

**TESTIMONY OF ERNEST STEVENS, JR., CHAIRMAN  
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**HOUSE ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE  
“INTERNET GAMING: IS THERE A SAFE BET?”**

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***Introduction***

Good morning Chairman Bono Mack, Ranking Member Butterfield and members of the Subcommittee. My name is Ernie Stevens, Jr., I am a member of the Oneida Nation of Wisconsin and it is my honor to serve as Chairman of the National Indian Gaming Association (NIGA). NIGA is an intertribal association of 184 federally recognized Indian Tribes united behind the mission of protecting and preserving tribal sovereignty and the ability of Tribes to attain economic self-sufficiency through gaming and other economic endeavors. I want to thank the Subcommittee for this opportunity to provide our views on proposals to legalize Internet gambling in the United States.

## ***Summary of Testimony***

My testimony today will provide the Subcommittee with background of the constitutional status of Indian tribes as governments in the U.S. federal system, a brief look at the history and current state of Indian gaming, and detailed focus on tribal views of federal proposals to legalize Internet gaming in the United States.

## ***Indian Tribes and the Constitution***

In order to understand our views on Internet gambling, I would like to first place Indian gaming in proper context by providing some background about the status of Indian tribes in the United States and discuss the state of Indian gaming.

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to their lands. The Nations of England, France, and Spain acknowledged tribes as sovereigns and entered into treaties with tribes to establish commerce and trade agreements, form wartime alliances, and preserve the peace.

When the United States was formed, it too acknowledged the governmental status of Indian tribes. The U.S. Constitution specifically acknowledges tribes as distinct governments in the Commerce Clause, which states that “Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” *U.S. Constitution, Article I, section 8, clause 3.*

The United States entered into hundreds of treaties with tribal governments. Through these treaties, tribes ceded hundreds of millions of acres of tribal homelands to help build this great Nation. In return, the United States promised to provide for the education, health, public safety and general welfare of Indian people. The Supremacy Clause of the Constitution establishes these treaty promises as "the supreme law of the land." *U.S. Constitution, Article VI, clause 2.* The U.S. Supreme Court later acknowledged that this course of dealing with tribal governments established a trust relationship between tribes and the United States, with accompanying obligations on the part of the United States towards Indian people. *See, e.g., United States v. Kagama, U.S. (1886).* It is widely known that the federal government has fallen far short in meeting these solemn treaty and trust obligations.

Despite these obligations, federal policies directly violated tribal treaty promises, caused the death of hundreds of thousands of our ancestors, stole additional millions of acres of tribal homelands, suppressed and outlawed the practice of tribal religion and culture, and destroyed tribal economies. One of the most tragic

examples was the federal policy of Assimilation, whereby the federal government forcibly took Indian children from their homes and placed them in military and religious boarding schools where they were forbidden from speaking their language or practicing their Native religions. The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Indian lands, and had the result of further eroding tribal land bases and devastating tribal economies. After a brief reversal in Indian affairs policy in the 1930's and 1940's, the federal policy of Termination in the 1950's again sought to put an end to tribal governing structures, eliminate remaining tribal land bases, and relocate individual Indians from tribal lands with the help of one-way bus tickets to urban areas with the promise of vocational education. The aftermath of all of these policies continues to plague Indian country to this day.

***Background: Indian Gaming and IGRA***

Indian communities and tribal culture, however, persisted in face of these failed policies. The strong perseverance of Indian people demonstrated to the federal government that Indian country was not going to fade away. On July 8, 1970, President Nixon formally repudiated the policy of Termination and adopted a policy supporting Indian Self-Determination, which seeks to improve Indian education, fosters tribal culture, and enhances tribal economic development, among other goals. More than forty years later, Indian Self-Determination remains the Indian Affairs policy of the United States. Tribal governments have

seen significant progress in rebuilding their communities as a result of the Self-Determination policy.

In the late 1960's and early 1970's, tribal governments took the concept of self-determination to heart, opening the first Indian gaming operations to generate governmental revenue to fund essential tribal government programs to make up for the federal government's shortfalls in meeting its treaty and trust obligations. Like state lotteries, tribal gaming revenues are used exclusively to fund tribal government programs to improve the education of Indian youth, provide health care, care for tribal elders, provide public safety, and promote the general welfare of Indian and nearby communities.

State governments and commercial gaming operations challenged tribal authority to conduct gaming on their lands. These challenges culminated in the Supreme Court case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The *Cabazon* Court upheld the right of tribes, as governments, to conduct gaming on their lands free from state control or interference. The Court reasoned that Indian gaming is crucial to tribal self-determination and self-governance because it provides tribes with a means to generate governmental revenue for essential services and functions.

