

**TRIBAL PROPOSALS TO ACQUIRE
LAND-IN-TRUST FOR GAMING
ACROSS STATE LINES AND HOW
SUCH PROPOSALS ARE AFFECTED
BY THE OFF-RESERVATION DIS-
CUSSION DRAFT BILL.**

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Wednesday, April 27, 2005

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**OVERSIGHT HEARING ON TRIBAL PROPOSALS
TO ACQUIRE LAND-IN-TRUST FOR GAMING
ACROSS STATE LINES AND HOW SUCH
PROPOSALS ARE AFFECTED BY THE OFF-
RESERVATION DISCUSSION DRAFT BILL.**

**Wednesday, April 27, 2005
U.S. House of Representatives
Committee on Resources
Washington, D.C.**

The Committee met, pursuant to notice, at 11:09 a.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Radanovich, Walden, Nunes, Drake, Fortunó, Kildee, Kind, Inslee, Tom Udall, Bordallo, Herseth and Costa.

STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on tribal proposals to acquire land-in-trust for gaming and how such proposals are affected by the off-reservation discussion draft bill that I proposed.

Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep to their schedules. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

I ask unanimous consent that my entire opening statement will be in the record. I am going to just abbreviate my opening statement because of the late beginning of the hearing.

The purpose of today's hearing is to continue the Committee's inquiry into off-reservation gaming. Last month the Committee held a hearing on a discussion draft bill I authored that would restrict and reform the process by which newly acquired off-reservation lands are taken into trust for gaming purposes. Committee members and witnesses both provided excellent analysis of the draft bill. It has also resulted in a tremendous amount of unsolicited

input from tribes, local leaders and private citizens across the Nation.

Today's hearing will focus on one aspect of the discussion draft bill, the provision dealing with tribes seeking trust lands for gaming in States where they don't reside. There is no official list of tribes in this situation, but one tribal witness in the last hearing provided a good list of such proposals.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard Pombo, Chairman,
Committee on Resources**

The purpose of today's hearing is to continue the Committee's inquiry into off-reservation gaming. Last month, the Committee held a hearing on a discussion draft bill I authored that would restrict and reform the process by which newly-acquired, off-reservation lands are taken into trust for gaming purposes. Committee Members and witnesses both provided excellent analysis of the draft bill. It has also resulted in a tremendous amount of unsolicited input from tribes, local leaders, and private citizens across the nation.

Today's hearing will focus on one aspect of the discussion draft bill, the provision dealing with tribes seeking trust lands for gaming in states where they don't reside. There is no official list of tribes in this situation, but one of the tribal witnesses in the last hearing provided a good list of such proposals. According to this list, tribes from certain states have attempted to negotiate gaming rights in at least twelve other states. Although details of the efforts are not always available, it appears that in most if not all cases, the gaming would be conducted under the Indian Gaming Regulatory Act.

While the Act generally prohibits this type of off-reservation gaming, exceptions are available depending on the willingness of the Interior Secretary and the governor of the affected state to play ball. It's just not clear what will happen in every case.

Regardless, these proposals have stirred up strong feelings among Members of Congress, governors, tribal leaders, tribal members, city and county leaders, and private citizens.

The discussion draft bill contains a section intended to bar such efforts to build casinos across state lines. It would be useful for the Committee to become better acquainted with several of the proposals and whether such proposals should be barred or allowed.

Before I recognize the Ranking Member, I want to note that the New York Land Claim is not the focus of today's hearing, even though it involves proposals relating to cross-state gaming. This issue is fairly unique and it would be better focus on what's happening in the rest of the United States before turning the committee's attention to that situation.

The CHAIRMAN. I would like to introduce our first panel of witnesses. Two of our distinguished colleagues from the State of Illinois, Congressman Jerry Weller of Illinois, 11th District, and Congressman Jesse Jackson, Jr. of Illinois' 2nd District. Let me take time to remind all of our witnesses today that under Committee Rules oral statements are limited to 5 minutes. Your entire statement will appear in the record.

Mr. KIND. Mr. Chairman, may I be recognized for a brief moment?

The CHAIRMAN. Mr. Kind?

**STATEMENT OF THE HON. RON KIND, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WISCONSIN**

Mr. KIND. Thank you, Mr. Chairman. Mr. Chairman, first of all, I want to thank you for holding yet another hearing on this very important issue and your proposed draft that we have been trying to work on together. I think this is a very serious issue. I am

looking forward to hearing our colleagues' testimony today as well as the testimony of the other witnesses on the second panel, one of whom I just want to especially welcome. He has been a good friend of mine for many years, but even more importantly, he has been a great leader of the Ho-Chunk Nation in Wisconsin, a great community leader. That is Wade Blackdeer, who will be on the second panel. We will look forward to hearing his testimony as well as the testimony of the other witnesses today.

The CHAIRMAN. Thank you.

Mr. KIND. Thank you, Mr. Chairman.

The CHAIRMAN. We are going to begin with our first panel. Mr. Weller, we are going to start with you.

STATEMENT OF THE HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. WELLER. Thank you, Mr. Chairman and members of the Resources Committee, for this opportunity to testify on a very important subject.

Mr. Chairman, I want to make it clear I am a supporter of your legislation, which I believe is good reform legislation. It takes into consideration the concerns of tribal governments as well as the States and I want to commend you for working in a bipartisan manner. I appreciate the time you and your Committee are taking to examine off-reservation gaming and its impact on tribal and non-tribal communities alike.

This reform legislation prevents federally recognized tribes from crossing State lines to set up gaming facilities in a different State than where they current reside; it prevents federally recognized tribes from opening gaming facilities outside of their existing lands in the State where they currently reside; and perhaps most importantly, it gives the Secretary of Interior much clearer guidance about the limited area where a newly recognized, restored or landless tribe can conduct gaming operations. I believe this is the right type of reform for this issue, and I am happy to be here in support of your legislation.

First, let me make it clear that I am a supporter of tribal gaming, with the benefits that it brings to tribal governments and the communities they serve. I strongly support tribal sovereignty and self-determination of Native Americans, our first Americans.

As former Chairman of the Congressional Gaming Caucus, I have supported all forms of gaming, provided they act in accordance with the clearly defined and commonly accepted laws and regulations that govern gaming in the United States.

However, I cannot support attempts to circumvent these established procedures to create opportunities for gaming, tribal or otherwise. It is this aspect upon which I appear before you today.

As you know, Mr. Chairman, Congress passed the Indian Gaming Regulatory Act in 1988, when it was enacted into law. The law has been successful in many ways. According to the National Indian Gaming Association there are 354 tribally operated casinos that employ approximately 400,000 U.S. citizens.

In 2002, tribal governmental gaming revenue was at \$14.5 billion, representing one-fifth of all of the nationwide gaming revenue, benefiting tribes and tribal governments by providing an

opportunity for better education for children, health care and housing for elders, and new economic opportunity for all in the tribal community as well as their neighbors.

The Act laid out the process by which a tribe could lawfully conduct any gaming, but most specifically, Class III gaming of the type commonly played at casinos such as slot machines, black jack, craps and roulette.

However, there has been an increase in proposals to create off-reservation gaming in extra-legal ways, seriously threatening the purposes of this Act in several States, including Ohio, California, Kansas, Minnesota and my home State of Illinois.

In Illinois, the Ho-Chunk Nation of Wisconsin is seeking to establish tribal gaming in Lynwood, located only a few miles away from my congressional district. Originally, the Ho-Chunk Nation had publicly stated its interest in two other sites in Illinois. This is a perfect example of an instance where the process of establishing a casino under IGRA should be adhered to.

The Ho-Chunks have purchased approximately 130 acres of the 260 acres designed for a casino complex. In order to create this complex, they pursued a dual-track strategy. The first part of the strategy was to seek legislation in Congress that would put their project on a "fast-track," circumventing existing law. I strongly object to this, and fortunately, no such legislation has been introduced yet in this Congress.

The other approach was to go through the regular procedures as provided under IGRA by seeking to place the land in a trust, which I have been informed the Ho-Chunks are preparing.

I do not believe the Ho-Chunks meet the requirements for having land placed into trust; yet should they meet them, I have no objections to their establishment of commercial operations.

However, the fact that the Ho-Chunks sought to use a process outside of IGRA clearly underscores the need to clarify and strengthen the protections and processes for the establishment of tribal gaming.

While I am opposed to tribes circumventing the law to establish gaming, I want to be clear that I am not opposed to current law which allows for lands taken into trust as part of a land claim settlement to be used for gaming. However, I do want to make certain that these claims are legitimate.

Perhaps one way to address this problem is to look at the work of past congresses. For example, I understand the 1982 Congress directed the Department of Interior to establish a list of all tribal claims for money damages, which included land claims because of the associated claim for trespass damages.

In 1983, the Department of the Interior published such a list in the Federal Register. Because this list predates the Indian Gaming Regulatory Act, we can feel confident that the tribal claims listed were not manufactured for the purpose of advancing casino projects. This list could be used as a bright line test, which communities could look to in determining whether they should be concerned with proposals by tribes or others who might seek to promote a tribal casino in their area.

This is but one suggestion among the many ways that Congress can act to clarify the legal process by which a tribe may establish

gaming. I ask that you consider this as a possibility while you continue to work on the excellent bill you have produced in this Committee.

By following through on these reforms, Congress can alleviate the negative image that tribal gaming has taken on as a result of efforts to establish off-reservation gaming. In doing so, it will allow Congress to act on issues of importance to the Native American community such as tax-exempt economic bonding, Indian health care and appropriate appropriations without fearing backlash resulting from negative publicity and press stories about off-reservation gaming.

Further, under a clearly defined process, tribes will be able to continue gaming in such a way to boost reservation economies and better the lives of tribal members.

Again, Mr. Chairman, members of the Committee, thank you for the opportunity, and I look forward to working with you and moving forward on this important reform legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Weller follows:]

**Statement of The Honorable Jerry Weller, a Representative in Congress
from the State of Illinois**

Mr. Chairman, Members of the Committee, thank you for inviting me to testify at this important hearing. I am a supporter of your legislation, good reform legislation that takes into consideration the concerns of Tribal Governments and States, in a bi-partisan manner, I appreciate the time you are taking to examine off-reservation gaming and its impact on tribal and non-tribal communities alike.

Mr. Chairman, with your permission, I would like to submit my written statement for the record.

This reform legislation prevents federally recognized tribes from crossing state lines to set up gaming facilities in a different state than where they currently reside; it prevents federally recognized tribes from opening gaming facilities outside of their existing lands in the state where they currently reside; and perhaps most importantly, it gives the Secretary of Interior much clearer guidance about the limited area where a newly recognized, restored, or landless tribe can conduct gaming operations. I believe this is the right type of reform for this issue, and I am happy to speak in support of it.

First, I am a supporter of tribal gaming, with the benefits that it brings to Tribal Governments and the communities they serve. I strongly support tribal sovereignty and self-determination of Native Americans, our first Americans.

As former Chairman of the Congressional Gaming Caucus, I have supported all forms of gaming, provided that they act in accordance with the clearly defined and commonly accepted laws and regulations that govern gaming in the United States.

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As you know, Congress passed the Indian Gaming Regulatory Act, (IGRA), 1988, which was enacted into law.

The law has been successful in many ways. According to the National Indian Gaming Association, there are 354 tribally operated casinos that employ approximately 400,000 people.

In 2002, Tribal Governmental gaming revenue was \$14.5 billion (21% of total gaming industry), which benefited tribes and Tribal Governments by providing better education for their children, health care and housing for their elders, and new economic opportunity for all in the tribal community.

The Act clearly laid out the process by which a tribe could lawfully conduct any gaming, but most specifically, Class III gaming of the type commonly played at casinos, such as slot machines, black jack, craps, and roulette.

The Act stated that—Before a Tribe might lawfully conduct Class III gaming; the following conditions must be met:

- (1) The Particular form of Class III gaming that the Tribe wants to conduct must be permitted in the state in which the tribe is located;

- (2) The Tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and
- (3) The Tribe must have adopted a Tribal gaming ordinance that has been approved by the Chairman of the Commission.

However, there has been an increase in proposals to create off reservation gaming in extra-legal ways, seriously threatening the purposes of the Act in several States, including Ohio, California, Kansas, Minnesota, and my home State of Illinois.

In Illinois, the Ho-Chunk Nation of Wisconsin is seeking to establish tribal gaming in Lynwood, located only a few miles away from my Congressional District. Originally, the Ho-Chunk Nation had publicly stated its interest in two other sites in Illinois.

This is a perfect example of an instance where the process of establishing a casino under IGRA should be adhered.

The Ho-Chunks have purchased approximately 130 acres of the 260 acres desired for a casino complex, and in order to create this complex, they pursued a dual-track strategy.

The first part of this strategy was to seek a bill in Congress that would put their project on a "fast-track," circumventing existing law. I strongly objected to this and fortunately, no such legislation has been introduced in this Congress.

The other approach was to go through the regular procedures as provided under IGRA by seeking to place the land into trust, which I have been informed the Ho-Chunks are preparing.

I do not believe that the Ho-Chunks meet the requirements for having land placed into trust, yet should they meet them; I have no objections to their establishment of commercial operations.

However, the fact that the Ho-Chunks sought to use a process outside of IGRA clearly underscores the need to clarify and strengthen the protections and processes for the establishment of tribal gaming.

While I am opposed to tribes circumventing the law to establish gaming, I want to be clear that I am not opposed to current law which allows for lands taken into trust as part of a land claim settlement to be used for gaming.

However, I do want to make certain that the claims are legitimate.

Perhaps one way to address this problem is to look to the work of past Congresses. For example, I understand that in 1982 Congress directed the Department of the Interior to establish a list of all tribal claims for money damages, which included land claims because of the associated claim for trespass damages.

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This list could be used as a bright line test, which communities could look to in determining whether they should be concerned with proposals by tribes or others who might seek to promote a tribal casino in their area.

This is but one suggestion among the many ways that Congress can act to clarify the legal process by which a tribe may establish gaming. I ask that you consider this as a possibility while you continue to work on the excellent bill that you have produced in this committee.

By following through on these reforms, Congress can alleviate the negative image that Tribal Gaming has taken on as a result of efforts to establish off-reservation gaming.

In doing so, it will allow Congress to act on issues of importance to the Native American community such as tax-exempt bonding, Indian health care, and regular appropriations without the fear of backlash resulting from bad publicity and negative news stories about American Indian tribes and tribal gaming today.

Further, under a clearly defined process, Tribes will be able to continue gaming in such a way as to boost reservation economies and better the lives of tribal members.

Again, Chairman Pombo, and members of the Committee, thank you for your attention to this important issue.

Mr. Chairman, with that I conclude my remarks, and welcome whatever questions the Committee may have of me.

The CHAIRMAN. Thank you.
Mr. Jackson?

STATEMENT OF THE HON. JESSE L. JACKSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. JACKSON. Chairman Pombo, Ranking Member Rahall and members of the Committee, I appreciate the opportunity to testify this morning on the subject of off-reservation gaming and on the draft bill intended to restrict it.

Mr. Chairman, I commend you for your efforts to seek input from all interested parties and to work in a cooperative way to craft sensible policies that improve the lives of Native Americans. I share your goals and commitment to protect, preserve and strengthen the sovereignty, self-determination and economic opportunities for all in the tribal community.

Clearly, the issue of "reservation shopping" in which a tribe seeks title to prime real estate to which they have absolutely no connection in order to set up a casino far from their reservation is both controversial and complicated. It, however, is different from out of State off-reservation gaming, in which a tribe located in one State seeks to establish gaming on land in another State where that tribe has historic, cultural and ethnographic ties. If allowed to become routine, I believe that reservation shopping has the potential to pit one tribe against another, to erode public support for Indian gaming and to undermine the economic growth and potential of Indian Country.

In my view, any attempts by an Indian tribe to establish gaming facilities on land to which they have no historic, ethnographic or cultural ties is impractical, imprudent and improper. While not readily apparent to me how prevalent or pressing the practice, I would support reasonable and precise efforts to prevent reservation shopping by tribes throughout the country.

However, I strongly oppose provisions of this bill that would bar a tribe in one State from locating a casino in another State on land to which the tribe has historic or cultural connections. Without a doubt there is a clear and sharp distinction to be made between reservation shopping on the one hand and out of State off-reservation gaming on the other. The former is illegitimate, the latter is not. Therefore, the prohibition on one should not lead to the preclusion of the other. For the purposes of our discussion and crafting sound policy, we must resist any temptations or tendencies to equate the two.

Thus, I believe that imposing an outright across-the-board ban on out-of-State off-reservation gaming would be too broad, too unfair, too severe, and too punitive. It simply would be wrong. As allowed under current law Indian tribes like the Ho-Chunk Nation should be allowed to reacquire or recover a portion of their ancestral lands in another State in order to establish a gaming facility.

Based today in Wisconsin, the Ho-Chunks claim a 10,000-year history in present-day Illinois. In the 17th century, the historic territory of the Ho-Chunks, then known as the Winnebago, included parts of Illinois, Wisconsin, Minnesota and Iowa. After rich deposits of lead were discovered by European miners under tribal land, the Ho-Chunks ceded the northwestern territory by the Treaty of 1829, marking the beginning of long and tragic successive relocations, often by force, by the U.S. Government. But now in the

words of one of the Nation's elected representatives, I quote, "the Ho-Chunk are knocking at the door and wish to come home."

My district, which includes the far south suburbs of Chicago, is indeed prepared to welcome them back to Illinois with open arms.

Last year, the Ho-Chunk Nation, which runs several casinos in Wisconsin, announced plans to build a 432-acre family entertainment destination in Lynwood, Illinois. The Ho-Chunk entertainment complex would feature a land-based casino, as well as restaurants, retail stores, a luxury hotel, a water park, a spa, a sports complex, a Native American museum and Pow Wow grounds.

Amid regional economic stagnation and neglect, the family entertainment facility would serve as a vital economic engine, bringing millions in revenue and thousands of jobs to an area in the State that so desperately needs them. Based on projections, the new complex would create 5,000 new jobs with an average salary of \$45,000. That is \$16,000 greater than the region's per capita average. In addition, the massive economic development project would generate \$64 million in wages during construction and \$78 million in payroll taxes each year.

Since the announcement the Ho-Chunk's proposal has generated broad civic, business and political support in the south suburbs. The Village of Lynwood and virtually all of the local community surrounding it support the Ho-Chunk proposal, including the Villages of Calumet City, Steger, Glenwood, the Township of Bloom, as well as mayors in nearby communities of Lansing, Thornton, East Hazel Crest and Sauk Village. In addition, it has the backing of the Southland Chamber of Commerce, the Illinois AFL-CIO and the local elected officials in the Illinois General Assembly, including State Senate Majority Leader Debbie Halvorson, as well as Chairman of the Southland Caucus, State Representative David Miller.

Mr. Chairman, I ask unanimous consent that the official letters and resolutions supporting the Ho-Chunk proposal from surrounding communities be placed in the record immediately following my testimony.

Under current regulations set forth in 25 C.F.R., the Ho-Chunk must submit their application to take the Lynwood land into trust in order to establish the casino complex. As members of the Committee well know, these regulations require the Department of the Interior to carefully scrutinize the Indian tribe's, quote, "need for additional land," end quote, purpose for which the land will be used, the impact on State and local governments, and, quote, "jurisdictional problems and potential conflicts of lands which may arise."

Revised in 1995, Part 151 regulations explicitly address decision-making on applications to take off-reservation land into trust, requiring among other things, that as the distance from the reservation increases, even greater scrutiny, Mr. Chairman, be given to the tribe's application and greater weight be given to the acquisition's potential impacts on the regulatory and taxing jurisdictions of the local and State Governments.

Mr. Chairman, if I might have just an additional minute, I will conclude my remarks.

Mr. Chairman, if the Ho-Chunk proposal meets the requirements of 25 C.F.R. Part 151, then the Secretary must make a finding under a two-part determination exception in Section 20 (b)(I)(A) of the Indian Gaming Regulatory Act. Specifically, these sections provide that gaming can occur on land if the Secretary, after consultation with Indian tribes and appropriate State and local officials, including officials of nearby tribes, determines that a gaming establishment of the newly acquired lands (1) would be in the interest of Indian tribe and its members, and (2) would not be detrimental to the surrounding community. In addition the Governor of the State must concur with the Secretary's determination. In fact, since October of 1988, State Governors have concurred on only 3 positive determinations of gaming on such tribal lands.

Therefore, the statutory and regulatory framework currently in place provides an important, necessary and rigorous process by which the Ho-Chunk Nation has an opportunity, not a guarantee, to regain their ancestral land on which to develop the proposed complex. In my view, 25 C.F.R. Part 151 and IGRA's 20(b)(I)(A), taken separately and together, establish and permit appropriate safeguards, input, checks and balances, and scrutiny among Federal, State and local tribal communities. The existing approval process is deliberative, it is detailed, it is careful and it is circumspect, and Mr. Chairman, it simply works.

Finally, Mr. Chairman, however in its current form, the draft bill would break this process, throwing out the two-part determination exception under IGRA and eliminating reasonable options by which tribes such as the Ho-Chunk may take land into trust for gaming purposes.

Mr. Chairman, I would urge you to keep the existing provisions of IGRA and allow tribes under certain circumstances and thorough scrutiny, an opportunity to acquire land in another State.

I thank the Chairman, Ranking Member Rahall, members of the Committee for allowing me the opportunity to testify before you. I appreciate the Committee's time and attention and look forward to working with you to address important matters affecting Native Americans.

I thank the Chairman and I thank members of the Committee. [The prepared statement of Mr. Jackson follows:]

Statement of The Honorable Jesse L. Jackson, Jr., a Representative in Congress from the State of Illinois

Chairman Pombo, Ranking Member Rahall and Members of the Committee, I appreciate the opportunity to testify this morning on the subject of off-reservation gaming and on the draft bill intended to restrict it.

