely unfair and unjustifiable that Indian tribal governments are not granted the same protection as other gaming interests, especially because the Class II Bingo game developed by the Tribe falls squarely within the statutory regulations of State and Federal laws.

Because my testimony is legally complex, I have attached a detailed legal analysis of everything that I presented to you today. I would encourage you and your legislative counsels to review this legal analysis before coming to any conclusions about prohibiting Class II gaming.

Finally, I have attached an Amendment, which is very limited in scope. The Amendment basically provides for a Class II Bingo exception to the Kyl Bill. This means Indian tribes would be extremely limited in the games they can conduct using Internet technology. For example, Tribes could not offer any Class III or sports wagering over the Internet under this exception. It basically only allows for what Congress intended in the

actual language of IGRA.

Once again, I thank you for inviting me to testify and am ready to answer any questions you have regarding the Tribe's Class II Bingo game and our ultimate future and welfare.