In 1988, one year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include the promotion

of tribal economic development and self-sufficiency, strengthening tribal governments, and establishing a federal framework to regulate Indian gaming. The Act also established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in America, the NIGC is the only federal commission to regulate any form of gaming in the United States.

Many tribes viewed IGRA as a product of state and commercial interests. A number of tribal governments strongly opposed the federal legislation considering it an intrusion on tribal sovereignty. The Act is far from perfect, and the U.S. Supreme Court has added to its imperfections. However, for 23 years, more than 200 tribes nationwide have made IGRA work to help begin to rebuild their communities and meet the stated goals of the Act.

### ***Benefits of Indian Gaming***

Indian gaming is the Native American success story. For four decades, Indian gaming has proven to be the most successful tool for economic development for many Indian tribes. In 2010, 240 of the 565 federally recognized Indian tribal governments operated gaming to generate revenue for their communities.

Many tribes have used revenue from Indian gaming to put a new face on their communities. Indian tribes have dedicated gaming revenues to improve basic health, education, and public safety services on Indian lands. We have used

gaming dollars to improve tribal infrastructure, including the construction of roads, hospitals, schools, police buildings, water projects, and many others. Gaming revenues also enable tribes to diversify their economies beyond gaming. Tribes have invested in renewable energy projects, retail operations, manufacturing and other entrepreneurial ventures.

For many tribes, Indian gaming is first and foremost about jobs. Indian gaming is a proven job creator, establishing and fostering over 600,000 direct and indirect American jobs in 2010. Indian gaming has provided many individual Indians with their first opportunity at work. Just as importantly Indian gaming is bringing entire families back to Indian country. Because of Indian gaming, reservations are again becoming livable homes, as promised in hundreds of treaties. These American jobs go to both Indian and non-Indian alike. Without question, we are putting people to work.

Indian gaming also benefits federal, state, and local governments. A June 2011 National Public Radio report, titled "Casino Revenue Helps Tribes Aid Local Governments," acknowledged that revenue from the Stillaguamish Tribe of Washington helped prevent additional layoffs at the local Everett, Washington prosecutor's office. The articles also acknowledged the \$1.3 million contribution that the Tulalip Tribes recently gave to the local school district after they heard about possible budget cuts and teacher layoffs. These same scenarios are taking place in more than a hundred local tribal jurisdictions throughout the United

States, saving thousands of American jobs for health care workers, fire fighters, police officers, and many other local officials that provide essential services to children, elders, and others.

In 2010, Indian gaming generated close to \$13 billion for federal, state and local governments budgets through compact and service agreements, indirect payment of employment, income, sales and other state taxes, and reduced general welfare payments.<sup>1</sup> Despite the fact that Indian tribes are governments, not subject to direct taxation, individual Indians pay federal income taxes, the people who work at casinos pay taxes, and those who do business with tribal casinos pay taxes. Last year, Federal and Social Security/Medicare taxes taken from Indian gaming wages totaled \$6.1 billion.

Indian tribes also made more than \$100 million in charitable contributions to other tribes, nearby state and local governments, and non-profits and private organizations. In short, Indian gaming has become a vital piece of the national economy.

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<sup>1</sup> Federal Taxes Paid From Indian Gaming: \$9,305,000,000; State Taxes, Revenue Sharing and Regulatory Payments: \$2,990,000,000.

However, much more must be done to improve tribal economies and the lives of Indian people. Indian gaming is not a cure all. Many tribal communities continue to suffer the devastating effects of the past failed federal policies. Too many of our people continue to live with disease and poverty. Indian health care is substandard, violent crime is multiple times the national average, and unemployment on Indian reservations nationwide averages 50%.

To broaden the economic success of Indian gaming, NIGA is working with our Member Tribes to further encourage tribe-to-tribe giving and lending. Through our American Indian Business Network, we work to highlight the benefits of hiring Native owned businesses and procurement of Native produced goods and services. Empowering tribal entrepreneurs and tribal government owned businesses, will serve to further diversify and strengthen tribal economies.

We have much work to do, but Indian gaming has proven to be one of the best available tools for tribal economic development. Indian gaming has helped many tribes begin to rebuild communities that were once forgotten. Because of Indian gaming, our tribal governments are stronger, our people are healthier, and an entire generation of Indian youth has hope for a better future.

