

Testimony of
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Oversight Hearing

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Introduction

Chairman Ben Nighthorse Campbell, Vice Chairman Daniel Inouye, members of the Senate Committee on Indian Affairs, thank you for the opportunity to provide testimony today. I am Rick Hill, Chairman of the National Indian Gaming Association (NIGA) based in Washington, DC. I am a member of the Oneida Indian Nation of Wisconsin currently serving my fifth term as Chairman of NIGA.

The National Indian Gaming Association is an organization of 168 Indian nations with governmental gaming interests around the United States. NIGA's purpose is to protect and advance the sovereign rights and interests of our member Indian nations with respect to tribal governmental gaming.

Not since the Congress deliberated over the Indian Gaming Regulatory Act in 1988 have NIGA and its member tribal governments had as much reason to act both deliberately and decisively to protect and preserve the sovereign tribal governmental gaming rights of Indian nations. In this

case, Indian nations did not choose to simply react to the process that the National Gambling Impact Study Commission (NGISC) followed in conducting a study of the impacts of gambling in the United States. Instead NIGA and our member Indian nations were pro-active and embraced the work of the NGISC as more than 100 tribal leaders and representatives traveled to various hearing sites around the country, at their own expense, to provide testimony before either the full Commission or the NGISC Subcommittee on Indian Gaming. Moreover, NIGA was present at every single hearing and/or meeting conducted by the NGISC over the two-year period of the study effort, prepared to offer information and other assistance as needed by the study commission.

Generally, NIGA is pleased with the recommendations included in the final report of the study commission. However, in NIGA's estimation, this unique opportunity to study tribal communities under the circumstances presented to the NGISC was, in the best possible scenario, not managed as well as it could have been.

Our association with the NGISC during the study process has evoked a broad range of emotions and thought for NIGA. The work of the study commission required constant monitoring, a task that NIGA was only too glad to perform on behalf of our member Indian nations.

The National Gambling Study Commission

Public Law 104 - 169, the National Gambling Study Commission Act, established the nine-member study commission in 1996. In the enabling legislation, the Congress specified the duties of the Commission as:

- (1) IN GENERAL - It shall be the duty of the Commission to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on - -

(A) Federal, State, local and Native American tribal governments;

NIGA participated in Congressional hearings as the Act was being considered, making several recommendations which were later incorporated into the bill. NIGA remained neutral on the bill. However, once the bill was enacted, we worked tirelessly to ensure that the study commission had full use of our NIGA resources to help carry out its important mission.

Before the NGISC began the work of collecting information on the impacts of tribal governmental gaming, NIGA became concerned that information posted on the study commission's web site included references and statements that are not factually correct. The NGISC information stated that, among others, Indian tribes were "defeated nations" and that those Indian nations who were actively seeking reinstatement of the recognition lost to the federal government's policy of termination, were characterized as merely "private associations".

NIGA representatives, as well as others, offered to assist the NGISC staff to correct information on their web site. The NGISC staff declined NIGA's offers and did not act to correct their reference citation. In fact, this was brought to the attention of the Commission and Executive Director Tim Kelly, PhD., in my February 9, 1999 testimony in Virginia Beach, VA. It is specifically referenced in their hearing record transcripts at pages 153 through 156.

In our estimation, the NGISC, a federal commission created by Congress, failed to recognize the unique historical and legal relationship between the tribal and federal governments as its first task on matters relating to Indian tribes. That the NGISC was unable to recognize the tribal/federal relationship even when presented with corrected information was disappointing to the tribes.

The Study Process

From the outset, NIGA and its member Indian nations believed it to be in our collective best interest to cooperate and participate fully in the study efforts of the NGISC. Beginning in July 1998 as the NGISC entered the study phase to gauge the impacts of tribal governmental gaming in tribal communities, NIGA became particularly active in the study process.

In early July 1998, the study commission notified NIGA and its member tribes that the commission would devote at least a portion of their full commission agenda to Indian gaming. The NGISC hearings which were to include tribal testimony were scheduled for Del Mar, CA (July 29) and Tempe, AZ (July 30).

However, NIGA became concerned that their proposal to hear from Indian tribes on the impacts of gaming included only a small number of tribal leaders and representatives. NIGA requested, and was granted a meeting with the NGISC staff to present a proposal for eliciting testimony from a broader representation of tribes.

The following are among the specific points of an understanding or agreement accepted by NIGA and NGISC following that meeting in early July 1998.

NGISC would schedule added days for a newly-formed Subcommittee on Indian Gaming to hear from tribal witnesses. These added days would be held in conjunction with those hearing dates and sites already on the NGISC schedule. (As a result, more than 1 00 tribal witnesses testified at six (6) field hearings of the Subcommittee, and four (4) others involving the full Commission.) NIGA would work with its member Indian tribes and the NGISC staff to schedule witnesses for the added hearings of the Subcommittee on Indian Gaming.