Mr. Chairman, I commend you for your efforts to seek input from all interested parties and to work in a cooperative way to craft sensible policies that improve the lives of Native Americans. I share your goals and commitment to protect, preserve and strengthen the sovereignty, self-determination and economic opportunities for all in the tribal community.

Clearly, the issue of "reservation shopping," in which a tribe seeks title to prime real estate to which they have absolutely no connection in order to set up a casino far from their reservation is both controversial and complicated. It, however, is different from "out-of-state, off-reservation gaming" in which a tribe located in one state seeks to establish gaming on land in another state, where that tribe has an historic, cultural or ethnographic tie. If allowed to become routine, I believe that "reservation shopping" has the potential to pit tribe against tribe, to erode public support for Indian gaming and to undermine the economic growth and potential of Indian Country.

In my view, any attempts by an Indian tribe to establish gaming facilities on land to which they have no historic, ethnographic, or cultural ties is impractical, imprudent and improper. While not readily apparent to me how prevalent or pressing the practice, I would support reasonable and precise efforts to prevent "reservation shopping" by tribes throughout the country.

However, I strongly oppose provisions in the draft bill that would bar a tribe in one state from locating a casino in another state on land to which the tribe has an historic or cultural connection. Without a doubt, there is a clear and sharp distinction to be made between "reservation shopping" on the one hand and "out-of-state, off-reservation gaming" on the other. The former is illegitimate; the latter is not. Therefore, the prohibition on one, should not lead to the preclusion of the other. For the purposes of our discussion and crafting sound policy, we must resist any temptation or tendency to equate the two.

Thus, I believe that imposing an outright, across-the-board ban on "out-of-state, off-reservation gaming" would be too broad, too unfair, too severe, and too punitive. It simply would be wrong. As allowed under current law, Indian tribes, like the Ho-Chunk Nation, should be allowed to "re-acquire" or "recover" a portion of their ancestral lands in another state in order to establish a gaming facility.

Based today in Wisconsin, the Ho-Chunks claim a 10,000-year history in present day Illinois. In the 17th Century, the historic territory of the Ho-Chunks, then known as the Winnebago, included parts of Illinois, Wisconsin, Minnesota and Iowa. After rich deposits of lead were discovered by European miners under tribal land, the Ho-Chunk ceded the northwestern Illinois territory by the Treaty of 1829, marking the beginning of long and tragic successive relocations, often by force, by the United States Government. But, now, in the words of one of the Nation's elected representatives, "the Ho-Chunk are knocking at the door and wish to come home."

My district, which includes the far south suburbs of Chicago, is indeed prepared to welcome them back home to Illinois with open arms.

Last year, the Ho-Chunk Nation, which runs several casinos in Wisconsin, announced plans to build a 432-acre family entertainment destination in Lynwood, Illinois. The Ho-Chunk Entertainment Complex would feature a land-based casino, as well as restaurants, retail stores, a luxury hotel, a water park, a spa and sports complex, a Native American museum and Pow Wow grounds.

Amid regional economic stagnation and neglect, the family entertainment facility would serve as a vital economic engine, bringing millions in revenue and thousands of jobs to an area in the state that so desperately needs them. Based on projections, the new complex would create 5,000 new jobs paying an average salary of \$45,000 annually—that is \$16,000 greater than the region's per capita average. In addition, the massive economic development project would generate \$64 million in wages during construction and \$78 million in payroll taxes each year.

Since the announcement, the Ho-Chunk's proposal has generated broad civic, business and political support in the south suburbs. The Village of Lynwood, and virtually all of the local communities surrounding it support the Ho-Chunk proposal, including the Villages of Calumet City, Steger and Glenwood, the Township of Bloom, as well as the Mayors of nearby communities Lansing, Thornton, East Hazel Crest and Sauk Village. In addition, it has the backing of the Southland Chamber of Commerce, the Illinois AFL-CIO and the local elected officials in the Illinois General Assembly, including Illinois State Senate Majority Leader Debbie Halvorson as well as the Chairman of the Southland Caucus, State Representative David Miller.

Under current regulations set forth in 25 C.F.R. Part 151, the Ho-Chunk must submit their application to take the Lynwood land into trust in order to establish the casino complex. As Members of the committee well know, these regulations require the Department of the Interior to carefully scrutinize the Indian tribe's "need" for additional land, the "purpose for which the land will be used," the impact on state and local governments, and "jurisdictional problems and potential conflicts of land use which may arise." Revised in 1995, Part 151 regulations explicitly address decision-making on applications to take off-reservation land into trust, requiring, among other things, that as the distance from the reservation increases, "greater scrutiny" be given to the tribe's application and "greater weight" be given to the acquisition's potential impacts on the regulatory and taxing jurisdictions of the state and local governments.

If the Ho-Chunk proposal meets all the requirements of 25 C.F.R. Part 151, then, the Secretary must make a finding under the "two-part determination" exception in Section 20 (b)(1)(A) of Indian Gaming Regulatory Act (IGRA). Specifically, this section provides that gaming can occur on the land if the Secretary—after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby tribes—determines that a gaming establishment on the newly acquired lands would (1) be in the best interest of the Indian tribe and its members, and

(2) would not be detrimental to the surrounding community. In addition, the governor of the state must concur with the Secretary's determination. In fact, since October of 1988, state governors have concurred in only three positive determinations for gaming on such trust lands.

Therefore, the statutory and regulatory framework currently in place provides an important, necessary and rigorous process by which the Ho-Chunk Nation has an opportunity, not a guarantee, to regain their ancestral land on which to develop the proposed complex. In my view, 25 C.F.R. Part 151 and IGRA's 20 (B)(1)(A) taken separately, and together, establish and permit the appropriate safeguards, input, checks and balances, and scrutiny among federal, state, local and tribal communities. The existing approval process is deliberative, detailed, careful and circumspect. Simply put, it works.

However, in its current form, the draft bill would break the process, throwing out the "two-part determination" exception under IGRA and eliminating a reasonable option by which tribes, such as the Ho-Chunk, may take land in trust for gaming purposes.

Mr. Chairman, I would urge you to keep the existing provisions of IGRA and allow tribes, under certain circumstances and thorough scrutiny, an opportunity to acquire land for gaming in another state. I thank you Mr. Chairman, Ranking Member Rahall and Members of the Committee for allowing me the opportunity to testify before you. I appreciate the Committee's time and attention and look forward to working with you to address important matters affecting Native Americans.

The CHAIRMAN. Thank you. I thank both of you for your testimony. I know that both of you have scheduling issues this morning, and because we started late it made it difficult to stay to those schedules.

Do any of the members of the Committee have any burning questions that they would like to ask?

If not, I am going to excuse both of you. Thank you for coming in and testifying on this. It is valuable, and as you said, Mr. Jackson, the process that we are going through is that we are having an open discussion on this and trying to figure out the best way to move forward, and I think your input and Mr. Weller's input is very important to that process. So thank you.

Mr. WELLER. Thank you.

Mr. JACKSON. Thank you, Mr. Chairman.

The CHAIRMAN. Panel 2 is up next. If you would join us at the witness table. Chief Charles Enyart, Vice President Wade Blackdeer, Vice Chairman William Blind, Senator Bradley Burzynski and Mayor Craig Foltin.

Before you take a seat, if you could just stand and raise your right hands. It is the custom of the Resources Committee that we swear in all of our witnesses.

[Witnesses sworn.]

The CHAIRMAN. Thank you. You may have a seat. Let the record show they all answered in the affirmative.

To begin with, I would like to apologize to the panel for our late start. It was beyond the Committee's control, but thank you very much for being here.

Mr. Enyart, we are going to begin with you.

**STATEMENT OF CHARLES D. ENYART, CHIEF,
EASTERN SHAWNEE TRIBE OF OKLAHOMA**

Mr. ENYART. Good morning, Chairman Pombo, members of the Committee. My name is Charles Enyart. I am the Chief of the Eastern Shawnee Tribe of Oklahoma, a federally recognized Indian Tribe whose aboriginal homeland encompasses what is the present

day State of Ohio. I appreciate the opportunity to be here today to share our views about Section 20 of the Indian Gaming Regulatory Act, and to explain the importance of this issue for our people.

I am here for three reasons today: first, to ensure that the Eastern Shawnee have the opportunity to return to our aboriginal homelands in present day Ohio; second, to ensure that we have the same opportunity to benefit from the Indian Gaming Regulatory Act as other Indian Tribes have since its enactment in 1988; third, to advocate for the right of tribes, States and local communities to work together for their mutual benefit.

In the interest of time, I will summarize the points contained in my written testimony which have been submitted in full for the record.

We understand that this Committee is in the process of determining whether IGRA should be amended to eliminate the two-part determination process and the land claim settlement provisions.

In our view, these changes will be detrimental to tribes and to local communities who wish to work together to bring Indian gaming to willing States and will unfairly discriminate against tribes such as the Eastern Shawnee, who are attempting to settle historical land claims.

As you are aware, the Eastern Shawnee Tribe has been exploring the possibility of establishing a presence in our aboriginal homeland now the State of Ohio. We wish to do this in cooperation with local communities. The legitimacy of our historical and cultural ties to Ohio is undeniable. 150 years ago the tribe was driven out of its homeland, lands that now comprise the State of Ohio. The historical record is replete with accounts of destructive raids and burning of Shawnee villages by the United States Army and the unauthorized taking of Shawnee land by encroaching settlers. Our people were forcibly removed from their villages and relegated to a series of reservations first in Ohio, then in Missouri, and ultimately Oklahoma. It was an ugly and shameful period in American history in which our people endured unspeakable fear, intimidation and military violence used by the United States and the early Ohioans.

However, our interest is not about retribution for past wrong. Rather we seek to establish a mutually beneficial political and economic relationship with the State of Ohio and the communities that have reached out to us with a vision of what is possible.

We do wish to finally resolve our outstanding land claims, but not in a manner that will be detrimental to the people of Ohio. Those with whom we have established a relationship understand our intentions and have welcomed us into their communities to discuss the potential for tribal economic development. Local communities in the State of Ohio, some of whom you will hear from today, have actually sought out the tribe and asked us if they could help bring the Shawnee back to our homeland. We are committed to working through the appropriate governmental channels in Ohio to ensure that we are welcomed back to our homeland.

The Eastern Shawnees are not reservation shopping and view the phrase as wrong. We have a unique situation in Ohio. Each piece of land has its own history and so it is with each tribe. We ask for the same opportunity to work with the State of Ohio to re-

gain those lands to bring Indian Gaming to those communities that welcome us, as other tribes have in their communities.

The land acquisition process in place under current law already constitutes a formidable barrier to tribes seeking to regain historical tribal lands. Since 1988 there has only been three instances in which land outside of the Indian Reservation has been taken into trust for purposes of gaming and none of them involved the crossing of State lines. Only 36 gaming regulated trust acquisitions have been approved since 1988. 30 applications for gaming or gaming-related acquisitions are pending, only 10 of which involve so-called off-reservation acquisitions. These numbers are minuscule, even the fact that there are more than 560 federally recognized tribes in the United States. The numbers certainly do not justify a major overall of IGRA.

Only a few tribes have a historic or cultural connection to any given State. The truth is that the only way for a tribe to succeed in securing off-reservation land into trust for purposes of gaming is where there are two willing parties, the State and the tribe, with the addition of local governments and community support. Ohio has shown this support.

The Ohio State Legislature, years before the Eastern Shawnee began exploring the possibility of gaming in Ohio, anticipated Indian gaming in the State. The Ohio Legislature enacted legislation effective in 1997 authorizing legislative approval of tribal-State gaming compacts negotiated by the Governor.

The proposed amendments to IGRA, however, would permanently foreclose the possibility of a gaming compact between the Tribe and the State of Ohio.

I have one more paragraph, Mr. Chairman.

In closing, I would emphasize that until very recently the historic legacy of the Eastern Shawnee people was one of poverty and isolation. Left virtually landless for over a century and a half, my people have had very little realistic hope that things would ever improve. Like other tribes in similar circumstances, we had no economy and no tax base. The lot of the Eastern Shawnee people is improved. We have a long way to go to achieve the prosperity that once was ours.

I told you a story. We respectfully urge that Congress not amend IGRA to impede or extinguish the authority of State Governments to work with tribes to bring Indian gaming to willing communities. Indian gaming is not out of control. The land acquisition process is long and difficult, and there are more than adequate safeguards against the establishment of unwanted gaming operations. Under IGRA, as it stands today, tribes cannot conduct Class III gaming in a State that is unwilling to have Indian gaming. States and local communities that want Indian gaming should continue to be allowed to work for the tribes to bring the highly regulated field of Indian gaming to their States without Federal interference.

Thank you and I appreciate your indulgence.

[The prepared statement of Mr. Enyart follows:]

**Statement of The Honorable Charles D. Enyart, Chief,
Eastern Shawnee Tribe of Oklahoma**

Good morning, Chairman Pombo, Members of the Committee, my name is Charles Enyart. I am the Chief of the Eastern Shawnee Tribe of Oklahoma, a federally

recognized Indian Tribe whose aboriginal homeland encompasses what is the present day State of Ohio. I appreciate the opportunity to be here today to share our views about Section 20 (Section 2719) of the Indian Gaming Regulatory Act (IGRA) and to explain the importance of this issue for our people. I am here for three reasons: (1) to ensure that we have the opportunity to return to our aboriginal homelands in present day Ohio; (2) to ensure that we have the same right as other Indian tribes to conduct Indian gaming under current law; and (3) to advocate for the right of tribes, states, and local communities tribes to work together for their mutual benefit.

We understand that this Committee is in the process of determining whether Section 2719(b) of IGRA should be amended to alter the manner in which land outside of an existing reservation or other presently occupied Indian lands could be taken into trust for purposes of gaming. The current proposal is to replace the entirety of sub-section (b), thereby eliminating the "two-part determination" process and the "land claim settlement" provisions, and effecting numerous other changes as well.

The Eastern Shawnee Tribe respectfully urges the Resources Committee to reconsider the need for such legislation. One need only review the record to see that the Indian Gaming Regulatory Act is not broken in this regard. In fact, there have only been three instances in which land outside an Indian reservation have been taken into trust for purposes of gaming since IGRA was enacted in 1988 and not one of them involved the crossing of state lines: (1) in 1990 the Forest County Potawatomi Community in Wisconsin obtained 15.69 acres of land in trust 250 miles from its reservation through a two-part determination; (2) in 1997, the Kalispel Indian Community in Washington obtained 40.06 acres of land in trust 60 miles from its reservation through a two-part determination; and (3) in 2000, the Keweenaw Bay Indian Community in Michigan obtained 22.00 acres of land in trust 70 miles from its reservation through a two-part determination.

Out of over 560 tribes, there are only 33 gaming or gaming related trust acquisitions pending at this time. The mere fact that some dozen or so tribes are presently considering invoking Section 20(b), which is entirely lawful, does not mean that they will succeed. The process is long and tedious with many barriers at every step along the way. Even the settlement provision of Section 20(b)(2) does not grant, as a matter of right, the taking of land into trust. First, a settlement must be reached, then it must be confirmed through Congressional legislation. The so-called two-part determination of Section 20(b)(1) requires a finding by the Secretary of the Interior that the acquisition is in the best interest of the tribe and not detrimental to the surrounding community and the governor of the state must concur in the Secretary's determination. The truth is that the only way for a tribe to succeed in securing off-reservation lands into trust for purposes of gaming is where there are two willing parties: the state and the tribe, with the addition of local government and community support.

The Ohio State Legislature, years before the Eastern Shawnee Tribe began exploring the possibility of gaming in Ohio, anticipated Indian gaming in the state. In fact, the Ohio Legislature enacted legislation effective in 1997 authorizing legislative approval of tribal-state gaming compacts negotiated by the governor. Ohio Rev. Code Ann. § 107.25 (West 2005). It is, therefore, apparent that the State has taken steps to inform itself about IGRA and tribal gaming, and to pave the way to one day proceed with a tribal-state gaming compact. The proposed amendment, however, would permanently foreclose the possibility of a gaming compact between the Tribe and the State of Ohio.

Some may wonder why a state such as Ohio, or any other, would be receptive to the establishment of Indian lands and Indian gaming within its borders. Assuming that a state desires the introduction of gaming for the unquestioned economic benefits that it produces, we would suggest that there are many reasons it might prefer Indian gaming over other alternatives. Foremost among these, there are natural controls on the scope of tribal gaming which diminishes the potential for uncontrolled proliferation. Only so many tribes have a historic or cultural nexus to any given state. Moreover, tribal gaming revenues, as a matter of law, may only be expended for socially beneficial purposes. Commercial gaming only benefits private interests. In stark contrast, tribal gaming lifts entire communities out of poverty, educates children who once had little hope for higher education, builds schools, roads, bridges, funds law enforcement and emergency services, preserves languages and cultures, builds clinics and hospitals and provides dialysis and diabetes centers, and funds charitable activities of every kind.

As to the interests of the Eastern Shawnee Tribe, the benefits of Indian gaming for the Tribe and Ohioans are obvious and the legitimacy of our historic and cultural ties to Ohio is undeniable. One hundred fifty years ago, the Tribe was driven out of its homeland: lands that now comprise the State of Ohio. The historical record

is replete with accounts of destructive raids and the burning of Shawnee villages by the United States Army and the unauthorized taking of the Shawnee's lands by encroaching settlers. Our people were forcibly removed from their villages and relegated to a series of reservations first in Ohio, then in Missouri, and ultimately Oklahoma. It was an ugly and shameful period in American history in which our people endured unspeakable fear, intimidation, and military violence used by the United States and early Ohioans.

Until very recently, our historic legacy was one of poverty and isolation. Left virtually landless, for over a century and a half our people had very little realistic hope that things would ever improve. Like other tribes in similar circumstances, we had no economy and no tax base. We did not even have the means to fully redress the wrongs against us, which is why certain of our claims remain outstanding. Indian gaming has changed our bleak outlook as to our future. The revenues from our modest gaming operation, BorderTown Bingo located in West Seneca, Missouri have provided us the means to make improvements in the lives of our people and to rekindle the hope for a better life for our children and grandchildren. However, the rural character of the land we now occupy, combined with the economic conditions in the surrounding area, severely restrict our economic potential. The lot of the Eastern Shawnee people is improved, but we have a long way to go achieve the level of prosperity that once was ours.

Some press accounts can be read to suggest that our interest in Ohio is to eject people from their homes. This is not true. Our interest is not about retribution for past wrongs, but rather about establishing a mutually beneficial political and economic relationship with the State of Ohio and the communities that have reached out to us with a vision of what is possible. The Eastern Shawnee seek to reestablish a presence in Ohio as part of a welcome and mutually beneficial relationship conducted on a government-to-government basis both with the State and the local governments that may one day be our neighbors once again.

We do wish to finally resolve our outstanding land claims, but not in a manner that will be detrimental to the people of Ohio. Those with whom we have established a relationship understand our intentions and have welcomed us into their communities to discuss the potential for tribal gaming. In fact, local communities in the State of Ohio, some of whom you will hear from today, have actively sought out the Tribe and asked us if they can help bring the Shawnee back to our homeland. We are committed to working through appropriate governmental channels in Ohio to ensure that we are welcomed back to our homeland.

The Eastern Shawnee are not "reservation shopping" and view the phrase as a misnomer. Like every other situation, ours is unique. Each piece of land has its own history and so it is with each tribe. It is very difficult for a tribe with existing lands to get new, non-contiguous land for gaming. Since 1988, only 36 gaming or gaming related trust acquisitions have been approved. Only three tribes have successfully been able to take land into trust and open Indian gaming facilities on lands that are outside of their reservation boundaries. Thirty applications for gaming or gaming related acquisitions are pending, only ten of which involve so-called "off-reservation" acquisitions. These numbers are minuscule given the fact that there are more than 560 federally recognized tribes in the United States. These numbers certainly do not justify a major overhaul of IGRA.

We would also point out that the land acquisition process in place under current law already constitutes a formidable barrier to these so called "off-reservation" acquisitions. The Office of Indian Gaming Management in the Department of the Interior has developed a thirteen-page checklist governing acquisitions of land in trust for gaming purposes. Tribes must comply with the rigors of the Section 151 process and satisfy the requirements established by Congress in Section 20 of IGRA. This application process requires a thorough environmental review under the National Environmental Policy Act, consultation with all tribes within a 50 mile radius, consultation with all local governments within a 10 mile radius, and local intergovernmental agreements.

Obviously, there is a great deal of misunderstanding about the procedures required by the Interior Department. However, Indian gaming is not "out of control." The land acquisition process is long and difficult, and there are more than adequate safeguards against the establishment of unwanted gaming operations.

We respectfully urge that Congress should not amend IGRA to impede or extinguish the authority of state governments to work with tribes to bring Indian gaming to willing communities. Under IGRA as it stands today, tribes cannot conduct Class III gaming in a state that is unwilling to have Indian gaming. States and local communities that want Indian gaming should continue to be allowed to work with tribes to bring the highly regulated field of Indian gaming to their states without federal interference.

Finally, we assert that the facts do not support the atmosphere that has evolved around this issue. IGRA contains a proper balancing of interests with regard to trust acquisitions. Congress should not interfere with the rights of states and tribes to enter into agreements that promote economic development and benefit tribal, state, and local economies.

Thank you.

The CHAIRMAN. Thank you.
Mr. Blackdeer?

**STATEMENT OF THE HON. WADE BLACKDEER,
VICE PRESIDENT, HO-CHUNK NATION**

Mr. BLACKDEER. Good morning, Mr. Chairman and members of the House Resources Committee. I am Wade Blackdeer, Vice president of the Ho-Chunk Nation. I want to thank you for giving me the opportunity to offer testimony on behalf of the Ho-Chunk Nation on off-reservation gaming and the draft legislation now before the Committee.