## ***Indian Gaming Regulation***

Tribal governments realize that none of these benefits would be possible without a strong regulatory system to protect tribal revenue and to preserve the integrity of our operations. With regard to regulation, IGRA established a three-tiered system. The Senate Report on the Act makes clear the original intent for the regulatory system:

“[IGRA] provides for a system of joint regulation by tribe and the federal government for class II gaming on Indian lands and a system of compacts between tribes and states for regulation of class III gaming. The bill establishes the NIGC as an independent agency within the Department of the Interior. The Commission will have a regulatory role for class II gaming and an oversight role with respect to class III gaming.”

*Senate Report 100-446, at 1 (Aug. 3, 1988).*

This regulatory system vests local tribal government regulators with the primary day-to-day responsibility to regulate Indian gaming operations. IGRA requires that Indian gaming revenue go: “(i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to

charitable organizations; or (v) to help fund operations of local government agencies.” *25 U.S.C. section 2710(b)(2)(B)*. As a result, no one has a greater interest in protecting the integrity of Indian gaming than tribes.

While tribes take on the primary day-to-day role of regulating Indian gaming operations, IGRA requires coordination and cooperation with the federal and state governments (in the case of class III gaming) to make this comprehensive regulatory system work. This comprehensive system of regulation is expensive and time consuming, but tribal leaders know what’s at stake and know that strong regulation is the cost of a successful operation.

Despite the recent economic downturn, tribal governments have continued to dedicate tremendous resources to the regulation of Indian gaming. In 2010, tribes spent more than \$375 million on tribal, state, and federal regulation. This number includes \$276 million to fund tribal government gaming regulatory agencies; \$81 million to reimburse states for state regulatory activities negotiated and agreed to pursuant to approved tribal-state class III gaming compacts; and \$18 million to fully fund the operations and activities of the National Indian Gaming Commission.

The Indian gaming regulatory system employs more than 3,400 expert regulators and staff to protect tribal operations. Tribal governments employ approximately 2,800 gaming regulators and staff. Among the ranks of tribal regulators are

former FBI agents, BIA, tribal, and state police officers, former state gaming regulators, military officers, accountants, auditors, attorneys and bank surveillance officers. In addition, states employ more than 500 regulators, staff and law enforcement officers to help tribes regulate Indian gaming. At the federal level, the NIGC employs more than 100 regulators and staff.

In addition to the NIGC, a number of other federal agencies help regulate and protect Indian gaming operations. Tribes work with the FBI and U.S. Attorneys offices to investigate and prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility. *18 U.S.C. §1163*. Tribal regulators also work with the Treasury Department's Internal Revenues Service to ensure federal tax compliance and the Financial Crimes Enforcement Network (FinCEN) to prevent money laundering. Finally, tribes work with the Secret Service to prevent counterfeiting.

Tribal governments have also invested heavily in state-of-the-art surveillance and security equipment, and employ professional personnel to operate these systems. Tribal surveillance systems are on par with the best systems in the gaming industry, and exceed standards employed by state and commercial gaming operations.

The FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration of organized crime on Indian gaming. Our regulatory system is costly, it's comprehensive, and our record and our experience shows that it's working.

### ***NIGA Views on Federal Legalization of Internet Gambling***

Against this backdrop, all Indian tribes are wary when Congress considers federal legislation that will change the playing field with regard to gambling in the United States. Legalization of Internet gaming raises significant concerns.

Congress has considered various forms of Internet gaming legislation for the past 15 years. Early on the discussion focused on prohibition. This debate culminated in the enactment of the Unlawful Internet Gambling Enforcement Act (UIGEA), which was attached as a rider to the Security and Accountability for Every Port Act, *P.L. 109-347*. Since enactment of UIGEA, several members of Congress have sought to reverse course and legalize Internet gaming in the United States.

Tribal governments hold differing positions on the legalization of Internet gaming. Some tribes acknowledge that Internet gaming is a growing legal part of the worldwide economy. They realize that one day it may become a part of the United States economy, and believe that it is in the best interests of their communities to enter the market as early as possible. Other tribes see Internet

gaming as a direct threat to the significant investments made to brick and mortar operations based on current law. Still others believe that regulatory technology has not yet evolved to adequately protect children and compulsive gamblers from abusing Internet gaming.

Despite these differences, tribal governments have built a consensus position on Internet gaming. Last year, tribal leaders met on more than a dozen occasions to discuss the pros and cons of Internet gambling legislation. We heard from experts in the Indian gaming and Internet gaming industry. From these meetings, tribal leaders came together to form a unified voice in support of general principles regarding federal legislation that would legalize Internet gaming in the United States.