In addition to the agreement, NIGA took steps to provide a briefing for the Advisory

Commission on Intergovernmental Affairs (ACIR), a designated contractor to the NGISC tasked with collecting governmental documents relating to the regulation of gaming activities. Tribal governments were among the governmental entities to be contacted for their regulatory documents and related information. NIGA thought it would be helpful to provide the ACIR with cultural and procedural insights for effectively working with tribal leaders to gain the desired results. ACIR representatives as well as their subcontractor, American University, participated in the briefing on July 20, 1998 in Washington, DC.

Tribal Concerns with the Study Process and Approach

While the agreement with the NGISC provided for additional opportunities to hear from tribal witnesses regarding the positive impacts of gaming in tribal communities, tribal leaders had serious concerns regarding the study process and approach employed by the study commission. Consider the following:

- NIGA had particular concerns about the information that the NGISC elected to include on its web site regarding Indian tribes, tribal governments, and Indian gaming. Despite offers to help correct the inaccuracies, the study commission went forward without taking action. The danger with the NGISC's inaction is that the posted information reflects a fundamental lack of knowledge about the institution of tribal government. And that lack of knowledge turned out to be vital to the ability of the study commission to interact effectively with Indian tribes.

Furthermore, the erroneous posted information concerning Indian tribes was likely to be accepted by the general public as accurate, thereby continuing a disservice of offering inaccurate information on Indian tribes to the American public. NIGA and

its member tribal governments had strong premonitions that a majority of the nine-member Commission brought to this important study task, a predetermined personal position on gambling or tribal governmental gaming. As such, tribal leaders believed that it would be very difficult to obtain a fair hearing or an objective assessment of the positive impacts that tribal governmental gaming has brought to tribal communities,

- NIGA and its member tribal governments, while applauding the creation of the Subcommittee on Indian Gaming, were concerned that the Subcommittee did not appear to receive a level of recognition by the NGISC that it deserved. For example, in the early hearings, no logistical support or transcription services were in place to create a Subcommittee hearing record.

I specifically note that according to the NGISC's Operating Rule IV (E) adopted on October 31, 1997:

"A verbatim transcript of each Commission meeting, hearing, and subcommittee meeting shall be made and retained by the Commission. The Executive Director shall review and correct the transcription before distribution... copies of transcripts of open sessions and redacted copies of transcripts of closed sessions in consultation with counsel will be provided to any individual upon request for a reasonable fee."

NIGA learned that later in the hearing process, the written testimonies, Q and A discussion points, from the Del Mar, CA and Tempe, AZ hearings, were lost, misplaced, or unable to be located. I would like to point out to this Committee that despite the NGISC's representations, the NGISC has failed to identify any governmental process where witnesses providing testimony are held accountable for transcribing the entire hearing record for Members of Congress or the general public.

- While the statute creating the Commission was very clear on what was to be studied, the Commission changed the focus of research to be provided by an independent firm. In mid-October 1998, the Advisory Commission on Intergovernmental Affairs (ACIR) was informed

by the NGISC staff that the commissioners wished to redirect the research, and focus PRIMARILY on tribal gaming, as opposed to a comprehensive survey of state, local and Indian ordinances and regulations. ACIR was asked to focus on 141 tribal gaming operations (out of a total population of 310 operations), but only 25 non-tribal operations for the entire rest of the gambling industry (a population which is comprised of approximately 600 commercial casinos, 180 parimutuel facilities, 38 state/district lotteries and an unknown population of jai alai and card rooms.) Donna E.Schwartz, Research Director- ACIR, specifically testified to this at the March 18, 1999 Washington, DC Commission meeting.

- Some question why tribes engaged in gaming should be entitled to receive funds from the Federal government. It should be understood that every form of government in the United States is a recipient of Federal funds and rarely are those funds based upon the relative wealth of the recipient government. Additionally, by virtue of treaties, executive orders, and Federal statutes, the United States made agreements with tribal governments in exchange for the unlimited use of land and other natural resources.

Specifically I note for the record that in NGISC testimony by Chairman Roland J. Harris of the Mohegan Nation on November 9, 1998, the nation made a very personal decision - they had decided to return Federal Grant Money to the United States and not seek any future financial assistance.

Additionally I note that Chairman Stanley Crooks of the Shakopee Mdewakanton Sioux Nation testified to the following before the NGISC on August 1, 1998 in Albuquerque, NM.

"Our Mdewakanton ancestors ceded 24 million acres of land and gave up a way of life in exchange for the promise of perpetual protection by the United States. That promise must be honored ... I firmly believe that the Federal government must

continue to maintain its trust responsibility to the tribes, irrespective of whether gaming continues or not."