I would like to begin my testimony today by stating that the Ho-Chunk Nation is opposed to the present legislation as drafted. Fundamentally, the Nation supports the idea of permitting Indian tribes to engage in off-reservation gaming including gaming in more than one State. Having said that, I want to emphasize that the Nation is sympathetic to many of the goals of the legislation, because we too believe that there must be restrictions on off-reservation gaming. We believe that those restrictions should be based on two principles. First, tribal gaming should be only conducted in areas to which an Indian tribe has specific historical connection, and second, tribes should not be permitted to enter the established gaming markets of other tribes without their consent. The Nation's opposition to the present draft of the legislation is based in large part of the perception that the legislation is designed to address problems that do not even exist.

Headlines and political grand-standing notwithstanding, tribes are not, for all intents and purposes, able to engage in off-reservation gaming at the present time. The Section 20 approval process has also created so many roadblocks for approving the taking of land into trust for gaming purposes, that it is almost impossible to establish off-reservation gaming unless it is done based on Federal legislation, specifically granting trust status to land for gaming purposes. And even there, as we have seen with the Lytton Band in California, public resistance can be so intense that legislation may not be enough to ensure that such gaming ever will take place. The resistance to off-reservation gaming is so great in fact that the Nation has been unable to conduct gaming on its pre-1988 trust land in Madison, Wisconsin. The development of gaming on that land has been blocked by the IGRA compact negotiation process.

Because the IGRA provides that the location of gaming is an appropriate topic of Tribal-State compact negotiations, the Governor of Wisconsin was able to refuse for years to agree to Class III gaming on pre-1988 trust land. When the present Governor finally agreed to negotiate over the Madison site, he insisted that the issue of gaming on our pre-1988 trust land be put to a public referendum which was subsequently defeated.

It is simply unrealistic to believe that off-reservation gaming will ever take place without the support of State and local government. We do not need any more roadblocks such as the provisions of the draft legislation requiring the approval of many more local governments entities. What we need and what legislation can provide are restrictions on off-reservation gaming that will eliminate the actual problems faced by gaming tribes and that will address the concerns of non-Indian communities.

The Nation believes in order to resolve the problem surrounding off-reservation gaming at least three restrictions should be applied to the Secretary's approval of trust transfers of land for gaming purposes.

First, all reservation gaming should be conducted on land to which the tribe seeking gaming has a historical connection. That connection could be established by evidence that the land in question was ceded by the tribe in a treaty. The land was once the tribe's reservation, or the land was once within the aboriginal territory of the tribe. Aboriginal territory could be established through the determinations of the Indian Claims Commission and the Indian Court of Claims.

Second, approval should not be given to requests to have land taken into trust that is within 50 miles of an existing gaming facility without that tribe's consent. This restriction would provide tribes with some steady market security and would ensure some stability of tribal revenues that pay for essential Government programs for tribal members. An exception to this consent provision would be that if the land in question is within 5 miles of a reservation of the tribe seeking to enter the gaming market. In that case the tribe seeking to acquire trust land for gaming would not need to obtain the consent of the tribe with the existing gaming operations.

Third, tribes should not be permitted to leapfrog over another tribe in order to establish a gaming operation closer to a population center that is a primary market for the existing gaming facility of another tribe.

These restrictions are designed to prevent strife among tribes and ensure that the tribal economies remain stable. The Nation has developed these restrictions in response to its own experience. Right now, a number of Wisconsin tribes are attempting to develop gaming operation in the Nation's existing markets, despite the fact that they have no historic connection with those areas. They are simply reservation shopping. This in turn creates a vicious cycle of efforts to steal markets.

Right now, because of the efforts of other tribes to move into the Nation's markets, the Nation is forced to seek new markets that are in some cases outside of the Nation's historic territory. The Nation will be compelled to do so as long as its markets are under threats from other tribes. So long as the Nation's market can be undercut as the result of approval of new gaming operations by the Secretary, the Nation has no choice but to do precisely what it does not wish to do, attempt to establish gaming markets in areas to which it may have no historic connection with the potential effect of reducing the market of an established gaming facility and the disturbance of a surrounding non-Indian population.

If the restrictions suggested by the Nation are part of the present legislation, the Nation would have no reason to seek sites for new gaming facilities in an area other than its own historic lands, lands such as the Illinois site. Until they are adopted, however, the scramble for markets will continue.

I hope that the Committee will consider these proposals in the spirit in which they are offered. We are trying to stabilize gaming markets while ensuring that the search for new markets do not result in the disturbance of the local non-Indian communities. This will benefit the tribes, their members and those members of the non-Indian communities who are concerned about the prospect of uncontrolled expansion of Indian gaming in our shared communities.

I want to thank you for your attention.

[The prepared statement of Mr. Blackdeer follows:]

Statement of Wade Blackdeer, Vice-President, Ho-Chunk Nation

Good morning Mr. Chairman and members of the House Resources Committee. I am Wade Blackdeer, Vice President of the Ho-Chunk Nation. I thank you for giving me the opportunity to offer testimony on behalf of the Nation on the subject of off-reservation gaming and the draft legislation addressing off-reservation gaming.

I would like to begin my testimony today by stating that the Ho-Chunk Nation is opposed to the present legislation, as drafted. Fundamentally, the Nation supports the idea of permitting Indian tribes to engage in off reservation gaming, including gaming in more than one state. Having said that, I want to emphasize that the Nation is sympathetic to many of the purposes of the legislation, because we, too believe that there must be restrictions on off-reservation gaming. We believe that those restrictions should be based on the concept that tribal gaming should only be conducted in areas to which an Indian tribe has a specific historical connection, so long as there is a stipulation that tribes should not be permitted to interfere with the established gaming markets of other tribes without their express consent.

Headlines and political grandstanding notwithstanding, tribes are not, for all intents and purposes, able to engage in off-reservation gaming. The Section 20 approval process has already created so many roadblocks for approving the taking of land into trust for gaming purposes that it is almost impossible to establish off-reservation gaming unless it is done based on legislation specifically granting trust status to land for gaming purposes. And even there, as we have seen with the Lytton Band in California, public resistance can be so intense that legislation may not be enough to ensure that such gaming will ever take place. The resistance to off-reservation gaming is subject to so many barriers, in fact, that the Nation has been unable to conduct gaming on its pre-1988 trust land in Madison, Wisconsin, which does not even fall under the Section 20 approval process. The IGRA provides that the location of gaming is a topic of tribal-state compact negotiations and, on that basis, the Governor of Wisconsin refused to even negotiate over Class III gaming on the pre-1988 trust land, where Class II gaming is already being played. When the present Governor finally agreed to negotiate over the Madison site, he insisted that the issue of Class III gaming on our pre-1988 trust land be put to a public referendum, which was subsequently defeated.

Thus, this legislation appears to be designed to resolve a problem that does not exist. It is simply unrealistic to believe that off-reservation gaming will ever take place without the support of state and local government. We do not need more roadblocks to approval, such as the provisions of the draft legislation requiring the approval of many more governmental entities. This is found in proposed Section 2719 (e)(2)(C) and (3)(C). What we need, and what this legislation can provide, are restrictions on off-reservation gaming plans that eliminates the actual problems faced by gaming tribes and the basic concerns of the non-Indian communities and governmental entities.

The Nation believes that, in order to resolve the problems surrounding off-reservation gaming, a number of basic restrictions should be applied to the Secretary's approval of trust transfers of land for gaming purposes. We do not believe that any changes need to be made to the provisions of the IGRA that related to the restored lands and newly recognized tribes exceptions found in Section 2719. First, all off-reservation gaming should be conducted on land to which the tribe seeking gaming

has a historical connection. That connection could be established on the basis that the land was ceded by the Tribe in a treaty, the land was once a reservation of the tribe, or the land was the aboriginal territory of the tribe. Aboriginal territory could be established through the determinations of the Indian Claims Commission and the Indian Court of Claims, and thus aboriginal territory would provide a meaningful and easily determined standard.

The Nation is a useful example of this historical connection concept. Although the Nation has no reservation, it has maintained a governmental, social and political presence throughout the Midwest, including the State of Illinois. The headquarters for the Nation's government is located in Black River Falls, Wisconsin, and it operates governmental offices throughout Wisconsin, including Minneapolis and Chicago. The Chicago Office has been in existence since the early 1980's, providing services to a thriving population of Ho-Chunk tribal members who live in the Chicago metro area. In fact, the Nation's ties to the Chicago area are so strong that they have been recently endorsed by a Federal Agency. In March 2005, the U.S. Department of Housing and Urban Development recognized the Chicago area and surrounding counties of Cook, Kane, Lake and Du Page as part of the service area for the Ho-Chunk Nation for purposes of the Section 184 Indian Housing Loan Guarantee Program. The Ho-Chunk Nation's Housing and Community Development Agency was approved by H.U.D. for the Section 184 Program accordingly.

In addition, we know that the Nation's tribal members have been in the Chicago area so long that The Winnebago Club has existed in the area since the 1950's. The Nation was formerly known as the Wisconsin Winnebago, and a group of tribal members in the Chicago area formed the Club as a social organization.

The Nation's ties outside of Wisconsin, and particularly in Illinois, are more than social or governmental in nature. The Nation has aboriginal connections throughout the area that would establish our historical connection to the State. I have provided a map of the Nation's aboriginal territory for the Committee's review and consideration. It shows the Nation's historical connections to Wisconsin, Minnesota and Illinois. Clearly, the Nation has a historical connection with the states of Wisconsin, Illinois and Minnesota.

Second, approval should not be given to requests to have land taken into trust that is within the geographical proximity of an existing gaming facility of another tribe without that tribe's consent. This provides tribes with some market security and ensures some stability of tribal revenues that pay for essential governmental programs for tribal members. An exception to this consent provision would be if the land in question is within five miles of the reservation of the tribe seeking to enter the market of the other tribe, the tribe would not need to obtain the consent of the tribe with the existing gaming operation.

In considering this factor, the Nation's experience is instructive. The Nation is facing precisely this situation in Wisconsin. Right now, a number of tribes like the St. Croix Band of Lake Superior Chippewa, the Bad River Band of Lake Superior Chippewa and the Menominee Nation are attempting to move into the Nation's existing markets. This is purely an attempt to capture market share, and is based on no present historical connection. Under our proposal, a tribe that wishes to enter into such a market would have to receive the approval of the tribe that has the existing facility, which would force tribes to communicate on matters that shared communities should address.

Third, tribes should not be permitted to leapfrog over another tribe in order to establish a gaming operation closer to the population center that is the primary basis for an existing gaming facility of another tribe. The Nation is facing precisely this situation. For example, the aforementioned Wisconsin tribes do not have a fourth gaming site provision in their present Tribal-State Gaming Compacts, yet the Ho-Chunk Nation does. However, those tribes seem to ignore this preserved ability by one tribe (the Nation) that negotiated for such a contractual right and prefer to move forward with their own agendas.

These provisions are designed to prevent strife among tribes and to ensure that tribal economies remain stable. Here, again, the Nation's situation is instructive. Right now, because of the efforts of other tribes to move into the Nation's markets, the Nation is forced to seek new markets that are, in some cases, outside of the Nation's historic territory. The Nation is compelled to do so, so long as its markets are under threat from other tribes. The Nation has an extensive tribal government that provides its members with a variety of benefits and programs. Those benefits and programs are dependent on a predictable income stream. So long as the Nation's market can be undercut as a result of approval of new gaming operations approved by the Secretary, the Nation has no choice but to do precisely what it does not wish to do: attempt to establish gaming in areas to which it may have no historic connection, with the potential effect of reducing the market of an established gaming

facility. If the restrictions suggested by the Nation are made part of the present legislation, the Nation would have no reason to seek sites for new gaming facilities in any area other than its own historic lands. Until they are adopted, the scramble for markets will continue.

I hope that the Committee will consider these proposals in the spirit in which they are offered: Communication. The Nation wishes to assist this Committee in creating legislation that will stabilize Indian gaming, so that all communities can adequately address their concerns. This will benefit the tribes, their members and those members of the non-Indian communities who are concerned about the unplanned expansion of Indian gaming in our shared communities.

Thank you.

The CHAIRMAN. Thank you.
Mr. Blind?

**STATEMENT OF WILLIAM BLIND, VICE CHAIRMAN,
CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA**

Mr. BLIND. Thank you. Chairman Pombo and members of the Resources Committee, I thank you for inviting me here today. I consider it a great honor and a privilege.

My name is William Blind. I am the Vice Chairman of the 11,000-member Cheyenne and Arapaho Tribes of Oklahoma. I understand that the purpose of my testimony is to discuss the perceived problem of the Land Settlement Exception of Section 20 of IGRA, and more specifically, situations where the land may be hundreds of miles away from the tribe's current reservation. I say that it is a perceived problem since in 17 years it has never occurred. There has never been a single case of land being taken into trust under this rule.

Regardless, the Land Settlement Exception is an important part of IGRA because it acknowledges that some tribes may have genuine land claims due to unfortunate past treatment. This is important both historically and practically. The practical value of this rule is substantial and does not only benefit the tribes, which it obviously does, but it benefits everyone, States, taxpayers, business owners, homeowners, schools and even the Federal Government, all benefit. We offer New York as an example of how the Land Settlement Exception can work. There the Land Settlement Exception may become an essential piece in solving a complex and expensive problem. With this tool there is a quick and easy no-cost path to settle a land claim recognized by the Supreme Court. Without this tool various alternate settlement proposals could hurt businesses and homeowners, the New York State budget, local budgets, and perhaps the Federal budget as well as the tribes the settlement is intended to help.

Additionally, the Land Settlement Exception is based on the American principle of fairness. Simply, it says that if you can prove that your land was unlawfully taken, we will treat settlement lands the same way as the original lands to try to right an historic wrong. That is fair.

By no means is the Land Settlement Exception being abused or easy. As the numbers show, in 17 years no one has achieved it yet. In practice the Land Settlement Exception is a lot like the Section 20 two-part test, but with the extra requirement of getting explicit congressional approval. That is to say that in practice we need to get local support, the Governor's approval, the Secretary of the

Interior's approval and Congress's approval. In our case we also had to get the support of the full Tribal Council of the Cheyenne and Arapaho Tribes of Oklahoma. I would like to submit into the record the Tribal Council Resolution which shows the overwhelming support given to the Homecoming Project. As far as I know, other than in New York, and as we proposed for Colorado, there are no other tribes pursuing this very difficult path.

The Cheyenne and Arapaho Tribes of Oklahoma believe that the Homecoming Project is the model for how the Land Settlement Exception should work in practice, as a balance of interests. First, and this is very important, we believe that we have unusually strong legal claims relating to our history in Colorado. I would like to submit into the record a short history of the Cheyenne and Arapaho in Colorado. Recognizing the cost and time it takes to resolve these issues, we felt all parties would be best served if we proposed a settlement under the Land Settlement Exception. We offered a market-based, privately funded, omnibus settlement that would have no cost to the Federal Government, no cost to the State Government and no cost to the local communities. We offered an approach where we would closely coordinate with the State and local communities to mitigate any negative local impacts and maximize the positive impacts. In short, we proposed a solution that is fast, free, based on cooperation and good for everyone.

The proposal was discussed in detail with all levels of Federal and Colorado representatives, from Congress to the Governor, local officials and back over to the Department of Interior. Draft legislation was presented and discussed, and eventually unfortunately rejected through this process. The vast majority of people that have taken the time to understand our claims and our proposal have received it warmly. However, our experience illustrates that the Land Settlement Exception, as drafted, works very effectively to balance the interests of all parties and through debate and compromise.

I am aware of another speaker on the panel here to speak out against our efforts. In the past, Mr. Steve Brady succeeded in confusing Senators, Congressmen and the press regarding his relationship to this project. Mr. Brady is not a member of our Tribe. He has no stake whatsoever in the status of our tribal claims or the claims of any individual member. While he represents that he is an authority on the history of the Sand Creek Massacre, which may or may not be true, I believe he has no qualifications to speak on the matter of Section 20 of IGRA, nor on the matter of a Cheyenne and Arapaho economic development effort.

I would like to submit for the record a letter of support from the Sand Creed descendants.

In the past, Mr. Brady has attacked our project for utilizing non-natives in the development group. That is a deliberate misrepresentation. Our developer, the Native American Land Group, includes nearly 15,000 Native Americans. While it is true that the developer does have non-native participants, if it were a disqualifying factor, there would probably no Indian economic development anywhere. The simple fact is that the Government urges private businesses to assist in tribal economic development. Most tribes who do not already enjoy the benefits of Class III gaming do not have the resources or expertise necessary to pursue a project

through the expensive, time-consuming process spelled out under IGRA.

This illustrates what we came here to discuss today. IGRA, as it stands, is a notable success for reducing Indian poverty. While I cannot speak to each aspect of the law, I can say from unsurpassed experience that the Land Settlement Exception, in practice, requires tremendous cooperation between Federal, State, local and tribal governments. Clearly, with zero applications of this rule in 17 years, it is clearly not a run-away problem. However, it remains important as an acknowledgment of our sad history, a glimmer of hope for those seeking justice, and as a practical tool for providing a no-cost device to settle any claims if and where they should arise.

However, should you choose to amend IGRA, we say that basic fairness suggests that those who have filed with the Secretary be allowed to complete their undertaking according to the current rules.

We thank you for your time and interest in this matter very much. Thank you.

[The prepared statement of Mr. Blind follows:]

**Statement of William Blind, Vice-Chairman,
Cheyenne and Arapaho Tribes of Oklahoma**

Chairman Pombo and members of the Resource Committee, I thank you for inviting me here today. I consider it a great honor and a privilege.

My name is William Blind. I am the vice-chairman of the 11,000-member Cheyenne and Arapaho Tribes of Oklahoma. I understand that the purpose of my testimony is to discuss the perceived problem of the Land Settlement Exception of Section 20 of the Indian Gaming Regulatory Act, or IGRA, and more specifically, situations where the land may be hundreds of miles away from the tribes' current reservation. I say that it is a "perceived problem" since in 17 years, it has never occurred. There has never been a single case of land being taken into trust under this rule.

Regardless, the Land Settlement Exception is an important part of IGRA because it acknowledges that some tribes may have genuine land claims due to unfortunate past treatment. This is important both historically and practically. The practical value of this rule is substantial and does not only benefit the tribes, which it obviously does, but it benefits everyone: states, taxpayers, business-owners, homeowners, schools, and even the federal government. All benefit. We offer New York as an example of how the Land Settlement Exception can work. There, the Land Settlement Exception may become an essential piece in solving a complex and expensive problem. With this tool, there is a quick, no-cost path to settle a land claim recognized by the Supreme Court. Without this tool, various alternate settlement proposals could hurt businesses and homeowners, the New York State budget, local budgets and, perhaps, the federal budget, as well as the Tribes the settlement is intended to help.

Additionally, the Land Settlement Exception is based on the American principle of fairness. Simply, it says that if you can prove that your land was unlawfully taken, we will treat settlement lands the same way as the original lands; to try to right an historic wrong. That's fair.

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practice—as a balance of interests. First, and this is very important, we believe that we have unusually strong legal claims relating to our history in Colorado. I would like to submit into the record a short history of the Cheyenne and Arapaho in Colorado. Recognizing the cost and time it takes to resolve these issues, we felt all parties would be best served if we proposed a settlement under the Land Settlement Exception. We offered a market-based, privately-funded, omnibus settlement that would have no cost to the federal government, no cost to the state government and no cost to the local communities. We offered an approach where we would closely coordinate with the State and local communities to mitigate any negative local impacts and maximize the positive impacts. In short, we proposed a solution that is fast, free, based on cooperation and good for everyone. The proposal was discussed in detail with all levels of federal and Colorado representatives, from Congress to the Governor, local officials and back over to the Department of Interior. Draft legislation was presented and discussed, and eventually unfortunately rejected through this process. The vast majority of people that have taken the time to understand our claims and our proposal have received it warmly. However, our experience illustrates that the Land Settlement Exception, as drafted, works very effectively to balance the interests of all parties and through debate and compromise.

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This illustrates what we came here to discuss today. IGRA, as it stands, is a notable success for reducing Indian poverty. While I cannot speak to each aspect of the law, I can say from unsurpassed experience that the Land Settlement Exception, in practice, requires tremendous cooperation between federal, state, local and tribal governments. Clearly, with zero applications of this rule in 17 years, it is clearly not a run-away problem. However, it remains important as an acknowledgment of our sad history, a glimmer of hope for those seeking justice and as a practical tool for providing a no-cost device to settle lands claims, if and when they should arise. However, should you choose to amend IGRA, we say that basic fairness suggests that those who have filed with the Secretary be allowed to complete their undertakings according to the current rules.

We thank you for your time and interest in this matter.

The CHAIRMAN. Thank you.
Senator Burzynski?

**STATEMENT OF THE HON. J. BRADLEY BURZYNSKI,
STATE SENATOR, 35TH DISTRICT, ILLINOIS STATE SENATE**

Mr. BURZYNSKI. Thank you, Chairman Pombo, members of the Committee, for the opportunity to be here today to address some of the issues that we have already heard spoken about.

I would like to indicate to you that I am here today as an individual representing my Senate District, the 35th Senate District in the State of Illinois, and not necessarily the Illinois General Assembly. So I want to make that perfectly clear as we go through this testimony this morning.

I also want to put it into perspective the fact that my district has been targeted by the Prairie Band of the Potawatomi Indians as a

site for gaming operations in the 35th Senate District, and I also serve on the Senate Appropriations Committee in Illinois and I wanted to give you a little bit of perspective of what is occurring right now with gambling proceeds from the gaming that is already there. Also, I would like to indicate that as I understand, and with my limited understanding of the draft bill that is in front of you, I would support it conceptually. I think it is a great step and applaud your efforts for working on this issue.

