

STATEMENT OF SENATOR MICHAEL B. ENZI  
BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS  
ON THE  
"INTERGOVERNMENTAL GAMING AGREEMENT OF 1999"

July 21, 1999

Mr. Chairman, Ranking Member, and members of Indian Affairs Committee. Thank you for extending me the opportunity to testify before your committee this morning on S. 985, the "Intergovernmental Gaming Agreement Act of 1999".

While some of the witnesses who will testify this morning will spend more time discussing the specifics of the legislation in question, I will focus my brief remarks this morning on why I have been involved in this debate over the past two years and why I think it is imperative that any changes that are made to the Indian Gaming Regulatory Act come from Congress and that those changes respect the legitimate interests of the fifty state governments. I will also offer a few observations on the legislation that is before the committee this morning by explaining why I believe S.985 gives the Secretary of the Interior too much authority in the process of approving class III gambling agreements for the various Indian tribes.

At the outset, I would like to thank the Chairman for holding this hearing. One of the points I have been trying to make in our floor debates on the issue of Indian Gambling is that Congress is the proper body to resolve any underlying disputes that exist between the States and the Tribes following the Seminole decision in 1996. It was Congress that passed the Indian Gaming Regulatory Act in 1988, and if the statute needs fixing, it is the duty of Congress, and especially this committee on the Senate side, to do the heavy lifting. It is not the role of an unelected cabinet Secretary to usurp Congress' duty and legislate by regulation whenever he perceives a problem with the current system.

Mr. Chairman, I have offered four amendments over the past two years to Appropriations bills on the floor of the Senate to prohibit the Secretary of the Interior from bypassing the role of states in the casino- gambling compacting process. While I have never claimed that these amendments would permanently fix problems that may still exist between the tribes and the states, I thought it was important to avoid changes if the changes could not be undone. I wanted Congress to have an opportunity to consider the problem, and if necessary, take up legislation to resolve the current impasse. I believe that the Secretary's recent action in finalizing his regulations demonstrates once again the Secretary Babbitt's serious disregard for the rightful role of Congress and all fifty state governments. Under the Secretary's regulations, there is little incentive for the tribes which desire casino gambling to strongly pursue reasonable negotiations with the states. They can always turn to Secretary Babbitt to get a better deal.

My primary motivation for becoming involved in the debate over gambling on Indian lands was derived from my background in state and local government. I have a strong respect for the

decisions of local lawmakers and I do not believe that their decisions on questions such as whether a particular type of gambling should be allowed within their state should be easily disregarded. Not only do I object as a general matter to an unelected cabinet official attempting to circumvent the rights of all fifty states, I have special concerns with the attempt by the current Secretary to delegate himself additional trust responsibilities. If anyone has any doubts about the proclivity of Secretary Babbitt to disregard the rights of states, I suggest they ask the Senator from Utah about the Secretary's handling of national monuments in Utah.

During his tenure as Secretary of the Interior, Bruce Babbitt hasn't had a very good track record in carrying out the trust responsibilities for Indian Tribes within his jurisdiction. There remain serious allegations that the Secretary Babbitt may have allowed campaign donations to influence his decision in approving and denying compacts for class III gaming. Moreover, his department has seriously mismanaged billions of dollars of trust monies for various Indian Tribes, and the Secretary himself has personally been held in contempt of court for their failure to turn over documents, and their subsequent false statements regarding the production of these documents in a federal lawsuit. Judge Lambert went so far as to remark that he had "never seen more egregious misconduct by the federal government." I do not think this is the time to be giving Secretary Babbitt additional trust responsibilities.

Mr. Chairman, while I will leave the more detailed analysis of s.985 to other witnesses, I would like to make a few observations on some of the provisions in this legislation. First, I am concerned over the degree of discretion this bill gives the Secretary of interior. Instead of requiring the states and tribes to negotiate a compact, as required under current law, this bill would allow the tribes to petition the Secretary for a gambling agreement right off the bat, thereby encouraging the various tribes to forego the initial tribal-state negotiations that were envisioned by IGRA. Second, the bill tips the scales of power more in favor of the tribes and against the states by effectively allowing the Secretary the final word on the meaning of state law. While I believe that a mediation process might be helpful in certain circumstances to resolve real stalemates in negotiations, such a process should not serve as means of reinterpreting or "rewriting" state domestic law. I think that states should have the last word on the meaning of their own laws. Third, this bill would require that all challenges to the compacts under IGRA be heard by the United States District Court for the District of Columbia. I think this requirement places an unfair burden on states by making it more cumbersome and costly for states to challenge decisions by the Secretary of the Interior.

While I appreciate your efforts, Mr. Chairman, and the efforts of others on the committee to provide a legislative fix to conflicts that have arisen in negotiations between tribes and states, I believe the current version of s.985 tips the scales too much away from the fifty state governments and instead places unwarranted new authority in the hands of the Secretary of Interior.