I also note for the record that Adam Rose, Ph.D., an economist from State College of Pennsylvania, who was hired by this Commission, but whose work has disappeared, detailed the following in response to the racial-ethnic distributional implications of casino gambling:

"The most obvious reflection on this question pertains to Native Americans: as a whole they have benefited greatly relative to whites and other groups, even though there is a sizable disparity among tribes. Deller and Chen (1996) have found some negative impacts on reservations, though the successes overall far outweigh these. For many tribes, casinos have been an economic salvation, and the gains have been spread across all members in the form of trust funds, necessary services, and luxury goods. It is not unusual for patrons exiting Foxwoods to remark, with some consolation, that they 'have helped repay the Indians.'"

In spite of the above omissions and the affirmative steps taken by NIGA to ensure that NGISC and its contractors were equipped to get the most out of their work with tribal governments, it eventually became clear that the advice offered by NIGA had little or no effect. The results were especially disappointing given the time and effort that NIGA put forth to help the study process along. Please note that the informational request from ACIR to Indian Nations was not forwarded to the tribes until five months following the July 20th briefing.

NIGA Response to Final NGISC Recommendations

In spite of the procedural problems NIGA encountered throughout the study phase, there are

some reasons to be pleased with the final recommendations offered by the NGISC in their final report. Conversely, there remain several items in the same report with which Indian nations disagree.

- 1 . NIGA is pleased that the study commission recognized the sovereignty of Indian tribes and their sovereign right to engage in tribal governmental gaming for the benefit of Indian communities.
2. NIGA is pleased that the study commission recognized the positive economic impact of Indian gaming, however, the study commission should have provided more detail and highlight to the importance of gaming to tribes and their neighboring communities.
3. NIGA is pleased that the study commission acknowledged that tribal governmental gaming is, in fact, regulated.
4. NIGA is disappointed that the study commission put so much focus on the negative social impacts of gaming and failed to acknowledge the positive social benefits for Indian tribes. Specifically, NGISC failed to note the incredible welfare to work success story that Indian Gaming has provided. Once again, I bring to your attention, Professor Rose who conducted an analysis of all gaming studies and or articles found the following:

"A Minnesota study found a significant decrease in AFDC payments following the advent of tribal gaming. Even if the skills learned are not high-level, permanent jobs enable people to develop good work habits and work records. The key to the question is whether there are opportunities for advancement with the industry or beyond."

Recognizing the fact that Tribal governments are major employers within and without their communities is critical to an understanding of how inclusive Indian Gaming has proven to be. I cite the following NGISC testimony for your edification.

"Prairie Island Indian Community's Treasure Island Resort and Casino is the number one employer in Goodhue county."

"The Ho-Chunk Nation has become the largest employer in each of three counties in Wisconsin."

"In just five years, the Oneida Indian Nation of Wisconsin has grown to become the largest employer in a two-county region with more than 2900 employees working at or managing our enterprises."

"Tribal gaming is the second largest employer in our area." Cited by Sue Shaffer, Chairperson Cow Creek Band of Umpqua Indians in Roseburg, OR.

"The Tunica Biloxi Indian Nation is the largest employer in the Parish and offers the best wages."

"The Oneida Nation of New York is the largest employer in the district."

"We are now the 2nd largest employer in Medoncino county, second only to the county itself." Cited in testimony by Tribal Chairman Richard Williams of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

5. NIGA is disappointed that the study commission failed to note the contributions made voluntarily by Indian tribes to the issue of compulsive gambling. Indian gaming makes up only 13 percent of the U.S. gambling revenues, yet tribes contribute a larger percentage of their revenues and have more on-site programs to prevent and treat gambling addictions than does commercial gaming and state lotteries.

6. NIGA opposes the recommendation made by the study commission calling for a pause in gaming. Any call for a pause, without qualification, would have a devastating affect on the stability of tribal governmental gaming by, among others, creating uncertainty as to how state governments might respond to the call for a pause when negotiating new gaming compacts or renegotiating existing ones.

Conclusion

Thank you again, Mr. Chairman, for this opportunity to offer testimony. I would like to conclude my remarks with a passage from a study conducted by The Economics Resource Group, Cambridge, MA titled: *American Indian Gaming Policy and Its SocioEconomic Effects, A Report to the National Gambling Impact Study Commission,* July 31, 1998. It states:

"In sum, we find that Indian gaming, an expression of Indian selfdetermination, has produced remarkable movement on stubborn social and economic problems that have been resistant to federal and tribal efforts for decades... Tribes are also translating gaming employment and revenue into significant social change by investing in social and physical infrastructures, thus producing striking improvements in the quality of reservation life. While the legacy of Indian poverty will not be easily erased, and while the vast majority of gaming tribes enjoy only modest gaming income, the economic and social benefits Indian gaming has produced are diverse, substantial, and unprecedented in this century."

The report concludes:

"Our investigation inescapably yields the conclusion that the positive social and economic impacts of gaming, both on and off reservations, far outweigh the negative. Indeed, for much of Indian Country, the alternative to gaming is the status quo ante: poverty, powerlessness, and despair. Selfdetermination - and the ways that Indian nations have used it - constitutes a public policy success of major dimensions. Indian gaming is a striking example of that

success."