Illinois is a State that legalized gaming many years ago beginning with the State run lottery, passed with the promise that proceeds would benefit our local school districts. Illinois the passed legislation to issue 20 riverboat licenses in the State of Illinois to be primarily located in areas that are depressed, in depressed communities throughout the State. Obviously, since the advent of the riverboats, lottery proceeds have grown somewhat stagnant but have also decreased the past few years to about \$570 million per year in revenue to the State of Illinois.

Also, and because of the huge success of the riverboat casinos and the inability of our Legislature to slow spending, a new tax structure was placed on the boats, with the most successful paying as much as 70 percent on their adjusted gross revenues. Increased revenues have driven the riverboat casinos into higher tax brackets, obviously. This has had an impact on the growth of our existing boats, on the gaming in the State, the State's revenue, local government's revenue.

Boats have reduced staff. They have cut their hours. They have established entrance fees, parking fees that they did not have before. Consequently, Illinois patrons have responded by traveling across our State borders to gamble in other States to avoid paying some of these additional fees.

We have seen market share go up in our neighboring States, where market share in Illinois has continued to decrease. Our admissions are down tremendously. I think in your packet you have some of that information.

Obviously, it is my opinion that if off-reservation gaming were allowed in Illinois, it would have a tremendous impact not only on the existing licensees but also on our State revenue. And our State has not begun an economic recovery at this point.

Additionally, in our State many not-for-profits have begun to have a strong reliance on charitable games to help fund their services. Further growth of casino gaming could be devastating to their operations.

Currently, there are several that would like to expand gaming in Illinois, and believe that this would enable our State to dig itself out of our deficit. But at the same time we do have legislation to abolish all gaming in the State of Illinois that has passed out of a House committee on a vote of 9 to 1, and is pending in the Illinois House of representatives.

In recent years, Illinois has been the target of various tribal entities either trying to claim properties as reservation sites, or trying to establish off-reservation gaming. At this time no reservations are located in Illinois, and to the best of my knowledge, there is no concentration of tribal members in Illinois in any single location.

In 2000, the Miami Tribe of Oklahoma filed suit in Illinois against landowners in 15 central Illinois counties in an effort to gain control of 2.6 million acres of land. The case was eventually dismissed, but only after it was revealed that the suit was being funded by a New York developer. And I think this begs the issue of your resolution, of your draft, about who is gaining from some of these things.

As you are well aware now, the Ho-Chunk Nation has been negotiating for status in Illinois to establish a casino complex near suburban Lynwood or south suburban Lynwood. I noticed that Congressman Jackson did indicate that there was General Assembly support. Well, there are members of the General Assembly that support that complex, but certainly the General Assembly in its entirety does not.

In my district, the Prairie Band of the Potawatomi Tribe has been trying to claim properties in northern Illinois. By the way, this is also Speaker Hastert's Congressional District. They have been willing to purchase options on certain properties in the area, and the latest last week, decided not to exercise an option on that property. But the fact of the matter is they hired representatives who came in and presented this as a done deal. They are in the process of trying to reclaim that property. It is not a done deal. There is no Federal ruling recognizing this or any other claim to the property.

Just very quickly in closing, in response to that particular proposal, I introduced Senate Bill 2460 last year in the Illinois General Assembly. It created the Native American Gaming Compact Act in Illinois. Very simply, before the Governor can enter into a compact, a request for authority to enter the compact, along with a copy of it, must be presented to the General Assembly for dialog. We have seen too many things going on in dark rooms, I guess is the way I will put it, and certainly we were just trying to provide sunshine on the process.

Again, I just want to thank you for the opportunity to be here with you today to present some testimony. I will be more than happy to answer any questions.

Thank you, sir.

[The prepared statement of Mr. Burzynski follows:]

**Statement of The Honorable Bradley Burzynski,
State Senator, Illinois State Senate**

The Honorable Chairman Pombo and members of the House Resources Committee:

My name is Brad Burzynski, and I am Senator of the 35th District in the State of Illinois. Thank you for allowing me the opportunity to present testimony today on the topic of off-reservation gaming, and in particular, the potential impact to the State of Illinois. Additionally, I want to take a few moments to make you aware of legislation passed during the last session of the Illinois General Assembly regarding tribal gaming.

While I am not necessarily an expert on the topic of tribal gaming, I have some understanding of certain aspects of Indian gaming. My district has been targeted by the Prairie Band of the Potawatomi as a site for gaming operations. As a member of the Senate Appropriations Committee I also have some knowledge relative to the income our state receives from existing non-tribal gaming operations.

Illinois is a state that legalized gaming many years ago, beginning with a state-run lottery passed with the promise that all proceeds be utilized to fund education. Illinois then passed legislation to issue 10 licenses for riverboat gambling on waterways in depressed communities throughout the state. Since the advent of the

riverboats, lottery proceeds have not only grown stagnant, but have decreased the past few years to \$570 million per year.

Because of the huge success of the riverboat casinos and the inability of the Legislature to slow spending, a new tax structure was placed on the boats, with the most successful paying as much as a 70 percent tax on adjusted gross revenues. Increased revenue drives the riverboat casinos into higher tax brackets. This has had an impact on the growth of the existing boats because in order to make up their tax share, they have implemented entrance fees, reduced hours and cut staff. Illinois patrons have responded by traveling across state borders to Missouri, Iowa, Wisconsin and Indiana to avoid paying entrance fees and to access greater gaming opportunities.

Obviously, if off-reservation gaming were allowed in Illinois, it would have a tremendous impact not only on the existing licensees, but also on state revenue, in a state which has not even begun a strong economic recovery.

Additionally, many not-for-profits have begun to have a strong reliance on charitable games to help fund their services. Further growth of casino gaming could be devastating to their operations.

Currently, there are those who would like to expand gambling in Illinois believing that this would enable the state to dig itself out of a multi-billion dollar deficit. But at the same time, legislation to abolish gambling in the state has passed out of committee and is pending in the Illinois House of Representatives.

In recent years, Illinois has been the target of various tribal entities either trying to claim properties as reservations or trying to establish off-reservation gaming. At this time, there are no reservations in Illinois, and to the best of my knowledge, no concentration of tribal members in any location in Illinois.

In 2000, the Miami Tribe of Oklahoma filed suit in Illinois against landowners in 15 central Illinois counties in an effort to gain control of 2.6 million acres of land. The case was eventually dismissed, but only after it was revealed that the suit was being funded by a New York developer who said he was in hopes of gaining the contract to build and operate a casino and resort for the Miami Tribe. Additionally, the state was allowed to intervene in the suit in order to protect the interests of all Illinois citizens.

As you are well aware, the Ho-Chunk Nation has been negotiating for status in Illinois to establish a casino complex near Chicago, in the south suburban community of Lynnwood. While many in the community seem to be receptive to the idea, it is my understanding that there have been no community forums or public hearings to date on the proposal. And as a state legislator, I can tell you for certain that we have not had the opportunity to discuss this proposal or the role the state would play in such a development.

Finally, the Prairie Band of the Potawatomi Tribe has been trying to claim properties in my district in northern Illinois. Some land owners have been convinced by tribal representatives, including former state officials hired by the Tribe, that they had a valid claim to the property. They have been willing to sell options on their property to the tribe. When asked "why," they comment that they felt no other recourse existed. The Potawatomi Tribe and its representatives have presented this as if there is no doubt to their claim and that it's a "done deal." At this time, there is no federal ruling recognizing this or any other claim on the property. In addition to private properties, the Tribe laid claim to property owned by the state consisting of a several-hundred-acre man-made lake, camping facilities and a small forest preserve. Many unanswered questions remain as to whether they have any legal claim to the property.

Preliminary plans by the Potawatomi Tribe call for an approximate 1,200-acre development including a casino, two hotels, a 75,000-square-foot convention center, a bingo hall, a "Las Vegas-style" theater and several restaurants. Consequently, as with other proposals, these amenities beg the question as to who pays for the necessary infrastructure improvements to accommodate them, such as roads, sewer & water, and police.

Constituents in my largely-rural district have been adamantly opposed to this proposal, but have found little opportunity for their concerns to be heard. They feel a casino development would significantly impact and negatively change their quality of life, including hurting property values and causing uncontrolled population influx and development. I would suspect residents in the Lynwood area in suburban Chicago have many of the same concerns, feeling they have little recourse due to the political nature of this issue.

In response to the Potawatomi's proposal in my district, I introduced Senate Bill 2460 last year. I recognize that the Federal Government at some time may provide either land title or authority for tribal gaming in Illinois and that statute requires the Governor of the state to enter into a gaming compact in such cases. But I feel

that such a compact should be negotiated in good faith and in public view in order for local and state interests to be protected.

Senate Bill 2460 (now Public Act 93-1051) created the Native American Gaming Compact Act in Illinois. Very simply, before the Governor can enter into a compact, a request for authority to enter the compact along with a copy of the proposed compact must be submitted to the General Assembly. The General Assembly would hold hearings to gather public input from those impacted by the proposal and would make recommendations to ensure that all concerns are addressed. The bill passed both chambers, the Governor vetoed the bill, and his veto was overridden in the Senate by a vote of 52-4, and a House vote of 106-8-2, therefore becoming law.

In conclusion, I realize that tribal gaming is a very volatile topic at this time. I am encouraged that this committee and Chairman Pombo are seeking to resolve this issue in the best interests of all. It appears to me that outside interests have begun to play a larger role, sometimes outweighing the intent of the Indian Gaming Regulatory Act. In Illinois, we have taken steps to best protect all of the citizens of our state. We hope that this committee and Congress will also take action to protect all of the citizens of the United States.

Thank you again for the opportunity to present input on this discussion draft.

ATTACHMENTS: 2002-2004 Gaming Comparison Chart; Illinois Riverboat Gaming Adjusted Gross Revenue Graph; Illinois Riverboat Gaming Admissions History Graph; Synopsis and Full Text of Senate Bill 2460

[NOTE: Attachments have been retained in the Committee's official files.]

The CHAIRMAN. Thank you.
Mr. Foltin?

**STATEMENT OF THE HON. CRAIG FOLTIN,
MAYOR OF LORAIN, OHIO**

Mr. FOLTIN. Thanks for the invite, Mr. Chairman.

I am serving my second term as the elected Mayor of Lorain, Ohio. We are right on Lake Erie. We are about 30 miles west of Cleveland, but we are in a suburb. We are a stand-alone city of 68,000 people.

We are a heavily Democrat, urban, blue-collar union steel town. We call ourselves the International City because of our diverse culture, and we take our name from the town in France because the French were the first white men to come to the area to trade with the Indians. Lorain is a textbook example of the decline of manufacturing in America. However, we have a tremendous asset in our city with the undeveloped formerly industrial waterfront and a deep water harbor.

We have 120 years of manufacturing history in our city. At one time our steel mill employed 14,000 people. American Shipbuilding, which is where George Steinbrenner built his fortune in the City of Lorain, once employed 5,000 people in the city. We have a long history with Ford Motor Company in Lorain, which also employed 5,000 people at one time. We were certainly instrumental in the victory of two world wars with our steel and ship building manufacturing, and we have literally helped build America in the City of Lorain.

But those times have changed though, and changed for the worse. All those jobs that I have just told you about are all but gone. I think I brought some articles that I submitted for the record, but you could read the headlines from here that paint a picture of what has been going on in our community for the last two decades. "Say It Ain't So," headlines when Ford Cougar and Thunderbird first announced their departure. "Ford Days Are Numbered for the Econoline Van." "Ford to Close at the End of This Year."

We make all the Econoline vans in the country for Ford, but we will not be making them in Lorain any more at the end of this year.

“Republic Steel Halts its Operations.” “Republic Defaults on Debt, Shuts Down.” Also didn’t pay our property taxes, which hurt us very badly as well.

The bottom line is Lorain’s population has decreased by 20,000 over the last two decades. Average salary, employment rates and quality of life have suffered immensely. Unemployment rate remains near the highest of the State, and by the way, Ohio’s unemployment rate is near the highest in the Nation. As the Mayor, we don’t know how to provide city services any more. We are already down 100 employees, which is 20 percent of our workforce. The State has cut another 5 percent of our budget in our share of our local government revenue, and now with Ford leaving at the end of the year, we don’t know how we are going to be able to provide adequate police and fire protection in our city.

That is why we want the opportunity to redefine ourselves because the manufacturing jobs are just not being created in Ohio, and basically technology of other business jobs aren’t being created. But we have a tremendous plan with the Eastern Shawnee Nation that includes not only gaming but it has business, retail, restaurants, a tremendous maritime museum and plenty of activity which takes advantage of our waterfront, including things like excursions to the lighthouse that we have, a historic restored lighthouse.

We have submitted all those details to you for your review, but our plan not only develops, but it preserves and restores land to the beauty that has not been seen for over 150 years because of the industrial use. For the first time we have had good headlines in the paper, and we have community wide support. Our council, the county commissioners and even the councils of the surrounding communities have all supported this. Keep in mind our city currently owns this land and we want to put it into public trust. We sought out the Shawnee Nation, not the other way around. We have researched this. We have researched them. We know them well, and we are confident that this deal will benefit both parties.

We feel that this will add and help preserve and bring more people to this land that currently is not available right now, aside from bringing the economic dollars that obviously our city needs. We are not building just a box with slot machines. We have the whole 9 yards of a destination resort. And Ohio is currently surrounded by gambling, and the buses leave our town every day, sometimes taking my mother and wife with them, to go gamble in other States and even in the State of Ontario, which Windsor is about 2 hours and 15 minutes.

Mr. Representative, Mr. Chairman, I know your record on jobs and families and budget, and I am a conservative Republican guy like you except I am in a sea of Democrats in Lorain, and I understand the fact that you want to restore the intentional—original intent of the Indian Regulatory Gaming Act. I know your concern for reservation shopping, and I understand your concern for tribes sharing percentages of their money with debt-ridden cities like Lorain or States like Ohio, and I applaud what you have done for the

economic opportunities for tribes and strengthening the sovereignty, and I know there's loopholes, I know there's greedy developers, but don't paint every deal with the same brush. We have a deal that is fair to both parties in the City of Lorain. It gives our city a chance to rebuild itself and gives the Shawnee the needed money to improve their education, housing, and health care.

So I disagree with the blocking of all tribes to requires land-in-trust across State lines, at least for communities like Lorain that are welcoming them. The Shawnee have a great history in Ohio, and we are welcoming them into Lorain. I know maybe some regulation may be necessary. I don't know enough of the laws and details to say what, but what I do know is this, Mr. Chairman, we want to have the ability to do this and to have the option to work with the Shawnee. It gives us alternatives and more opportunities. Please don't take this choice away from us to form partnerships with the Shawnee Nation.

I thank you very much for the invitation and opportunity to do this, and please, as you move forward and refine this legislation, please keep in mind situations like we have in Lorain, Ohio.

[The prepared statement of Mr. Foltin follows:]

**Statement of The Honorable Craig Foltin, Mayor,
City of Lorain, Ohio**

Introduction

- Background on Lorain
 - Right on Lake Erie, 30 miles west of Cleveland, not suburb
 - 68,000—Heavily Democrat—Urban—Blue Collar—Union Steel town
 - International City—diverse culture
- Lorain is text book representation of Manufacturing Decline in America
- However we have a tremendous Asset with our undeveloped (formerly industrial) waterfront and deep water harbor

120 years manufacturing

- Ford, Amship, Steel

Times Have Changed Though

- Those jobs are all but gone.
- Unemployment remains near top of the state which is near the top in the Nation. We rank 45 out of 50 states in employment.

City Operations

- Lorain cannot continue to provide basic services to citizens. With Ford leaving it also takes 7% of our budget. The state has dramatically cut its funding of local governments. Already inadequate police, fire, park and street services will be decimated. 20% of our workforce is gone.

Lorain deserves the opportunity to redefine our self

- Manufacturing jobs just aren't being created in Ohio
- Technology and other business jobs also are not being created
- For 25 years jobs in our city have been on decline. Nobody has been able to find the panacea
- We have a tremendous plan with the Shawnee that includes not only gaming, but business, retail, restaurants, a tremendous museum and plenty of activity which take advantage of our waterfront, like excursions to our historic lighthouse. (Submitted the details) Our plan develops, but preserves and restores the land to a beauty that has not been seen for 150 years because of its industrial use. (Journal front section)
- Ohio is surrounded by gambling in Michigan, Indiana, Ontario, New York, Pennsylvania, and West Virginia. Busses leave every day from Lorain from".. Our citizens want it in the worst of ways.

Specific appeal against restricting off-reservation gaming

- We have a deal in Lorain that it fair and just to all parties. It gives our City a chance to rebuild itself and take advantage of our waterfront, while allowing the tribe to improve education, housing, and health care for its members.

In Closing

- Maybe some regulation is necessary, I do not know enough to make that call. But what I do know is we want the ability to do this. Allow us this option. It gives us additional alternatives and more opportunities. Do not take the choice away from us or the Indians to form these partnerships.
- I thank you for the opportunity to speak before you today. And as you move forward, please keep in mind situations like we have in Lorain Ohio.

The CHAIRMAN. Thank you. I thank the entire panel for their testimony.

Senator Burzynski, in your senatorial district, obviously you walk around and talk to people and get an idea of how people feel and what their opinions are. With the proposals of Indian gaming being brought to Illinois, what is the general feeling amongst the people you talk to at home about Indian gaming right now?

Mr. BURZYNSKI. Thank you, Chairman Pombo. My district is still relatively rural in nature. When I talk to most of the individuals in my district they're very concerned about their way of life as it exists now. They're very concerned about changes that would be detrimental to that. They're very concerned about a tribe coming in, having a casino, and someone having to help pick up the bills to fund the infrastructure. What we saw occur with the efforts in recent years in my district is the fact that there was very little discussion ongoing with the community itself as to what would be necessary. There was no discussion with us as legislators until just recently when we were contacted by lobbyists who were working for the tribe.

So I think the key is, is there are people that would support some sort of operation, there are those that don't. But we certainly want to have an ability to have a voice in the process. And in addition to that, you know, we want to make sure that there are viable, there are legitimate claims. I mean that's one of the things that—you know, if under the IGRA if it's found that the tribes do have claim to the area, then that's another issue all together, but certainly when we talk about off-reservation gaming, it opens up a lot of issues for us in my district.

The CHAIRMAN. The draft that I put together on this, one of the things that was included in that was the prohibition on going across State lines, on a tribe having the ability to go across State lines. If we were to allow some regulated way or some controlled way that tribes still could go across State lines, if the communities that you represent felt that they would have the ability to have some control over what gaming went on, if they felt they had some guarantee that they would at least be part of the process, do you think that the fear they currently have would change?

Mr. BURZYNSKI. I don't believe their fear would change. I think they would still see a change in their quality of life, what they're accustomed to, what they're used to having. I think their fears might be alleviated if there was better oversight of what would occur on those—you know, that promises made are promises kept. I think that's a real concern that people have. I believe that from my standpoint and also from my constituents' standpoint in the long run, as I've indicated to you, our State does rely somewhat heavily on gaming right now for our State's coffers and particularly for education. We receive about \$705 million a year in proceeds from our gaming already, from our boats, another \$570 million

from the lottery that go into our State's general education fund. And I believe that from that perspective we would see diminished returns in that area.

And again, our State has not even begun an economic recovery at this point with the several billion dollar deficit that we're facing.

The CHAIRMAN. Mayor Foltin, listening to your testimony, it strikes me that Lorain is the kind of community that we were actually looking at in terms of setting up what we call an Indian Economic Opportunity Zone, where you had a community that welcomed the gaming, that wanted to work with the tribes to establish something like that as part of their economic activity for the future.

And it appears from what you have testified to here today that you would fit that kind of a situation in moving forward and that that would be a possibility if we proceed with this draft legislation, that you would obviously be one of the possibilities that the Secretary would look at within your State and that is kind of what we were going for in terms of listening to your testimony here today.

Let me ask you if things were different and the people in Lorain were opposed to establishing a gaming facility there, would that change the way that you look at the draft legislation?

Mr. FOLTIN. No, I don't think so. If Lorain was a very financially sound community and the citizens didn't want that, I would still think that communities who did want them should be able to have that kind of gaming available to them.

But I do point out that the City of Lorain has a long history of wanting gambling. They tried it in a private sector fashion and voted it in in the late '90s before there was any gaming outside of—in the early '90s before there was gaming outside of Atlantic City and Las Vegas. It passed by about a 3 to 1 margin. Unfortunately, it failed statewide in the State of Ohio, and thus it was not approved for places like the City of Lorain. So we have a long history of wanting it, and there's been three attempts throughout the '90s and each time our city has overwhelmingly wanted it, even when economic times were a little better, when Ford was humming along a little stronger, when our steel mill was thriving a little better.

So I just want to make sure that places like us are—and I know the last part of your draft bill, it does say notwithstanding the crossing State lines which is the deal that we have with the Shawnees. We want to make sure that there are provisions for communities like ourselves.

Aside from Lorain, if they didn't want it, I don't see why that should not be allowed if the overwhelming community and surrounding communities want it. I think that's capitalism in America. Let it happen.

The CHAIRMAN. Thank you. My time has expired.

Mr. Kildee?

Mr. KILDEE. Thank you very much, Mr. Chairman. First of all, again I want to commend you for using the draft method of presenting this proposed legislation. I think it is fair both to the Committee and fair to the public out there, and it is not done very often, and I commend you for doing that.

I am really conservative—that probably surprises you—I am conservative on the use of the exceptions written into IGRA on land

acquired after October 17th, 1988. But I think that the present language in IGRA—which by the way, I helped write, I was on the Committee then, probably one of the few left on the Committee—I think the present language of IGRA adequately protects my conservative position on this. I don't see the proliferation of casinos because of the exceptions we wrote into IGRA here. There has been no proliferation.