Our Resolution acknowledges that Indian country has diverse economies that could be adversely impacted by the federal legalization of Internet gaming. The Resolution resolves that, at a minimum, federal Internet gaming legislation must incorporate the following fundamental principles:

- **Indian tribes are sovereign governments with a right to operate, regulate, tax, and license Internet gaming, and those rights must not be subordinated to any non-federal authority**

All federally recognized Indian tribes must be eligible to both operate and regulate Internet gaming. IGRA authorizes tribes to both operate and regulate

brick and mortar casinos. As noted above, the current regulatory / operation system in place for Indian gaming is working. A similar system is in place for state governments to both operate and regulate lottery systems. However, state lotteries do not have the added oversight of a federal regulatory agency like the NIGC.

When it comes to recognized U.S. governmental entities, Congress should not pick winners and losers if or when it decides to establish a new industry such as Internet gaming. Any federal internet gaming legislation must also allow tribal governments to have an early entrance into Internet gaming, with a limited period of exclusivity. Carving out exemptions for certain states or gaming industries while violating existing Tribal-State compacts is unacceptable to Tribal governments and raises major concerns under the Fifth Amendment Due Process and Takings Clauses.

Current Internet gaming legalization bills and recent drafts violate this principle by prohibiting a licensee / operator to also regulate Internet gaming. From the operational standpoint, these bills do not acknowledge that governments can be eligible operators. These same bills pick a select few most favored regulators and operators. These provisions should be amended to acknowledge tribal governments as eligible operators and regulators.

In addition, if a federal regulatory scheme is developed, tribal governments ask that the NIGC be vested with authority to regulate tribal Internet gaming. IGRA established the NIGC as the principal federal regulatory body overseeing Indian gaming. The NIGC is the only federal agency in the United States with experience in regulating any form of gaming in the Nation. Any Internet gaming bill must provide that the NIGC shall be the exclusive federal agency to provide oversight of gaming activities by Indian tribes. This provision should not supersede tribal governments' rights to regulate Internet gaming.

- **Internet gaming authorized by Indian tribes must be available to customers in any locale where Internet gaming is not criminally prohibited**

Internet gambling transcends borders. Thus, Internet gaming legislation must acknowledge that customers may access tribal government operated and regulated gaming sites as long as Internet gaming is not criminally prohibited where the eligible customer is located. Such acknowledgment would be consistent with current law and would recognize significant experience on the part of tribes in using technology to conduct gaming across borders. IGRA authorized tribal gaming operations to use telecommunications and other technology with the intent of authorizing tribes to provide games to a broader audience. In addition, for decades, tribes have employed technology to link class III machines across tribal and state borders.

This would be consistent with past statements of the U.S. Department of Justice. “Finally, to the extent that any legislation would seek to exempt from its prohibition bets and wagers that are authorized by both the state or country in which the bettor and the recipient reside ... Indian Tribes should be treated as every other sovereign for the purpose of authorizing gaming activity on their lands.” *Statement of Kevin V. DiGregory, Deputy Assistant Attorney General, Criminal Division, <http://www.justice.gov/criminal/cybercrime/kvd0698.htm>.*

- **Consistent with long-held federal law and policy, tribal Internet gaming revenues must not be subject to tax**

It is a widely held general rule of law that governments do not tax one another. Thus, Internet gaming legislation must acknowledge that tribal Internet gaming revenues are not subject to taxation. Tribes are willing to maintain the same limits on the use of tribal Internet gaming revenue as are included in IGRA for the use of tribal gaming revenue. These limits, included in section 2710(b)(2)(B), (quoted above) essentially assess a 100% tax on tribal gaming revenue. Under IGRA, all tribal gaming revenues must be used for government and public purposes. There is no room for federal or state taxation.

Current Internet gaming legalization bills and recent drafts violate this principle by placing an across the board tax on Internet gaming revenues. These tax provisions must be amended to acknowledge tribal Internet gaming revenue as governmental revenue not subject to taxation.

- **Existing tribal government rights under Tribal-State Compacts and IGRA must be respected**

Tribal governments have invested significant resources in their operations based on IGRA and on carefully negotiated tribal-state class III gaming compacts. These agreements must not be violated. Enacting a bill with provisions that render exclusivity agreements null and void without the consent of affected states and tribes may violate the Fifth Amendment Due Process and Takings Clauses. In addition, IGRA requires that if a state government regulates gaming by any person for any purpose, then federally recognized tribes in that state may conduct class II gaming on their lands and may enter into agreements with states to conduct class III gaming.

Current Internet legalization bills before Congress contain provisions that would both of these principles. Bill would permit state governments to ignore the principles of IGRA with regard to tribal eligibility to conduct gaming under IGRA, requirements for tribal-state compact negotiations, and would authorize the violation of provisions, such as exclusivity agreements, in existing tribal-state compacts. These provisions should be amended to affirmatively recognize the full force and effect of existing tribal-state compact agreements as well as safeguard existing tribal government rights under IGRA.