There have only been three tribes that have used the two-step process, that is the Forest County Potawatomi of Wisconsin, the Kalispel Tribe of Washington State, and the Keweenaw Bay of my State of Michigan. Only three have used that two-step. And I would say one, maybe not completely yet, but one settlement of land claim. Congress settled the land claim. The Interior gave them permission to game, but I don't know if they completed their compact yet. So it is really three or four who have used these exceptions, so I don't think there has been a proliferation by using these exceptions which we wrote into the law when we passed this. So I am really trying to figure what we are trying to solve here when there is no clear and present danger, no record of proliferation.

I do know that in California—and I know this has to play greatly in your mind—there are so many small tribes, all of them are trying to get into this right to game, but it may be you are isolated and you are trying to create some opportunities for them, and I think that that is very understandable.

May I ask any one of the tribes, you have pretty well reiterated that you think the present language safeguards against proliferation of gaming.

Mr. ENYART. I will speak for the Eastern Shawnee. We agree with you. We have a saying in the area that I come from, and that is, if it ain't broke, don't fix it, and we don't feel like it's broke.

Mr. KILDEE. Any other of the sovereign nations?

Mr. BLACKDEER. Yes. The Ho-Chunk Nation also has the feeling that the present language does adequately preserve communities from proliferation of gaming. It is very hard to establish a new gaming market under the present language.

Mr. BLIND. For the Cheyenne-Arapaho Tribes of Oklahoma, they feel the same way, that the present language of IGRA is sufficient and workable, and that it's not broke.

Mr. KILDEE. Thank you very much.

Again, Mr. Chairman, I have no further questions. I do again commend you for this process that you are using. I think it is going to be helpful to all. Thank you.

The CHAIRMAN. Thank you.

Mrs. Drake?

Mrs. DRAKE. Thank you, Mr. Chairman.

Mayor, I would certainly like to welcome you. I am originally from Elyria, and so I know Lorain very well, and I know Lorain's had some ongoing problems and that things are very, very serious for you. However, I am extremely concerned that—it's my understanding Ohio has had two referendums and gambling has been voted down. So it concerns me that it seems like a way around if you get a Governor that is agreeable to gaming, but I thought I heard from a couple people on the panel that there is some sort of State or local oversight in this process, that they wouldn't be able

to come if—did I misunderstand that? With the legislation the way it is now, with the approval of the Governor and the Secretary, the Shawnee Indians would be able to come regardless of the referendum in Ohio?

And I would like to welcome you too, Chief. I know a lot of history and a lot of legend in northern Ohio, Indian legends.

Mr. FOLTIN. I think I will handle that if it's OK. Yes, with—if the Governor or Legislature agree to compact with a tribe—

Mrs. DRAKE. Does it have to be the Legislature too or just the Governor?

Mr. FOLTIN. Well, the Governor, or the Legislature can force the Governor to compact with a simple majority vote. Right now, in the State of Ohio, to have private sector gaming you would need to amend the constitution which would take two-thirds, a supermajority vote of our Legislature, plus a statewide vote. And in a way this does have the opportunity to sidestep that procedure, but again I point to a situation like Lorain, where Cincinnati is 20 minutes away from a gambling casino, but they are 6 hours away from the City of Lorain. How will a casino impact those places that vote against it? In our county, we're not against any home rule vote. We are very confident that it would pass. We just don't think the people down in southern Ohio, where it's a bit more conservative, should tell us that we cannot do that.

With that being said, we also, because of the plan we have with the Shawnee, has created a great deal of talk around the whole State, and is now talking about pushing for a constitutional amendment, and we're having kind of separate but congruous talks with the Legislature. In fact, tomorrow in Columbus we are going to be down there talking about how to proceed.

One of the things that we've never had in the State of Ohio is had all the parties at the same table, which mean the Indian gaming, the racetracks, the private sector interests. When it failed in the last few times—the last time I think it was in '96—the racetracks were aboard. But prior to that the racetracks two years prior campaigned and lobbied and spent \$12 million in 1992 dollars to campaign against gambling coming to Ohio.

So the Legislature right now, some proponents of gambling, are bringing the two sides together and trying to go that route. However, with the Indian gaming route, with the Indian history that we have of northern Ohio that you are aware about, and the great want for and the open arms that not only our community but surrounding communities have had, it gives us an additional opportunity which we may not have because of some people that are 5, 6 hours drive from us.

Mrs. DRAKE. One last question for the chiefs. Your tribes are only interested in coming to these locations if you are allowed to do gambling. You're not interested—I mean that's the impression I got, is you're not interested in going to any of these tribal lands unless you have the ability to have gaming?

Mr. ENYART. That is true. We want to come home. Ohio is our homeland and we want to come home. And I would just make one further comment, and that is, we believe very much in working with the community, so we don't want to go into a community that

does not have support. So we work very diligently on that and have all the time we've been in Ohio.

Mrs. DRAKE. Thank you.

Thank you, Mr. Chairman. And I am very sorry that I have to leave.

The CHAIRMAN. Ms. Bordallo, did you have any questions?

Ms. BORDALLO. I do not have any questions.

The CHAIRMAN. Mr. Nunes, any questions?

Mr. NUNES. No.

The CHAIRMAN. Well, I want to thank the panel for their testimony, and it has been very helpful, I think, to the Committee in our efforts to continue to deal with this issue. As we move forward with this draft legislation and look at things that need to be changed or amended within the legislation, I think your testimony will be very helpful to that, so thank you very much. Dismiss this panel.

The CHAIRMAN. Call up our next panel. Mr. Steve Brady, Mr. John Kindt, the Reverend Cynthia Abrams, if you could join us at the witness table and remain standing. If I can have you raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. You can be seated. Let the record show they answered in the affirmative.

Mr. Brady, we are going to begin with you.

STATEMENT OF STEVE BRADY, SR., CO-CHAIR, NORTHERN CHEYENNE SAND CREEK MASSACRE SITE COMMITTEE AND PRESIDENT OF THE NORTHERN CHEYENNE SAND CREEK MASSACRE DESCENDANTS

Mr. BRADY. When we start late like this, back home we call it Indian time.

[Laughter.]

The CHAIRMAN. I guess we are on Indian time today then. We have another name for it around here, but I won't say it out loud.

[Laughter.]

Mr. BRADY. I want to thank the Committee for allowing me to testify here today, and I also want to thank the Chairman for the invitation to provide testimony here today.

First of all, I want to make it explicitly clear that I am not here to establish a position for the Northern Cheyenne Tribe in terms of the proposed legislation by Chairman Pombo, but I am here to make some remarks on the proposal by Counciltree with regard to the Cheyenne-Arapaho Tribes of Oklahoma.

Probably first and foremost the Cheyenne-Arapaho Tribes of Oklahoma is an independent sovereign nation, and what they do with Steve Hilliard and his gaming proposal is entirely up to them. However, when it comes to treaty rights like the 1851 Fort Laramie Treaty, and situations like the Sand Creek Massacre of November 29th, 1864, which I just testified on here a couple of weeks ago, it affects us in the north as Northern Cheyenne, Montana.

We are legally intertwined with the Cheyenne-Arapaho Tribes of Oklahoma in the 1851 Fort Laramie Treaty. We are also culturally and historically connected with the Southern Cheyenne through

our traditional cultural way of life, both language and our religious beliefs. So needless to say, the proposal that Steve Hilliard has been working with the Cheyenne-Arapaho on is indeed very pernicious and divisive.

The Northern Cheyenne Tribe, as a government, rejected Steve Hilliard's proposal about a year or so ago through a lengthy non-disclosure agreement, and at the conclusion of the non-disclosure agreement the Northern Cheyenne Tribe, after a subsequent independent review, rejected his proposal. Steve Hilliard stood to gain enormously, profit enormously from his proposal and the tribe would be left holding the bag for quite some time. Apparently, the Northern Arapaho did not even entertain Hilliard's proposal at all. They had other concerns.

And with regard to petition for a land claim in exchange for a casino in Colorado, the Northern Cheyenne Tribal Council has passed a resolution requesting for the full file of what was submitted by Cheyenne-Arapaho Tribes to the Secretary of Interior. However, the Northern Cheyenne Tribe has not formally requested from the Secretary of the Interior the file. They just have passed a council resolution. The Tribal Council Resolution No. is 3305.

And at the same time, the Secretary of Interior has not informed the Northern Cheyenne Tribe of this petition for a land claim, and there's a question of whether or not our treaty rights are going to be affected or impacted as Northern Cheyenne. As I said earlier the Northern Cheyenne and the Southern Cheyenne are interconnected with treaty rights, we are legally intertwined.

The Hilliard proposal has the potential to undermine and erode any trust or relations that exist or that may exist between the Northern and Southern Cheyenne, and as I said earlier, it's pernicious and very divisive, and that concludes my statement here today.

If you have any questions, I'll be open to them.

Thank you for allowing me to testify.

[The prepared statement of Mr. Brady follows:]

Statement of Steve Brady, Co-Chair of Northern Cheyenne Sand Creek Massacre Site Committee, and President of the Northern Cheyenne Sand Creek Massacre Descendants

I would like to thank the Committee for allowing me to provide testimony and especially, The Honorable Richard Pombo, Chairman of the Committee for the invitation to testify on issues that remain profoundly significant, the Sand Creek Massacre of November 29th, 1864, as well as our treaties with the United States of America.

The Cheyenne signed a series of treaties during the 19th Century, beginning with the Cheyenne Treaty of 1825 and then Fort Laramie Treaty of 1851. Among the conditions in the Ft. Laramie Treaty of 1851, the Cheyenne and Arapaho agreed to the boundaries of their first reservation. The area of this reservation encompassed approximately 51 million acres from the Rocky Mountains in Colorado to the Plains in parts of Wyoming, Nebraska and Kansas.

While Western-Europeans had forced the Cheyenne and Arapaho out of their treaty territory, apparently the boundaries of the 1851 Treaty remained in effect until the mid-twentieth century when the U.S. Indian Claims Commission offered to compensate the Cheyenne and Arapaho Tribes for their treaty territory.

In the early 1960's, the Northern Cheyenne Tribe of Montana, the Northern Arapaho Tribe of the Wind River Reservation of Wyoming and the Cheyenne & Arapaho Tribes of Oklahoma (sometimes referred to as Southern Cheyenne and Southern Arapaho), among other conditions to the treaty settlement, these Cheyenne and Arapaho Tribes agreed to the compensation settlement of the Claims Commission. The Treaty, however, does not distinguish between the Northern Cheyenne and the

Southern Cheyenne nor does it distinguish between the Northern Arapaho or the Southern Arapaho, the Treaty merely says Cheyenne and Arapaho. Therefore all of the tribes had to agree to a settlement one could not opt out they were all legally intertwined, it was the settlement of the 1851 Treaty boundaries of the Cheyenne and Arapaho Tribes.

Apparently, during the 1851 Ft. Laramie Treaty settlement with the Indian Claims Commission, there was an attempt to include the Article 6 provision of the Cheyenne and Arapaho Treaty of Little Arkansas River of 1865, in which U.S. Congress admits responsibility to the atrocities committed at the Sand Creek Massacre of November 29th, 1864 by Col. Chivington and his troops and promises reparations. However, the Indian Claims Commission rejected this claim by the Cheyenne and Arapaho Tribes, due to the fact that the claim was a descendant's claim, not a tribal claim. The Indian Claims Commission said that the descendants of the Sand Creek Massacre would have to file the claim, not the tribes, because Article 6 specifies "certain bands of Cheyenne and Arapaho," and not the entire tribe(s). Again, the Cheyenne and Arapaho Treaty of Little Arkansas River of 1865 does not distinguish between the northern or the southern tribes, it just says Cheyenne and Arapaho and for that matter there are descendants of the Sand Creek Massacre with the Cheyenne & Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of Montana and the Northern Arapaho Tribe of Wind River Reservation of Wyoming.

The Northern Cheyenne Tribe rejected Steve Hilliard's (Counciltree) proposal for a casino in or near Denver in exchange for treaty lands the tribe may still have and for the atrocities committed the Sand Creek Massacre and for the tribe to view the proceeds from the casino as reparations. After a closer analysis, Hilliard stood to gain an enormous amount of profit while the tribe would be steeped in debt for quite some time, there was a question of whether the tribe would ever get out of debt. At the conclusion of a non-disclosure agreement with Counciltree, the Northern Cheyenne Tribe refused to get involved in the shady arrangement. The Northern Arapaho Tribe apparently did not even entertain the idea from Counciltree, the Northern Arapaho had concerns elsewhere.

In the meantime, the C&A Tribes of Oklahoma apparently are continuing to entertain the notion of some business proposal with Counciltree entitled the "Homecoming Project." This proposal by Hilliard is extremely pernicious and divisive between all of the tribes mentioned herein. The Hilliard proposal has the potential to undermine and erode any trust or relations that may exist between any or all of these tribes.

Moreover, while the Northern Cheyenne Tribal Council recently passed a resolution for the Secretary of the Interior to provide the file in its entirety of the Petition submitted by C&A Tribes of Oklahoma, for a land claim in exchange for a casino operation in Denver, the Northern Cheyenne Tribe have yet to file a formal request with the Secretary of Interior. Apparently, the Secretary of Interior, thus far has rejected the land claim filed by C&A Tribes of Oklahoma.

Again, thank you for allowing me to provide testimony today.

The CHAIRMAN. Thank you.
Mr. Kindt?

**STATEMENT OF JOHN WARREN KINDT, PROFESSOR,
UNIVERSITY OF ILLINOIS**

Mr. KINDT. Thank you, Mr. Chairman. Thank you, Mr. Vice Chairman. Thank you Members of the House Resources Committee. I'm Professor John Kindt from the University of Illinois. I apologize—I'm told that technologically they could not put my overheads up for the Committee. But they are in your packets and they are attached to my testimony. I will go through those overheads or those attachments one by one.

Several issues involving my home State of Illinois have come up, and so I'd like to start off by talking about the National Gambling Impact Study Commission, which completed its report in 1999. I'm sure several members of the Committee here voted in favor of this commission report, or to get it established. And it calls for a moratorium on the expansion of any type of gambling anywhere in the

United States—and for a large reason; those are economic types of reasons.

Also, in Illinois, I believe we are the first State which, after hearing the economic testimony, has passed out of committee basically unanimously, with only one dissenting vote, a bill, House Bill 1920 out of the House Administration Committee, to recriminalize the casinos—or I should say to eliminate the casinos in Illinois.

There has never been a statewide vote in Illinois as well. If there were, the polls, which we have monitored for about 15 years now, indicate that the vote would be 2-1 against gambling or against the expansion of gambling. The most recent poll is from the Chicago Tribune in 2004. But if you look at your attachments, you'll see the first one is a headline from the Omaha World-Herald, which says "40 Economists Side Against More Gambling." Now, can you get 40 economists to agree about anything? Well, here are 40 economists who come out and say that the costs are likely higher than the benefits. And this was back in 1996. This is basically an Economics 101 type of problem, if you look at it from an economic-social standpoint.

A notable quote from Donald Trump, a casino owner: "People will spend a tremendous amount of money in casinos, money that they would normally spend on buying a refrigerator or a new car. Local business will suffer because they'll lose customer dollars to casinos." Basically, what happens with gambling is that you have consumer dollars coming out of the consumer economy which then go into the gambling economy. And primarily we are talking slot machines at this point, because 80 to 90 percent of all the money that's going into the casinos is going into slot machines.

If you look at the circle diagram attached to my testimony—it is out of the Michigan State DCL Law Review—and it shows the 35-mile feeder market around casinos. Now, when an analysis of what was happening in this feeder market was done of the Wisconsin tribal casinos, one of the results was that people were spending 10 percent less on food, 25 percent less on clothing, and 37 percent had raided their bank accounts in order to put the money into gambling.

In this same area, we found that initially in these feeder market areas around casinos, that you weren't creating net new jobs. And in fact, more recent data coming out indicates that you're probably losing one job per year for every slot machine that is located in the feeder market area. So if you have a thousand slot machines within that 35-mile feeder market, you're probably losing a net of 1,000 jobs per year. Well, why is that? Well, you're bringing in \$100,000 on average to each slot machine per year. That translates into \$300,000, more or less, in lost economic multiplier effect. That translates into a lost job out of the consumer economy.

Also, we find that the taxpayer social costs are \$3 for every \$1 in benefits. And that ratio has held up for many years.

We also find that crime in the feeder market area goes up 10 percent the third year after the casinos open, and then increases after that.

Business and personal bankruptcies, in a report done by the American banking industry, increases 18 to 42 percent as the con-

sumer dollars are lost into these casino establishments. Drive-by businesses, in one study, are down 65 percent.

The citations for all of this may be found attached to that circle chart.

There's also a Table 2 here, which indicates the social costs—analyzes all nine academic studies across the country of the costs of \$3 for every \$1 in benefits.

I also have a Table 18, which shows the net economic impact of the Indian casinos in Wisconsin. It's Table 18. As you can see, this is not my study, this is someone else's study. It shows that it's a net loss of between \$200 million and \$500 million to the State of Wisconsin.

Two final tables. One shows the percentage of expenditures in the casinos, showing that 25 percent to 75 percent of all the money going into the casinos is coming out of pathological and problem gamblers. And then a bankruptcy cost table is included for your perusal, as well as some of my law review articles which you may wish to review.

Thank you, Mr. Chairman. Thank you, Mr. Vice Chairman. Thank you members of the House Resources Committee. It is a pleasure being here today. I'll take questions when you wish.

[The prepared statement of Mr. Kindt follows:]

**Statement of John Warren Kindt, Professor,
University of Illinois**

This Statement will address the following issue areas, as requested by the Committee.

1. U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of Legalized Tribal Gambling Activities;
2. Solutions: Transform Tribal Gambling Facilities into Educational and Practical Technology Facilities;
3. The Feeder Market Impacts of Tribal Casinos;
4. Tribal Gambling Activities: The Issues Involving Market Saturation; and
5. Are Tribal Games and Slots "Fair" to Patrons?

In this testimony I have cited to my own work only as introductions to the hundreds of source materials cited in the footnotes. These sources can be referenced by researchers. This Committee has my permission (and the permissions which I have already received from the publishers of my articles and the attachments herein) to reprint and distribute any or all of the articles authored by myself on gambling issues.

1. U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of Legalized Tribal Gambling Activities

During the 1990s, the international economic and diplomatic ramifications of the spread of U.S. gambling technologies throughout the United States and the world were outlined in an article written at the suggestion and under the auspices of former Secretary of State Dean Rusk. The article was: John W. Kindt, U.S. Security and the Strategic Economic Base: The Business/Economic Impacts of Legalized Gambling Activities, 33 St. Louis U.L.J. 567-584 (1995), reprinted in National Gambling Impact and Policy Comm'n Act: Hearing on H.R. 497 before the House Comm. on the Judiciary, 104th Cong., 1st Sess. 519-27, 528-45 (1995).

U.S. tribal gambling issues are larger than myopically trying to help the selective impoverished. The U.S. tribal model is being marketed around the world as economic development to Third World countries, but their economies just become poorer, and their infrastructures and financial institutions become destabilized.

As commonly utilized by U.S. State Department analysts, the McDougal/Lasswell methodology for policy-oriented decision-making highlights these strategic problems with the spread of U.S. gambling technologies. See, e.g. John W. Kindt & Anne E.C. Brynn, Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling as Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies, 16 Temple Int'l & Comp. L.J. 243 (2002-03) (lead article).

2. *Solutions: Transform Tribal Gambling Facilities into Educational and Practical Technology Facilities*

Instead of legalizing a casino/slot machine establishment at a failing racetrack in 1997, the Nebraska Legislature bulldozed the racetrack and made it into an extension of the University of Nebraska and a high-tech office park. John W. Kindt, *Would Re-Criminalizing U.S. Gambling Pump-Prime the Economy and Could U.S. Gambling Facilities Be Transformed into Educational and High-Tech Facilities? Will the Legal Discovery of Gambling Companies' Secrets Confirm Research Issues?*, 8 *Stanford J.L., Bus. & Fin.* 169-212 (2003) (lead article).

Thereafter, as pro-gambling interests returned to Nebraska, they were repeatedly rebuffed by the academic community, which was exemplified in one instance by 40 economists publicly rejecting new gambling proposals that would "cannibalize" the consumer economy. Robert Dorr, *40 Economists Side Against More Gambling, Signers: Costs Likely Higher than Profits*, *Omaha World-Herald*, Sept. 22, 1996, at B1.

In a unanimous vote (except for one dissent by a representative from a casino district) on March 17, 2005, the Illinois House Government Affairs Committee favorably reported H.B. 1920 to the House for a vote to re-criminalize Illinois casinos.

Similarly, suggestions have been made to re-criminalize gambling facilities in other states and transform the gambling facilities into educational and high-tech assets—instead of giving the gambling industry tax breaks. Casinos and gambling parlors would generally be compatible with transformations into educational and high-tech resources. For example, the hotels and dining facilities could be natural dormitory facilities. Historically, facilities built for short-term events, such as various World's Fair Expositions, the 1996 Olympic Village (converted to facilities for the Georgia University system), and other public events have been transformed into educational and research facilities.

Given the allegations of misuse, non-accounting, and even malfeasance involving gambling revenues in Native American operations, various legislative personnel in the late 1990s considered potential legislation that would place Native American gambling revenues in trust for the benefit of all Native Americans, not just a few senior tribe members. This policy was to be combined with the partial use of trust monies to convert Native American gambling facilities into educational, cultural, and business facilities. For a historical summary of issues, see Bruce Orwall, *Gaming the System: The Federal Regulator of Indian Gambling is Also Part Advocate*, *Wall St. J.*, July 22, 1996, at A1.

For concerns by the 1999 U.S. National Gambling Impact Study Commission, see, for example, *Nat'l Gambling Impact Study Comm'n, Final Report 7-9* (June 1999). "Again, the unwillingness of individual tribes as well as that of the National Indian Gaming Association (the tribes' lobbyists) and the National Indian Gaming Commission, (the federal agency that regulates tribal gambling), to provide information to this Commission, after repeated requests and assurances of confidentiality, limited our assessment..." *Id.* With only one dissenting vote by Commissioner Robert W. Loesher who was unduly protecting Native American gambling interests, the 1999 U.S. National Gambling Impact Study Commission voted eight to one to subpoena information from the U.S. National Indian Gaming Commission in 1999. However, use of its subpoena power was thereafter deemed largely ineffectual by the Commission and was not pursued.

3. *The Feeder Market Impacts of Tribal Casinos*

The Final Report of the Congressional 1999 National Gambling Impact Study Commission called for a moratorium on the expansion of any type of gambling anywhere in the United States. Although tactfully worded, the National Gambling Commission also called for the re-criminalization of various types of gambling, particularly slot machines convenient to the public.

Some of the negative impacts of casinos and slot machines are detailed in the appendix to the article, *Diminishing Or Negating The Multiplier Effect: The Transfer of Consumer Dollars to Legalized Gambling: Should A Negative Socio-Economic "Crime Multiplier" be Included in Gambling Cost/Benefit Analyses?*, 2003 *Mich. St. DCL L. Rev.* 281-313 (lead article). The circle "feeder market" chart and sources documentation follow this written testimony.

The most authoritative and specific example involving tribal casinos is a 1995 Wisconsin report which concluded that "[w]ithout considering the social costs of compulsive [addicted] gambling, the "rest-of-the-state" areas lose-or, transfer in-\$223.94 million to the local gaming areas. Considering the lowest estimated social costs of problem gambling, the rest of—[Wisconsin] loses \$318.61 million to gambling." This report also concluded that without casino gambling, many local citizens would have increased participation in other "outside" activities. "More than 10% of the locals would spend more on groceries if it were not for the casino, while nearly

one-fourth would spend more on clothes. Thirty-seven percent said that their savings had been reduced since the casino had opened..." William Thompson, Ricardo Gazel, & Dan Rickman, *The Economic Impact of Native American Gambling in Wisconsin* (Wis. Policy Res. Inst. 1995).

From the business perspective, businesses are not naive. For example, "in a rare public stand on a controversial political issue, the Greater Washington Board of Trade's 85-member board voted unanimously against" Mayor Sharon Pratt Kelly's initiative to bring casino-style gambling to Washington, D.C. Liz Spayd & Yolanda Woodlee, *Trade Board Rejects D.C. Casino Plan*, Wash. Post, Sept, 25, 1993, at A1, A8. With the exception of the cluster services associated with gambling, new businesses tend not to locate in areas allowing legalized gambling because of one or more of the aforementioned costs. In areas saturated with legalized gambling activities, pre-existing businesses face added pressures that push them toward illiquidity and even bankruptcy.

4. Tribal Gambling Activities: The Issues Involving Market Saturation

In his classic book entitled *Economics*, Nobel-Prize laureate Paul Samuelson summarized the economics involved in gambling activities as follows: "There is—a substantial economic case to be made against gambling. First, it involves simply sterile transfers of money or goods between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, where the main purpose after all is to "kill" time, gambling subtracts from the national income. The second economic disadvantage of gambling is the fact that it tends to promote inequality and instability of incomes." Paul A. Samuelson, *Economics* 245 (10th ed.). Furthermore, Professor Samuelson observed that "[j]ust as Malthus saw the law of diminishing returns as underlying his theory of population, so is the "law of diminishing marginal utility" used by many economists to condemn professional gambling." *Id.* at 425.

The concern of the legalized gambling interests over "market saturation" is largely a non-issue. From the governmental perspective, focusing on this issue misdirects the economic debate, because fears of market saturation are predicated upon the unwarranted assumption that legalized gambling operations constitute regional economic development—which they do not. In reality, legalized gambling operations consist primarily of a transfer of wealth from the many to the few—accompanied by the creation of new socio-economic negatives. It is well-established that the societal and economic costs to the taxpayers are \$3 for every \$1 in benefits.

These issues should first be examined from the strategic governmental perspective. In this context, the inherently parasitic manner in which legalized gambling activities must apparently collect consumer dollars to survive is frequently described as "cannibalism" of the pre-existing economy—including the pre-existing tourist industry. According to the skeptics of legalized gambling activities, this industry-specific phenomenon means that in comparison with most other industries, legalized gambling activities must a fortiori not only grow as rapidly as possible, but also grow as expansively as possible. John W. Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. Ill. U.L. Rev. 271-306 (1995). See also John W. Kindt, *The Negative Impacts of Legalized Gambling On Businesses* 4 U. Miami Bus. L.J. 93-124 (1994) (lead article).

In California and Nevada: *Subsidy, Monopoly, and Competitive Effects of Legalized Gambling*, the California Governor's Office of Planning and Research highlighted in December of 1992 "the enormous subsidy that Californians provide to Nevada through their gambling patronage" and concluded that "Nevada derives an enormous competitive advantage from its monopoly on legal gambling." The report summarized that "[g]ambling by Californians pumps nearly \$3.8 billion per year into Nevada, and probably adds about \$8.8 billion—and 196,000 jobs—to the Nevada economy, counting the secondary employment it generates— and that this was "a direct transfer of income and wealth from California to Nevada every year." Thus, the Nevada economy appears to constitute a classic example of a legalized gambling economy "parasitically" draining or "cannibalizing" another economy (primarily Southern California). Cal. Governor's Off. Plan & Research, *California and Nevada: Subsidy, Monopoly, and Competitive Effects of Legalized Gambling ES-1* (Dec. 1992).

The gambling interests argue that the dollars they take in are "entertainment dollars" or "recreational dollars." This observation is valid with regard to approximately 35% of the "gambling dollars," but it is invalid with regard to the remaining 65%. Opponents of legalized gambling argue that there are also differences because the entertainment dollars spent on a movie, for example, largely generate more movies, and recreation dollars spent on a speedboat, for example, largely generate

orders for more speedboats. Accordingly, while most entertainment or recreational dollars contribute to a positive multiplier effect legalized “gambling dollars” result in a net negative multiplier effect. This negative impact apparently occurs, in part, because approximately two-thirds of the gambling dollars are not recreationally-oriented, but are spent by a compulsive market segment reacting to an addictive activity—probable or possible pathological gambling—as delimited by the American Psychiatric Association. *Am. Psychiatric Ass’n Diagnostic and Statistical Manual of Mental Disorders*, 615-18 §312.31 (4th ed. 1994). Opponents also note that gambling dollars spent in a legalized gambling facility are usually reinvested in more gambling facilities—which just intensifies the socio-economic negatives associated with gambling activities and “reduces the national income” even further.

5. Are Tribal Games and Slots “Fair” to Patrons?

Issues have arisen involving how “slot machines” are programmed and whether the astronomical odds are “fair” to patrons. “The Insiders” for Gambling Lawsuits: Are the Games “Fair” and Will Casinos and Gambling Facilities be Easy Targets for Blueprints for RICO and Other Causes of Action?, 55 *Mercer L. Rev.* 529-593 (2004) (lead article). See also Subpoenaing Information from the Gambling Industry: Will the Discovery Process in Civil Lawsuits Reveal Hidden Violations Including the Racketeer Influenced and Corrupt Organizations Act?, 82 *Oregon L. Rev.* 221-294 (2003) (lead article). Coupled with pandemic regulatory failures, these issues of “fairness” have been exacerbated. The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance, 27 *S. Ill. U.L.J.* 221-262 (2002) (lead article). See also Follow the Money: Gambling, Ethics, and Subpoenas, 556 *Annals of the Am. Academy of Political & Soc. Sci.* 85-97 (1998) (invited article).

The Office of the Inspector General reported in 1993 to the U.S. Department of the Interior (DOI) that 32 percent of Native American gambling operations were being conducted in violation of federal statutes/regulations. Office of the Inspector General, U.S. Dep’t of Interior, *Audit Report: Issues Impacting Implementation of the Indian Gaming Regulatory Act* (1993). Thereafter, the National Indian Gaming Commission (NIGC) arguably suppressed numbers that indicated in November 1996 that 84 percent of Native American gambling facilities were openly operating illegally or in violation of federal statutes/regulations. *Nat’l Indian Gaming Comm’n, Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act* (Nov. 1996). Other reports suggested that there were more than just isolated instances of crime and corruption caused by Native American gambling activities.

Furthermore, the implicit goals of the 1988 Indian Gaming Regulatory Act (IGRA) to enhance the lives of all Native Americans were not being realized, as the large majority of Native Americans remained in grinding poverty as the 21st century began. See, e.g., U.S. General Accounting Office, *Indian Programs: Tribal Priority Allocations Do Not Target the Neediest Tribes 1* (1998). Accordingly, policymakers have suggested that future legislation should not disproportionately enrich isolated tribes. Instead, Native American gambling should operate for the benefit of all Native Americans, if not all of the U.S. public. This could be achieved via federal administration of a Gambling Proceeds Trust Fund financed by Native American gambling operations while they are phased out to become educational and technological facilities.

In 2000, it was reported that “[d]espite an explosion of Indian gambling revenues—from \$100 million in 1988 to \$8.26 billion a decade later [1998]—an Associated Press [AP] computer analysis of federal unemployment, poverty and public-assistance records indicates the majority of American Indians have benefited little.” Between 1988 and 1998 “poverty and unemployment rates changed little,” as exemplified by the Fort Mojave Indian Reservation, where despite two casinos, the Native American “unemployment rate climbed from 27.2 percent in 1991 to 74.2 percent in 1997.” This development was attributed to the fact that “among the 130 tribes with casinos, a few near major population centers have thrived while most others make just enough to cover the bills.” In addition, any “new jobs [created by the Indian gambling facilities] have not reduced unemployment for Indians.” David Pace, *Casino Boom a Bust for Most Members of Indian Tribes*, *News-Gazette* (Champaign, Ill.), Sept. 2, 2000, at A1. According to the National Indian Gaming Association, the lack of net new jobs for Indians was because “75 percent of jobs in tribal casinos are held by non-Indians.” Unexpectedly, the 55 tribes with casinos before 1992 had their 1991 unemployment rate of 54 percent even increase somewhat to 54.4 percent by 1997. For an extensive investigative report highlighting the problems of Native American gambling activities, see Donald L. Bartlett & James B. Steele, *Look Who’s Cashing In At Indian Casinos: Wheel of Misfortune*, *Time*, Dec. 14, 2002, at 44 (cover story).

These situations were exacerbated by illusory accounting standards that resulted in some tribal members with exorbitant wealth while most Native Americans remained disenfranchised. The tribes also claimed to have sovereign immunity from general federal statutes like those involving labor rules, sexual harassment, equal employment opportunity, and tortious acts. As reported in the Wall Street Journal and as most disconcerting to Congressional leaders were the indications involving alleged organized crime activities. The concerns among the U.S. Representatives were exemplified by Representative Chris Shays (R-Conn.) and Representative Frank Wolf (R-Va.) who highlighted these in a letter to President Clinton.

NOTE: Attachments to Professor Kindt's statement have been retained in the Committee's official files.

The CHAIRMAN. Thank you.
Rev. Abrams?

**STATEMENT OF REV. CYNTHIA J. ABRAMS, DIRECTOR,
ALCOHOL, OTHER ADDICTIONS AND HEALTH CARE WORK
AREA, GENERAL BOARD OF CHURCH AND SOCIETY OF THE
UNITED METHODIST CHURCH**

Rev. ABRAMS. Good morning, Chairman Pombo and honorable members of the House Resources Committee. I want to thank the Committee for this opportunity to testify on behalf on the General Board of Church and Society of the United Methodist Church.

The United Methodist Church has for many years expressed its opposition to gambling. Our doctrinal statements, known as The Social Principles, state that gambling is a menace to society, deadly to the best interests of moral, social, economic, and spiritual life, and destructive of good Government. As an act of faith and concern, we call Christians to abstain from gambling and to minister to those victimized by the practice. Furthermore, we call the church to promote standards and personal lifestyles that would make unnecessary and undesirable the resort to commercial gambling as a recreation, as an escape, and as a means of producing public revenue or funds for support of charities or Government.

We are alarmed at the expansion of gambling and, more specifically, the proliferation of off-reservation casino and casino proposals. We believe that off-reservation casinos are having a negative effect on inter-tribal relations, as you have seen here today between two tribes, and between tribal and community relations. In addition, the United Methodists' historic opposition to gambling is coupled with a very clear and strong support of self-determination of American Indian people, and we continue to support good legislation that supports American Indian people in their long-term best interest.

Gambling and legislation to expand it is a grave moral concern. Because of the United Methodist public witness on gambling, we are on countless mailing lists for groups opposed to gambling. We believe that off-reservation casinos have fostered an anti-sovereignty climate, which is growing. Furthermore, the proposals cast a shadow over legitimate applications for Federal tribal recognition. And we find the increase in anti-sovereignty and anti-Indian racist rhetoric by some of these groups alarming. And we do our best on behalf of the United Methodist Church to counteract the positions of these groups at every opportunity. But the carelessness and disregard for communities and children in promoting off-reservation casinos, some in the poorest of areas, makes this very difficult. It

is simply unacceptable and contrary to the long-term best interests of the sovereignty and welfare of American Indian people as a whole that tribes continue to propose to build casinos with little or no regard for the social costs to the communities.

I am a United Methodist, and I want to tell my personal story because I am also a Seneca.

These proposals are antithetical to my tribe's traditional beliefs. My grandmother taught me that I am a member of an immediate family, I am a member of an extended family and a tribal family, and I am also a member of a global family. This concept is not foreign to most American Indian people. Yet, I ask the question, When did we stop caring about the rest of the world and only care about ourselves and our own best interests alone?

It is not in the best interest of gamblers to gamble away their hard-earned dollars. The numbers of people who gamble are disproportionately poor, lower-income, or seniors on fixed incomes. Gambling takes away money from the people who need it the most. Is this the way States, communities, and tribes want to balance their budgets? And furthermore, is this good stewardship of the gifts that God has given us?

Moreover, there are other American Indian people who are opposed to gambling both on-reservation and off-reservation, but they fear retribution. And this has happened in my own family. Our family opposed casinos that our tribes proposed. And in approving the casinos, the Senecas gave away historic sovereign rights to sign a State compact. Yet, all during this time of opposition, my family endured death threats, bodily harm, intimidation tactics, and outright ostracization for our public stand.

The struggle of our tribe is not unique from other tribes. The split between pro- and anti-casino groups splits the tribal community. It divides churches on the reservation and it even divides families on the reservation. In my own home church on the Cattaraugus Reservation, it has even physically split the church. When we worship, the anti-casino people sit on one side of the church and the pro-casino people sit on the other side. Is it any wonder that American Indian people opposed to Indian gambling are afraid to speak up?

The United Methodist Church believes that American Indian people bring gifts to the world. They have taught people who have come to this country how to live, how to survive, and how to care for the Earth and its people. And it is critical at this time that American Indian people, tribes, not allow the temptation of greed to overwhelm the gifts that have allowed American Indians the ability to survive and maintain their traditions.

Thank you.

[The prepared statement of Rev. Abrams follows:]

Statement of The Reverent Cynthia J. Abrams, Director, Alcohol, Other Addictions, and Health Care Work Area, General Board of Church and Society of the United Methodist Church

I thank the Committee on Human Resources for this opportunity to testify on behalf of the General Board of Church and Society of the United Methodist Church. The United Methodist Church has for many years expressed its opposition to gambling. Our doctrinal statements known as The Social Principles state that "Gambling is a menace to society, deadly to the best interests of moral, social, economic, and spiritual life and destructive of good government. As an act of faith and concern

we call Christian to abstain from gambling and to minister to those victimized by the practice." Furthermore, we call "The Church to promote standards and personal lifestyles that would make unnecessary and undesirable the resort to commercial gambling as recreation, as an escape, or as a means of producing public revenue or funds for support of charities or government." (United Methodist Social Principles 162G)

We are alarmed at the expansion of gambling and, more specifically, the proliferation of off-reservation casinos and casino proposals. We believe that off-reservation casinos are having devastating effect on intertribal relations, tribal to community relations.

In addition, to our historic position on gambling we have strongly supported the self-determination of American Indian people and continue to support good legislation that supports American Indian people. Gambling and legislation to expand it is a grave moral concern. Because of the United Methodist's public witness on gambling we are on countless mailing lists for groups opposed to gambling. We believe that off-reservation casinos have fostered an anti-sovereignty climate, which is growing. We find the increase in anti-sovereignty and anti-Indian racist rhetoric by some of these groups alarming. We do our best to counteract the positions of these groups at every opportunity, but, the careless disregard for communities and children in promoting off-reservation casinos, some in the poorest of areas, makes this very difficult. It is simply unacceptable that tribes propose to build casinos with little or no regard for their social cost on a community.

I am a United Methodist and also a Seneca. These proposals are antithetical to my tribe's traditional beliefs. My grandmother taught me that I am a member of an immediate family, I as a member of an extended and tribal family, and I am a member of a global family. This concept is not foreign to most American Indian people. Yet, when did we stop caring about the rest of the world, and only care about ourselves and our best interests alone? It is not in the best interest gamblers to gamble away their hard-earned dollars. The numbers of people who gamble are disproportionately poor, lower income, or seniors on fixed incomes. Gambling takes money away from the people who need it the most. Is this the way states, communities, and tribes want to balance budgets. Is this good stewardship of the gifts God has given us?

Furthermore, there are other American Indian opposed to the off-reservation and even on-reservation casinos but they fear retribution. This has happened in my own family. Our family opposed the casinos our tribe proposed. My family endured death threats, bodily harm, intimidation tactics and outright ostracization for our public stand. The struggle of our tribe is not unique from other tribes. The split between pro and anti-casino groups splits the community, divides churches on the reservation, and even divides families. In my own home church it has even physically split the church. When we worship, anti-casino people sit on one side of the church and the pro-casino people sit on the other side of the church. Is it any wonder that American Indian people opposed to Indian gambling are afraid to speak up?

The United Methodist Church believes that American Indian people bring gifts to the world. They have taught people who came to this country how to live, how to survive, how to care for the earth and its people. It is critical, at this time, American Indian people/tribes not allow the temptation of greed overwhelm the gifts that have allowed American Indians the ability to survive and maintain their traditions.

The CHAIRMAN. Thank you.

I am going to start with Mr. Brady. Can you explain to the Committee why the Northern Cheyenne Tribe rejected the casino proposal near the Denver airport?

Mr. BRADY. It was based upon their legal counsel as well as independent business analysis. Steve Hilliard stood to gain enormously while the tribe would be left in debt for quite some time.

The CHAIRMAN. Professor, in looking at your testimony, the analysis that was done, just so I understand, the economic analysis that you did, does that—when you talk about money being taken out of the economy, does it also factor in the jobs that are created and the money that is generated by that casino itself?

Mr. KINDT. Yes, sir, Mr. Chairman. Now, my area is interdisciplinary analysis, or one of my areas. So what I am doing here is I'm

citing to the most authoritative reports, academic reports across the country. And the one to which I believe you are referring is the Table 18—

The CHAIRMAN. Yes.

Mr. KINDT.—done by Professor William Thompson, Ricardo Gazel, and Dan Rickman. Ricardo Gazel was formerly at the University of Illinois; William Thompson at UNLV, University of Nevada, Las Vegas; and they did factor in those types of considerations. And you can see down at the bottom of the page that—the table is on itself in the attachment—it does talk about the benefits of investment and self-sufficiency. So we reviewed these to make sure that they're balanced reports. And even though this report was done in 1995, it's the most authoritative still, the best report out there about the impact of tribal casinos on a State and regional economy.

You may wish to bring Ricardo Gazel, by the way. I believe he's now at the World Bank. He's right here in town. You may wish to bring him before the Committee. He's done follow-up studies, and I'm sure he could shed light on these numbers.

The CHAIRMAN. There are other studies that I've seen that show a net positive economic impact. Did you look at any of those studies?

Mr. KINDT. We try to review all the studies from all across the country—industry studies, academic studies, Government studies—that come forward. And you will see from some of my writings that they're very straightforward in our analysis, or in my analysis, of some of those studies, and they're very pointed at times. Sometimes what is occurring by the industry studies is they can be perfectly valid, but they don't go far enough. They're just impact studies, or what we call benefit-benefit studies. They're not cost-benefit studies. And unless you have a real cost-benefit study on the proper scale, you really miss what is happening in the regional and State economy.

And that's why you have such a backlash going on. And the people of Illinois are obviously getting it. After the State Committee on Administration, for whom I testified along with Professor Earl Grinols, and other people were there testifying about these impacts, the legislators already knew it. They had it, and they voted, with just one dissent, to report out a bill that would eliminate the riverboat casinos—which are now land-based casinos—in Illinois because of the negative social-economic effects and the negative tax effects that were occurring.

Now, that's not to say that the people who own the casinos are—they're cash cows. They bring in a lot of money. But on a statewide or regional basis, they are taking enormous numbers of consumer dollars out of the consumer economy, and that translates, on a regional basis in the feeder market, into lost jobs and these socio-economic problems that are outlined in the tables.

The CHAIRMAN. Did you look at the difference between more of a neighborhood casino that generates most of its money locally and what would be described as more of a destination casino? Did you look at the difference on the impact of economies between those?