Finally, Internet gaming legislation must permit Indian tribes to operate Internet gaming without renegotiating their tribal-state compacts under the IGRA.

- **The legislation must not open up IGRA for amendments**

This provision is simple and straightforward. For hundreds of tribal governments there is simply too much at stake to open the Indian Gaming Regulatory Act up to amendments on the floor of either the House or Senate. Tribes have consistently opposed subjecting IGRA to amendments for the past 23 years.

- **Federal legalization of Internet gaming must provide positive economic benefits for Indian country**

This provision requires the United States to acknowledge its Constitutional, treaty and trust obligations to Indian tribes as well as the significant stake that tribal governments have in the existing gaming industry. To meet this principle, federal legislation legalizing Internet gaming must dedicate funding to meet the significant unmet needs of tribal communities.

### ***Current Internet Legalization Proposals Before Congress***

As noted above, Internet gaming bills that have been introduced in the House of Representatives in the 112<sup>th</sup> Congress (H.R. 1174 and H.R. 2366) as well as recent drafts developed in the Senate violate many of the principles discussed above. NIGA strongly opposes these proposals unless they are amended to adhere to the principles detailed in this testimony.

We understand that this is a preliminary oversight hearing, and that the Subcommittee will solicit the views of the Departments of Justice, Interior, Commerce, and Treasury, as well as the views of the National Indian Gaming Commission. We urge this Subcommittee and other committees of jurisdiction to first obtain the views of these agencies and other regulatory experts before moving forward to enact internet gambling legislation. These agencies will provide Congress with vital information on the feasibility of regulating Internet gaming in the United States.

A number of Members of Congress have raised social concerns with legalized Internet gaming in the U.S. They continue to oppose efforts to legalize Internet gambling, because they believe that it fosters problems unlike any other forms of gambling. Opponents list concerns that online players can gamble 24 hours a day from home; children can play without sufficient age verification; and betting with a credit card can undercut a player's perception of the value of cash — leading to possible addiction and, in turn, bankruptcy, crime, and other serious societal consequences.

Feasibility of regulation has also been listed as a significant concern. Because of the virtual nature of Internet gaming the regulatory protections utilized at brick-and-mortar casinos do not translate to online gambling. An online regulator does not have the benefit of live confrontation with players to confirm their identity, identify and stop problem gambling, or the use of facial recognition software to

identify cheats and others that would defraud a gaming operation.

### ***Internet Gambling and the Deficit Reduction Plan***

Proponents of legalizing Internet gambling have asked the Joint Select Committee on Deficit Reduction to include Internet gaming as part of the national strategy to cut the federal deficit. We strongly oppose inclusion of Internet gaming legalization as part of the national plan to reduce the federal deficit.

Legalization of Internet gaming is a controversial policy issue that must be carefully examined. As noted above, much more work must be done convince many Members of Congress that the benefits of legalizing Internet gaming in the United States outweigh the social concerns they hold. In addition, the U.S. Attorney General has publicly stated that he will oppose legislation to legalize Internet gaming in the United States.

Finally, the claims made by the proponents of Internet gaming with regard to the potential revenues to be generated from the legalization of Internet gaming should be closely studied. The Congressional Budget Office made initial estimates based on a nationwide legalization of all forms of Internet gaming that did not include individual state and tribal opt-out provisions and was based on a certain minimum tax rate. The current measures under consideration in both the House and Senate would not meet the lofty claims of the past CBO score. As

Congress considers addressing the deficit by more than \$1.5 trillion, the limited revenue offered by Internet legalization is not worth the risk of bringing the entire package down.

### ***Conclusion***

For four decades, Indian gaming has proven to be the most effective tool to help Indian tribes begin to address more than a century of federal policies that sought to destroy tribal land holdings, culture, and economies. Many tribal governments are justly concerned that legalizing Internet gaming in the United States will threaten the American jobs and precious government revenues that are created by Indian gaming.

To address these concerns, tribal governments ask that if federal Internet gaming legalization moves forward: (1) that the legislation acknowledge that all federally recognized tribes are eligible, as governments not subject to taxation, to participate in the new industry as both operators and regulators; (2) that tribal Internet operations be open to customers wherever legal; (3) that the legislation fully protect tribal government rights under IGRA and existing tribal-state compacts; (4) that IGRA not be opened to amendment; and (5) that the legislation set-aside positive economic benefits to address the significant unmet needs of Indian country.

I again thank you for this opportunity to testify this morning. I look forward to working with the Subcommittee on this important issue, and am prepared to answer any questions.