Mr. KINDT. Yes. We've reviewed that over time. I could just make some general observations. A destination area would generally be,

like, Las Vegas. However, in my testimony, I give a California report, done in 1992 by the California Governor's Office, that shows the number of jobs and the number of dollars that were being lost out of the Southern California economy to Las Vegas. Well, it's really sort of Basic Economics 101. You're just moving dollars around when you take them out of the consumer economy and you put them into gambling. But when you put them into gambling, you're creating very large social costs, what are called the ABC's of gambling—new addicted gamblers, new bankruptcies, and new crime.

Now, we can debate the extent of these negatives. But one of the tables that I've provided for this Committee summarizes, I believe, the nine leading reports on the socioeconomic costs, and they all, over the last 15 years, are still coming out at about \$3 in costs for every \$1 in benefits.

So on a strategic level—and that's why I sort of started my written testimony with a strategic concept—on a strategic level, this is not helping the U.S. economy and there are other strategic problems involved with the expansion of gambling. And I would again reference the National Gambling Impact Study Commission, which had many gambling members on it—several gambling members on it—and it still came out asking for a moratorium on the expansion of any type of gambling anywhere in the U.S.

The CHAIRMAN. Finally, in regard to the draft legislation, is it your opinion that we would be better off if we just stop the expansion of Indian gaming altogether?

Mr. KINDT. Well, I would have to speak from an academic standpoint. I know that—with a natural sympathy to the concerns that are expressed here today. And from an academic standpoint, I would have to agree with the National Gambling Impact Study Commission's call for a moratorium on the expansion of any type of gambling anywhere in the U.S.

The CHAIRMAN. What about existing facilities?

Mr. KINDT. Well, I have indicated what the economic and social negatives are with regard to gambling activities and I think that the policy decisions should be made on the academic facts. And so I would leave that to the policy decisionmakers. I would, however, make one comment, and that is that when one of the proposals here from the earlier panel for a tribal expansion for a casino in Madison, Wisconsin, proposed by the Ho-chunks, I was up there along with other academics when that came—a few days before that came to a vote. And despite the fact that, I believe, about \$1.5 million was spent by the tribe, by the interests who wanted to have this pass and have this casino in that area, the academic community at the University of Wisconsin came out en masse. The campus newspapers both editorialized against this casino. Despite the natural sympathy for the plight of Native Americans and their interests, they knew academically that this would be a drain on their community. And I believe the vote was about 55 percent against allowing this casino to come to that area.

The CHAIRMAN. Reverend, I guess I just put basically the same question to you. In regard to legislation, would you support the notion that we stop the expansion of Indian gaming altogether?

Rev. ABRAMS. I would speak only on the position of the United Methodist Church, which would then say that—would agree that expansion of any type of gambling, be it Indian or otherwise, would be something that we would want to work against because it's contrary to good Government.

The CHAIRMAN. And in regard to existing facilities?

Rev. ABRAMS. In regard to existing facilities, the United Methodist Church has a position on self-determination and sovereignty and so they would not comment on those that are already existing.

The CHAIRMAN. Thank you.

Ms. Bordallo?

Ms. BORDALLO. No questions.

The CHAIRMAN. Mr. Nunes?

Mr. NUNES. I have a quick question for Professor Kindt. Your testimony is very much appreciated, and I think this is an ongoing battle we have between gambling or non-gambling. But I would like you to comment a little bit on the fact that Las Vegas is the fastest-growing area of the country and has been for nearly a decade. I would like to know your thoughts on this issue. Because obviously it has been a very successful economy. Every time I go there, there is a new subdivision, or 20 new subdivisions. And I would like for you to comment on the growth of gambling there and how you see the economy that's been built there.

Mr. KINDT. Yes, sir. Basically, and I did address this in my written testimony, and I would refer back to the California report that I mentioned that talks about how basically the dollar just being transferred in from outside the area. Now, the one thing Las Vegas—So basically you're taking consumer dollars out of Southern California and much of the rest of the country, and that's spurring the growth in Las Vegas. You're transferring those into gambling dollars. But those are lost dollars to the consumer economy, and that translates into lost jobs. And then people take their social problems that have been outlined here in these tables and take them back to their host communities, so Las Vegas doesn't have to bear the expense of much of the socioeconomic problems. But when you bring the casino to the person's backyard, then you have that 35-mile feeder market and the State having to absorb all these socioeconomic negatives, and that's a drain on the taxpayer dollars.

The one other thing I would mention about Las Vegas is they do appeal to an Asian Pacific market, they do appeal to an overseas market. But that's not what we're talking about with all of these other—and Atlantic City also, to some extent. But these other casinos aren't really doing that. They're basically—and the casinos themselves call them feeder markets. They're feeding off of that regional economy. And as Senator Burzynski indicated, and I think if you brought in many other legislators they would indicate that we're feeling these negatives, which we predicted years ago, as socioeconomic and interdisciplinary analysts, would happen.

And I would also reference in my testimony Economics 101, the basic, probably the most used textbook in the United States by a Nobel Price laureate, economics winner Paul Samuelson. He simply says they're just sterile transfers of wealth when you take the money out of the consumer economy and you dump it into gambling. But you're creating all these social problems at the same

time—the increased addicted gamblers, which has been parallel to drug addiction; the increased bankruptcies as people lose their money; and the increased crime. And there's a definitive analysis on the crime which was done by Professors Grinols and Mustard, and it's even better than what the National Gambling Impact Study Commission did. It took every community, every county, every feeder market before and after it brought in the gambling, and it showed that crime goes up 10 percent, not the first or second year, but the third year after these establishments open as people lose their money, some people resort to crime, and then that crime continues to increase afterwards.

So there are real costs that are associated with this trend toward more and more gambling.

Mr. NUNES. Thank you, Professor. Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you. I want to thank the panel for their testimony. And again, it will be very valuable in our efforts to move forward on this issue.

I remind this panel and the previous panels that there may be additional questions that Members have. I know Mr. Kildee had another appointment and had to go out, but I know he had additional questions he wanted to ask. Those will be submitted to you in writing, and if you could answer them in writing so that they could be included as part of the hearing record, it would be appreciated. The hearing record will be held open for those responses.

Again, I want to thank this panel and the previous panels and apologize to you for the delay in starting the hearing.

If there is no further business before the Committee, again I thank the members of the Committee and our witnesses. The Committee now stands adjourned.

[Whereupon, at 12:52 p.m., the Committee was adjourned.]

[Responses to questions submitted for the record follow:]

Response to questions submitted for the record by Otto Braided Hair for the Northern Cheyenne Sand Creek Massacre Committee

A follow-up response on questions from Representative Jim Gibbons, a result from the oversight hearing regarding draft legislation proposed by Chairman Richard Pombo to amend the Indian Gaming Regulatory Act (IGRA) "Tribal proposals to acquire lands-in-trust for gaming across state lines; and how such proposals are affected by the off-reservation discussion draft bill" before the House Resources Committee held on April 27, 2005.

Question 1. This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another tribe.

a. Do you have any specific suggestions on how Congress should proceed in this regard?

Comments:

One of the most perplexing problems throughout the westward expansion of the United States was determining where the exact boundaries between United States and the Indian Nations existed. Most boundaries were descriptions of landmarks, for example, rivers, mountaintops, ridges, a road, etc. The "boundary problem" was further exacerbated by future treaties that redrew the boundary lines which can be characterized as very difficult to discern and constantly changing. Even more so, some Indian nations ceded lands claimed by other Indian nations. The statements and commentary that follow are made partially in response to Eurocentric historians whose mental constructs and ideologies unconsciously, and usually, view people different than themselves as obstructions to a process of human perfection or achievement of a higher level of civilization. A focus on property rights and

commerce appears to lie at the core of many of the conflicts between Indian nations and the U.S. government and its citizenry. The questions at hand, concerning expanded Indian gaming, are the same of genre of causation of conflict between Indian nations and the American government and public it represents.

In 1834, the U.S. Congress admitted the multiplicity of Indian treaties made it very to ascertain what, at any given period, was the boundary or extent of the Indian country (Report of Commissioner of Indian Affairs Samuel S. Hamilton, November 26, 1830; and, Report Commissioner of Indian Affairs Elbert Herring, November 19, 1831, in *The American Indian and the United States*, comp. By Wilcomb E. Washburn, 1:16-17, 21:House Report 474 (ser. 263), 10). An obvious historical fact is that the U.S. government's unilateral policy of Indian removal beginning in 1834 considerably simplified the boundaries leaving very small areas in the east in Indian hands and larger tracts of land west of the Mississippi designated as Indian country. In the ensuing historical events from the time of the overt genocidal "Indian Removal" policy the government-to-government relations between Indian nations and the U.S. government has been a story of betrayal, usurpation and rapine as it became desirable to denigrate the native peoples, even the faithful Indian allies, as subhuman.

In the unmistakable spirit of fairness and moral consciousness, it appears that the subtle underlying intent by certain members of the U.S. Congress to "right" some of the wrongs done to Indian nations has been to introduce favorable amendments to the Indian Gaming Regulatory Act (IGRA) that could potentially create an "economic bonanza" for rural poverty-stricken Indian Tribes whose homelands are primarily situated in the western United States. An extensive document search and analysis of Indian claims on a comprehensive scale would, in all probability, establish a measure of historical and legal continuity and consistency of what constitutes ancestral lands of an Indian Tribe. Competing ancestral claims would perhaps require usage of the principles of International law wherein Federally recognized Indian Tribes would potentially be afforded a forum to assert what has been described as the right of occupancy which has been frequently referred to as "aboriginal title" or "Indian title." The quest to clarify ancestral Indian lands would most certainly be within the parameters of western law since the "oral tradition" of the surviving Indian nations has often been discounted in the established system of American jurisprudence.

Allowing Indian nations, miles away from a urban area, the opportunity negotiate with another Indian Tribe with claims to ancestral lands near a standard metropolitan statistical area (SMSA, an area with a population of 500,000 or more) would most certainly become a long drawn out process steeped in bureaucratic regulation and unquestionable opposition from states and citizens opposed to the expansion of Indian gaming. If indeed the goals and objectives of the U.S. Congress is to establish Indian gaming law allowing a Tribe to go hundreds of miles off their reservation to open a casino in the ancestral lands of another Tribe, then it would be proper to allow all potential stakeholders the opportunity to provide commentary in the American tradition of consent of the governed.

The compelling public interest in the arena of Indian gaming can only be strengthened by focusing the national spotlight on the continuing plight of the economically depressed Indian nations, who are significant in number, whose dependence on Federal largesse and unabated socio-economic realities has added to a "social malaise" that permeates a majority of Indian country. Expansion of Indian gaming is not a panacea for the depressed economies of Indian Tribes or the answer to improving the quality of life for Indian people, yet, it is reasonable to state that if afforded the opportunity to develop and open a casino in a metropolitan area most Indian Tribes would in all probability pursue such an economic opportunity.

b. Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

The U.S. Congress has the responsibility to set the criteria to determine whether or not a group of people claiming to be an aboriginal people within the United States should be federally recognized. The standard of recognition should be at a standard where there exists incontrovertible evidence that the group of people seeking recognition is beyond dispute. Presumptions that a "newly—recognized tribe intend to develop gaming operations should not be the most weighted factor when congress considers federal recognition.

Reservation shopping immediately creates a negative image of native people and intentionally or unintentionally diminishes the sacredness, culture and history of an unrecognized Indian nation that has survived countless attempts to destroy them. True Indian leaders, in their unique tribal tradition, seeking rightful federal

recognition of their people, in this writer's opinion, will not focus solely on Indian gaming and they, and their predecessors, may in fact have been dedicated their lives to achieve federal recognition for their people decades before the advent of the IGRA. The potential opportunity to develop Indian gaming in this modern era could be characterized as a historical artifact similar to the shift in the American economy from heavy industry to the high tech industry.

The impact on communities with an off-reservation gaming establishment would vary depending on the state of the economy and cultural values in an identified area. In a depressed metropolitan area a high tech modern casino operation would undoubtedly create thousands of jobs and create opportunities for local entrepreneurs to provide goods and services to a large casino operation. Negotiated partnerships between Indian tribes and state and local governments would certainly improve the quality of life for the citizens of communities where Indian gaming would be allowed to flourish. On the other hand, off-reservation gaming in rural areas may not be viable. Today, professional operators of Indian gaming facilities have accumulated a considerable amount of data and expertise to sufficiently determine whether or not a gaming location will be economically feasible and whether or not a selected community is the "right fit" for a casino operation.

Question 2. When tribes seek to enter already established gaming areas, doesn't that create an uneven playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do not pay state taxes; etc?

Indian nations with little or no economic development have almost always entered into negotiations to develop economic projects on an uneven playing field whether on or off established reservations especially with the lack of access to investment or financial capital. In the area of Indian gaming, states have become intransigent in the required negotiations process for State/Indian gaming compacts. The scenario presented by the possibility of off reservation gaming, including in another state, would raise issues of taxation of gaming operations and more regulation by the National Indian Gaming Commission. Current Indian gaming operations are in most instances more heavily regulated than state sanctioned gaming operations. A detailed comparison of the various State gaming versus NIGC generated regulations would suggest "more" regulation is applicable to Indian gaming operations.

Question 3. What criteria should be used by the Department of the Interior in it's determination of land-into-trust?

a. Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust?

Why/why not?

A key point to take into consideration would be the timeframe when western trained historians and ethnologists began documenting the geographic areas occupied by various Indian nations when "first" contact was made with sovereign Indian nations. If one is a proponent of the southerly migration theory by Indian tribes, often presented by historians and also by native oral tradition, the vast areas south of Hudson bay and extending south into the United States could be identified as ancestral homelands of many of the eastern, southern, great plains and south-western tribes.

Requiring a substantial historical connection between a tribe and a parcel of land being considered in a land-into-trust process would be a logical method of determining if a compelling argument by an Indian tribe is sufficient to grant trust status to off reservation real estate. Indian tribes would need to demonstrate connection to the land in question in the form of identified sacred sites, burial sites, village or camp sites, or any other empirical evidence (including treaties) that would pass the scrutiny of "expert" scientific and legal analysis. Aforementioned, a comprehensive document search and analysis of Indian land claims would be probably necessitated and a "cut off" date determined in order to reasonably identify and settle competing land claims by the various Indian nations.

b. How recent should the historical connection be?

Congress, with the plenary power it maintains over Indian affairs, and the body of U.S. Supreme Court case law may have already unilaterally determined the historical connection between Indian tribes and parcels of land be considered for land-into-trust. Each application for land-into-trust whether for gaming or any other purposes would need to be deliberated upon on a case-by-case basis by the Department of Interior. Special legislation enacted by congress taking land-into-trust would also need to utilize precedent case law and previous legislation, bypassing the Department of Interior, as an established guide for taking land-into-trust.

The recent land-into-trust transactions appear to be reduced to considerations of national interests, state rights and individual landowner rights. In addition, the federal government appears cautious in allowing condemnation of land in the land-into-trust process. Conversely, when the federal government favors energy development in environmentally sensitive areas (e.g. The Arctic National Wildlife Refuge, Powder River Basin, etc.) it has the propensity to take unilateral action completely disregarding the interests of native people and the resultant selective application of environmental and nation historic preservation laws and regulations has occurred.

c. What about distance from the tribe's current service area?

Most tribes are very familiar with issues of distance from tribal programs and other government service delivery programs for tribal members (often inter-tribal) through the special considerations and flexibility of service delivery in urban areas with a relatively large Indian population (e.g. Urban Indian Centers, I.H.S. clinics, etc.). The delivery of basic services to Indian people would need to be considered in the overall planning of Tribal casinos, at whatever distance from the reservation, and Tribal governments would meet this responsibility as a matter of protecting the health and general welfare of tribal members. Modern communications technology and transportation systems have lessened the issues of distance in nearly all aspects of American society including Indian reservation lifestyles.

Modern Tribal governments have the capacity and capability to address the needs of their membership and when necessary to collaborate with other Tribal governments to provide for the basic needs of Indian people, especially areas with a concentrated Indian population, residing at varying distances from the reservation. Tribal trust lands at short and long distances from the reservation would not diminish the responsibility of Tribal governments and the Bureau of Indian Affairs (Trust-ee) to properly manage the real estate, the attendant resources, Tribal people and others living or doing business on trust lands.

d. Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? (Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?)

This is a leading question and requires the responder to speculate on future events without proper analysis that would assuredly be part of a comprehensive planning strategy by Tribal governments and associated gaming developers. A responsible Tribal government, without question, would investigate in detail the advantages and drawbacks of developing a casino at any location within the United States. It is common sense human resource issue when speculating on farther distance and employment opportunities for Tribal members. Issues of housing, health care, schools, fire protection, law enforcement, etc. undoubtedly require appropriate government-to-government relations between the Tribe and local officials to ensure that the area being considered for gaming operations would benefit the existing local community and Tribal members desiring to transplant their families where employment opportunity would be available.

The inclusion of the local citizenry, business enterprises, and government officials in the process of developing a casino in a traditional/service area is an expectation Tribes would in probability be considered a priority in the formulation of a comprehensive gaming development scenario. Disruption of a traditional community/service area denotes a negative development rather than a progressive economic development initiative by an Indian Tribe. The overall benefits to a local economy may well outweigh the issues associated with "disruption."

Question 4. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

a. Designation as a Landless Tribe has the obvious implication that they have not attained the status of a federally recognized tribe with all associated government-to-government experience and network of formal relations with existing Tribal governments, local communities, and other entities in the various geographic areas across the United States. Upon attainment of federal recognition, it would seem appropriate to locate landless Tribes on land-into-trust lands on or near current established communities or land specified in acts of Congress federally recognizing applicant Indian Tribes.

Landless applicant Tribes granted federal recognition is a monumental achievement in their respective history and is usually the culmination of years persistence to officially restore their honor and dignity in the family of Indian nations. It is

unimaginable that a prospective Tribal applicant for federal recognition would neglect or overlook issues related to jobs, health care and any other type of services that are required to allow a community to develop and flourish. Applicant Tribes would most certainly have developed an extensive and rich knowledge base of the full range of issues intricately and necessarily associated with status of federally recognized "Indian Nationhood." Consulting directly with "newly" established Indian nations would be in accordance to long history of progressive developments in the area of federal Indian policy with an emphasis on Indian self-determination, self sufficiency and sovereignty as guideposts to government-to-government relations.

Question 5. If some tribes are permitted to select the "best gaming" locations, wouldn't all tribe want to do that?

It is incomprehensible that the general American public and U.S. Congress would authorize some Tribes to select the "best gaming" locations in an arbitrary manner or to the advantage of some Tribes over others. To enact legislation with a process where one Tribe is allow significant advantage over other Tribes has the appearances of "conquer and divide the Indian nations." A probable "backlash" against Indian gaming would assuredly ensue and a disruption in intertribal relations would become common place.

An overwhelming compelling argument by some Tribes to be allowed an advantage of a "best location" for a gaming operation would need strong general consensus by all impacted stakeholders, especially Indian Tribes in the area of taking land-into-trust. Opportunists of every type would initiate contacts with Tribes seeking "gaming riches" near metropolitan areas in the United States. Of course the above commentary is directed toward the theoretical scenario of allowing some Tribes an advantage.

a. What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

Commenting on a theoretical scenario of allowing Tribes to shop for a best location for a casino has an element of fear and distrust that is unmistakable. Indian nations over time and with the evolution of federal Indian policy has, in general, not strengthened the sovereignty of Indian nations; has not satisfactorily met the seemingly elusive goals of Indian self-determination and self-sufficiency; and, has not raised the quality of life, in western standards of living, for the majority of Indian people especially when poverty indicators suggest that Indian people: Have shorter life spans; have higher rates of infant mortality, suicides, accidental deaths related to substance abuse, incarceration in jails/prisons, unemployment, etc.; and, the capital expenditures for education, healthcare, fire protection, law enforcement services, and other necessary services is declining in proportion to one the fastest growing ethnic groups in the most recent U.S. Census.

The past cannot be relived and starting point for a scenario of allowing Tribes a best location must begin with an extensive and open dialogue with Indian Tribes. Tribes that have played by the rules and operate casinos on their current reservation lands, with not so good of a gaming location, need to express their concerns at each available opportunity in order add their legitimate interests into cauldron of concerns and opinions from a wide array of individuals and organization both private and public.

Question 6. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

Tribal governments may need to be subject to the federal campaign contribution laws, if it is demonstrated that Tribes are violating applicable law, and since some Tribes have become highly successful and have discretionary funding to advance their interests at various governmental levels, they have become an added factor in arena of partisan politics. The Tribal leaders of Indian nations have the responsibility of enacting Tribal law to regulate the levels of campaign contributions also, this is the essence of Indian self-determination and self-government. Most Tribal governments have very limited financial resources and Tribal leaders need to be conscientious of the levels of funding resources in their respective Tribal treasuries.

During the oversight hearing before the House Resources Committee, Chairman Pombo posed a question to me, as a witness on a panel, "why did the Northern Cheyenne Tribe reject Steve Hilliard's proposal?" in reference to a similar proposal for a land claim settlement in exchange for a casino operation in Denver filed by the Cheyenne-Arapaho Tribes with the Secretary of the Interior. While I did respond during the hearing that "Hilliard stood to profit enormously from the

proposed casino operation and that the Northern Cheyenne Tribe would be in debt for long period of time," I felt that I needed to expound on my response to the question.

Steve Hilliard, represented Counciltree and the Native American Land Group (NALG) during the deliberations with the Northern Cheyenne Tribe for the purpose of proposing a 27 million acre land claim settlement with the United States under the Ft. Laramie Treaty of 1851 with Cheyenne and Arapaho in exchange for a 500 acre lot near the Denver International Airport to establish a casino operation and that, among other things, the tribe should also view this settlement as a form of reparations for the atrocities committed at the Sand Creek Massacre of November 29th, 1864.

The Northern Cheyenne Tribe rejected Steve Hilliard's proposal because Hilliard proposed that the Northern Cheyenne Tribe circumvent the seven (7) year provision of IGRA pertaining to the length of management agreements and that NALG would have total control and that NCT would more or less be just a "rubber stamp." Moreover, that Hilliard would handle the political end of things through Senator Ted Stevens from Alaska and that the NCT would not have to notify Senator Ben Nighthorse Campbell of Colorado or any other political contacts.

Moreover, I responded to Hilliard during a session with the Northern Cheyenne Tribal Council in Billings that the Ft. Laramie Treaty of 1851 had already been settled by the Northern Cheyenne Tribe, Northern Arapaho Tribe and the Cheyenne—Arapaho Tribes of Oklahoma with U.S. Indian Claims Commission in the 1960's. Secondly, a casino operation can in no way be viewed as a form of reparation for the atrocities committed at Sand Creek and that only Congress can provide the reparation as promised in Article 6 of Cheyenne and Arapaho Treaty of Little Arkansas of 1865 and not from proceeds through some "fly-by-night" casino operation.

Having already been rejected by the Northern Cheyenne Tribe and the Northern Arapaho Tribe apparently did not even entertain his proposal, Steve Hilliard again made his pitch (this time with Cheyenne-Arapaho Tribes of Oklahoma) at a staff briefing facilitated by Paul Moorehead, Chief of Staff, Senate Indian Affairs Committee held on September 8, 2004 that was attended by the Congressional Delegation from Colorado, Bill Owens, Governor of Colorado and Senator John McCain. Again, I responded to Hilliard that "He was doing his best to exploit the pain and misery of the Cheyenne people (in reference to the Sand Creek Massacre, other acts of genocide and the desperate economic conditions of the Northern Cheyenne Reservation) and that the Northern Cheyenne Tribe had not been notified as to the filing of the Land Claim Settlement before the Secretary of the Interior," to date to the Northern Cheyenne Tribe still have not been notified.

Answers to the questions were prepared by William Walks Along, Northern Cheyenne Tribal Council and Steve Brady, Co-Chair, Northern Cheyenne Sand Creek Massacre Site Committee.

For any further questions please contact Otto Braided Hair at the Northern Cheyenne Sand Creek Office @ Ph (406)477-8026 or e-mail sandcreek@rangeweb.net.

**Response to questions submitted for the record by The Honorable
Charles D. Enyart, Chief, Eastern Shawnee Tribe of Oklahoma**

Chairman Pombo, thank you for your letter dated May 17, 2005. It was my privilege and honor to present the story of the Eastern Shawnee people and our desire to return to our aboriginal homeland in Ohio to the Committee in April. As requested, below please find my responses to the specific written questions asked by Congressmen Jim Gibbons and Dale E. Kildee.

A. Responses to Questions Submitted by Congressman Jim Gibbons

Question 1. You already operate a Bingo and Casino in Oklahoma, sited on top of the Missouri border yet you are attempting to acquire a tribal casino in Ohio. It is my understanding that the Governor of Ohio opposes your proposal, is that correct? How will a casino located in Ohio employ tribal members in Oklahoma?

- **In your Chief's Report available on your web site, he wrote regarding your efforts to acquire tribal gaming in Ohio, declaring that "If we are successful, this Tribe will be a very wealthy Tribe." If you believe your casino proposal is good for the Ohio community and your tribe, why not build a commercial casino and compete on a level playing field—under the same labor, wage and safety rules, anti-corruption oversight and local, state and federal taxes as other private casinos?**

Answer to Question 1.

You are correct that the Tribe currently operates an Indian gaming operation. The revenues from our gaming operation, BorderTown Bingo located near West Seneca, Oklahoma have provided us the means to make improvements in the lives of our people and to rekindle the hope for a better life for our children and grandchildren. However, the rural character of the land we now occupy, combined with the economic conditions in the surrounding area, severely restrict our economic potential.

However, I disagree that we "are attempting to acquire a tribal casino in Ohio." The Eastern Shawnee are seeking to return to our aboriginal homeland in Ohio. One hundred fifty years ago, the Tribe was driven out of its homeland: lands that now comprise the state of Ohio. The historical record is replete with accounts of destructive raids and the burning of Shawnee villages by the United States Army and the unauthorized taking of the Shawnee's lands by encroaching settlers. Our people were forcibly removed from their villages and relegated to a series of reservations first in Ohio, then in Missouri, and ultimately Oklahoma. It was an ugly and shameful period in American history. We want to return to Ohio because Ohio is our aboriginal homeland.

You also assert that "the Governor of Ohio opposes your proposal." We do not know whether this is the case. Press reports indicate that the Governor is generally opposed to an expansion of gaming in the state. We have not spoken with the Governor, and, to date, we do not know whether he has taken any formal position on our valid land claims. We do know that many local officials support Shawnee claims in Ohio.

A casino in Ohio would greatly benefit the Tribe and all Ohioans. As you know, under the Indian Gaming and Regulatory Act ("IGRA"), tribal governments determine how gaming proceeds are to be spent. However, IGRA requires that all revenues from tribal gaming operations be used solely for the following purposes: (1) to fund tribal government operations or programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote Tribal economic development; (4) to donate to charitable organizations; or (5) to help fund operations of local government agencies. In addition, the Eastern Shawnee may agree to pay local municipalities where gaming will take place to assist them with local costs. Moreover, Indian gaming is a major catalyst for community growth and economic development, generating revenues for tribes and local communities like no federal stimulus effort ever has before. Indian gaming also creates jobs, increases economic activity and generates tax revenue for local communities. Finally, Eastern Shawnee gaming will increase tourism in Ohio and reduce the number of persons who travel to West Virginia, Michigan, or Indiana for gaming, keeping more money in Ohio.

You also suggest that the Tribe should "build a commercial casino and compete on a level playing field." We are interested in competing on the level playing field for all tribes already provided for by the Congress in the Indian Gaming Regulatory Act. Indian gaming, originally part of tribal ceremonies or celebrations, existed long before Europeans came to America. In 1987, the U.S. Supreme Court recognized a tribe's right to conduct certain kinds of gaming on Indian land without state supervision. In 1988, Congress affirmed the right of Indians to conduct gaming operations with the passage of the Indian Gaming Regulatory Act. IGRA allows tribes to do exactly what the Eastern Shawnee are seeking—to conduct Indian gaming which benefits the entire tribal community and surrounding non-Indian communities. In contrast, commercial gaming only benefits few private individuals. Indian gaming is the most heavily regulated form of gaming in the United States. Tribal gaming is regulated on three separate and distinct levels, in contrast to the single level for other commercial gaming.

We simply seek to ensure that we have the same right as other Indian tribes to conduct Indian gaming under current law.

Question 2. What criteria should be used by the Department of the Interior in its determination of land-into-trust?

- **Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?**
- **How recent should the historical connection be? 100 years? 200 years?**
- **What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?**

Answer to Question 2.

The Department of the Interior should determine which criteria should be considered as part of the land into trust process through the normal process of publishing

proposed changes to 25 C.F.R. pt. 151 in the Federal Register and soliciting comments. The Tribe reserves its right to make comments concerning changes to the land-to-trust regulations until such time as the Department of the Interior may choose to amend those regulations. However, we have the following comments on your concerns:

- a. Should historical connections be required? The Congress has already determined that tribes can have land taken into trust in settlement of land claims. Obviously, such lands might be other than those that a tribe has an historical connection. Requiring a parcel to be one with "a substantial historical connection" to the tribe would limit the flexibility of all concerned to settle a claim. It could force affected parties to transfer land into trust which no one preferred. It is hard to see what benefit this would be to anyone.
- b. How recent should the historical connection be? Again, we do not agree that only land with a "historical connection" should be available for a land-to-trust transfer.

However, the legitimacy of our historic and cultural ties to Ohio is undeniable. The facts do not support changing the law. There have only been three instances in which land outside an Indian reservation have been taken into trust for purposes of gaming since IGRA was enacted in 1988: (1) in 1990 the Forest County Potawatomi Community in Wisconsin obtained 15.69 acres of land in trust 250 miles from its reservation through a two-part determination; (2) in 1997, the Kalispel Indian Community in Washington obtained 40.06 acres of land in trust 60 miles from its reservation through a two-part determination; and (3) in 2000, the Keweenaw Bay Indian Community in Michigan obtained 22.00 acres of land in trust 70 miles from its reservation through a two-part determination. IGRA and the land-to-trust process are not broken. There is no problem that Congress needs to address.

Question 3. This Committee has held hearings on legislation that would allow a Tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe. Do you have any specific suggestions on how Congress should proceed in this regards?

Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

Answer to Question 3.

The Tribe believes that, like every other tribal nation, our situation is unique. Each tribe and piece of land has its own history. It is very difficult for a tribe with existing lands to get new, non-reservation contiguous land for gaming. Since 1988, only 36 gaming or gaming related trust acquisitions have been approved. Only three tribes have successfully been able to take land into trust and open Indian gaming facilities on lands that are outside of their reservation boundaries. Each particular situation must be considered on its own merits. The best way for a tribe to succeed in securing off-reservation lands into trust for purposes of gaming is where there are willing parties: with state, tribal, local government, and community support.

The Eastern Shawnee are not "reservation shopping" and view that phrase as a misnomer. We also do not agree that the "over 300 tribes seeking recognition" are doing so to conduct gaming, as you suggest. We do not know why certain tribes are seeking recognition or why certain tribes seek land into trust. However, there are many important sovereign rights that hinge on federal recognition. Numerous factors come into play—we suggest that gaming is often not one of them. As for the Eastern Shawnee, we are already a federally recognized tribe. We are pursuing claims in Ohio because Ohio is our aboriginal homeland.

Question 4. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

Answer to Question 4.

We believe the current exception in IGRA dealing with land acquisitions for "landless" tribes is sufficient and does not need to be amended. However, "landless" tribes should be consulted on this matter. The Eastern Shawnee is fortunate not to be a landless tribe. Therefore, we do not feel as though it would be appropriate to comment on statutory changes that do not affect the Tribe. Needless to say, however, economic development and economic diversification for Tribes and tribal communities are critically important regardless of where that economic engine is located. The only way for tribes to break the cycle of poverty and achieve self-governance

is through economic development. Indian gaming has been a crucial and successful means of providing such a means to achieve tribal self-sufficiency and tribal economic development. It can produce revenues that can be used for jobs, health care and services for tribal members wherever they reside.

Question 5. If some tribes are permitted to select the “best gaming” locations, wouldn’t all tribes want to do that? What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

Answer to Question 5.

We do not know what tribe you are referring to when you speak of tribes seeking the “best gaming” locations.” We cannot speak for other tribes. The Eastern Shawnee seek to return to our aboriginal homeland in Ohio. We are not seeking “some abstract “best gaming” locations.” We are not pursuing claims in New York, for instance. We are seeking to settle our claims to aboriginal lands we once occupied. One way to do that is to accept lands in settlement of those claims that might be suitable for gaming.

We disagree with your suggestion that certain tribes may not be “playing by the rules.” To our knowledge, all tribes are playing by the rules as set out by Congress. Since 1988, only 36 gaming or gaming related trust acquisitions have been approved. Only three tribes have successfully been able to take land into trust and open Indian gaming facilities on lands that are outside of their reservation boundaries. Thirty applications for gaming or gaming related acquisitions are pending, only ten of which involve so called “off reservation” acquisitions. These numbers are minuscule given the fact that there are more than 560 federally recognized tribes in the United States. All these tribes have played by the rules as created by Congress and implemented by the Department of the Interior. We are simply seeking to ensure that we have the same right as other Indian tribes to conduct Indian gaming under current law.

Question 6. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

Answer to Question 6.

We do not see how this question is relevant to scope of the April 27, 2005, hearing on “Tribal Proposals to Acquire Land in Trust for Gaming Across States Lines, and How Such Proposals are Affected by the Off Reservation Discussion Draft Bill” or my testimony before the Committee. Nevertheless, we answer generally as follows.

Indian tribes engage in a government-to-government relationship with the United States and represent a number of tribal people, thus they are defined as an unincorporated entity according to the Federal Election Commission (“FEC”). This relationship makes tribes unique. As such, Indian tribes are generally able to donate to election funds assuming that each donation does not exceed the limits set by the FEC.

A tribe may use its general treasury funds to contribute directly to federal candidates (and to Indian PACs which will give to federal candidates), under the following conditions: (1) the tribe is unincorporated and its primary purpose is not to make political contributions; (2) the tribe, or any business operated within the tribal structure, is not a federal contractor with procurement contracts; (3) any revenues from a tribal corporation must not be commingled with tribal treasury funds to be used to make contributions to federal candidates; and (4) the federal funds the tribe receives under Pub. L. 638 contracts and federal grants must be kept separate from, and not commingled with, general treasury funds to be used for federal contributions. If the above conditions are met, the tribe may use its general treasury funds to contribute “hard” money, subject to the same federal limits that apply to any person’s contributions. “Hard” money contribution limits apply to tribes because a tribe is treated as a “person” under federal election law, but not as an “individual” for the purposes of the applicable federal aggregate limits.

B. Responses to Questions Submitted by Congressman Dale E. Kildee

Question 1. Please explain whether you believe the current federal administrative process for taking land into trust and those requirements of the Indian Gaming Regulatory Act are sufficient to prevent a tribe from building a gaming facility on land far away from its existing reservation where the tribe may not have an historical or ancestral connection to the land?

Answer to Question 1.

We believe the current law and the current process work as intended. The Tribe further believes that, like every other situation, ours is unique. Each piece of land has its own history and so it is with each tribe. Each particular situation must be considered on its own merits. This process works.

Question 2. Do you believe a tribe should have an historical connection to the land on which it seeks to building a gaming facility?

Answer to Question 2.

Again, we believe that like every other situation, ours is unique. Only so many tribes have a historic or cultural connection to any given state. Each piece of land has its own history and so it is with each tribe. Each particular situation must be considered on its own merits.

For the Eastern Shawnee, there is no question that Ohio is our homeland. The Eastern Shawnee seek to reestablish a presence in Ohio as part of a welcome and mutually beneficial relationship conducted on a government-to-government basis both with the State and the local governments that may one day be our neighbors once again.

We do wish to finally resolve our outstanding land claims, but not in a manner that will be detrimental to the people of Ohio. Those with whom we have established a relationship understand our intentions and have welcomed us into their communities to discuss the potential for tribal gaming. In fact, local communities in the state of Ohio have actively sought out the Tribe and asked us if they can help bring the Shawnee back to our homeland. We are committed to working through appropriate governmental channels in Ohio to ensure that we are welcomed back to our homeland. We do not believe a tribe need have a historical connection to the specific parcel of land on which a gaming facility is sited. To so require, would tie the hands of all those involved in attempting to settle claims. It might require the displacement of current owners of historical land rather than allowing flexibility in choosing land to settle the claims.

Question 3. What would you recommend as the standard for determining whether a tribe has an historical connection to the land?

Answer to Question 3.

We do not believe we are in a position to suggest a "standard" for determining whether a tribe has "an historical connection to the land." Many factors may come into play. For instance, issues such as whether a tribe had a reservation, villages, or hunting and fishing rights in a particular state may be relevant. Each particular situation is unique must be considered on its own merits.

Question 4. Should a tribal land claim resolved by the Indian Claims Commission, Court of Claims, Congress or other forum involving land in a state where a tribe once occupied, but is no longer situated, prevent a tribe from claiming that it has an historical connection to that land for purposes of building a gaming facility there?

Answer to Question 4.

"Land claims" per se were not resolved by the Indian Claims Commission. The Indian Claims Commission had limited jurisdiction. The Commission was created by the Indian Claims Commission Act of 1946, 25 U.S.C. § 70 et seq., in order to resolve claims for compensation for lands that were taken by the United States from tribes without just payment. Tribes, and the persons who advanced claims on behalf of tribes, had to present evidence of aboriginal use and occupancy of lands that were normally memorialized in findings of fact of the Commission. If the Commission found evidence of exclusive use and occupancy for a certain period of time, the Commission would normally award some nominal compensation. However, the Indian Claims Commission's final orders only dealt with compensation, not determinations of unresolved land claims, land title or use rights.

For instance, the Indian Claims Commission was not empowered to resolve claims concerning violations of the Nonintercourse Act, 25 U.S.C. § 177, or claims

concerning trespass or wrongful possession. There is no federal statute of limitations governing federal common-law actions by Indians to enforce property rights. Therefore, we do not believe that the Indian Claims Commission should be used as a vehicle to deny an "historic connection" to land. However, Commission findings of fact concerning use and occupancy of lands by tribes may be considered as a factor, among others, that Congress or the Department of the Interior may wish to consider as evidence of historical connection to a particular place.

Question 5. Please describe any tribal claims against the federal government that have been initiated by your tribe or resolved by the Indian Claims Commission, Court of Claims, Congress or any other forum arising in the state in which you propose to build a gaming facility?

Answer to Question 5.

Because the Tribe may end up in litigation concerning its claims in Ohio, we do not believe it would be appropriate for the Tribe to discuss these matters in detail at this time. However, some claims were initiated by persons acting as representatives of the Eastern Shawnee, the Absentee Shawnee, and individual members of the Shawnee Tribe. See generally, ICC Docket No.64, 64-A, 335 and 338. As discussed below, in that litigation the Indian Claims Commission did determine that the Shawnee aboriginally used and occupied vast areas of what is now the state of Ohio. Additional research also supports that determination.

The areas found to be Eastern Shawnee lands included what is know as Central Royce Area 11. This area is bounded on the east and the south by the Ohio River, on the west by the drainage between the Scioto River and the Great Miami and little Miami Rivers (which may be described as a north/south line from northeastern Logan County on the Greenville Treaty line to the southeastern corner of Brown County on the Ohio River), and on the north by the Greenville Treaty line from a point in northeastern Logan County east to the northeast corner of Knox County. *Strong v. United States* (Dkt. Nos. 64, 335 & 338), 31 Ind. Cl. Comm. 89, 157 n. 6 (1973), *Strong v. United States*, 518 F.2d 556 (Ct. Cl. 1975), cert. denied, 423 U.S. 1015 (1975). The predominant topographical feature of this region is the Scioto River which flows into the Ohio River at present-day Portsmouth and the Scioto's tributaries. *Id.* In central Royce Area 11 "the Shawnees were predominant." *Id.* at 98. "[T]he Shawnees continuously used and occupied [central Royce Area 11] from the late 1730s until they were forced to abandon these lands in the late 1770s." *Id.* at 122. Until they were forced out in the late 1770s, the Indian Claims Commission concluded that "the Shawnees had established Indian title to the area bounded on the north by an east-west line running along the 40 north latitude and on the south by a straight line running from the City of Athens in Athens County west to the town of Highland in northern Highland County, and bounded on the east and west by the lines described in the aforementioned footnote as the east-west boundaries of central Royce Area 11." *Id.* at 123, 136.

In addition, the Indian Claims Commission noted that the Shawnee were known to have hunted extensively in this area and had "as many as sixteen villages on the upper Great Miami River and its tributary, the Mad River." *Id.* at 123. The Indian Claims Commission also acknowledged that the "Shawnees are also known to have hunted extensively in western Royce Area 11. *Id.* at 125. Moreover, the Indian Claims Commission noted that archaeological evidence from sites around Cincinnati indicates the possible presence of Shawnee or Shawnee-related Indians at an early date in the area (approximately 1660). *Id.* at 153 n.2. In Docket No. 64-A, the Indian Claims Commission affirmed Shawnee aboriginal possession and determined that the Shawnee held an undivided one-tenth interest in Royce Area 87 (northwest Ohio). *Strong*, 43 Ind. Cl. Comm. at 331.

Question 6. Please provide the details if your tribe has shared a judgment award granted by the Indian Claims Commission, Court of Claims, Congress or any other forum with other bands, tribes or groups for tribal claims arising in the state in which you propose to build a gaming facility. And, please explain whether you believe those bands, tribes, or groups, if federally recognized as an Indian tribe, should have the same opportunity to build a gaming facility in the same area where your tribe proposes to build a gaming facility?

Answer to Question 6.

Please see answer to Question 5 above. The plaintiffs in the *Strong* litigation accepted \$1,745,146.86, a little more than one dollar an acre, for compensation of the Shawnee's exclusive ownership of 1,667,496 acres in present-day Ohio. *Strong v. United States*, Findings of Fact On a Compromise Settlement, 40 Ind. Cl. Comm.

161, 161, 173 (1977) (Dkt. Nos. 64, 335, and 338). The plaintiffs were generally descendants of five "Shawnee" groups, known as "septs". The five septs are as follows: Chillicothe (Calaka, Chalaakaatha, Chalahgawtha); Hathawekela (Oawikila, Thaawikila, Thawegila); Kispoko (Kiscopocoke, Kispokotha, Spitho); Mequachake (Maykujay, Mekoce, Mekoche); and the Piqua (Pekowi, Pequa). We note that this settlement has nothing to do with the lands or other claims at issue in our present claim. The three plaintiff groups involved in the ICC case included the Eastern Shawnee, Absentee Shawnee, and Cherokee Shawnee. Of these, only two (i.e., Eastern Shawnee and Absentee Shawnee) are federally recognized tribes.

No other tribes have made a claim for lands in Ohio and no other tribe has a similar history of such gross injustice in the state. In addition, the state of Ohio and the Eastern Shawnee may enter into a compact to limit Indian gaming to just the Eastern Shawnee on lands that the Tribe may obtain in settlement of its claim. We do wish to finally resolve our outstanding land claims, but not in a manner that will be detrimental to the people of Ohio.

Thank you for the opportunity to answer the Committee's questions.

**Response to questions submitted for the record by Craig Foltin,
Mayor, City of Lorain, Ohio**

Thank you for your letter of May 17, 2005 seeking my responses to Representative Gibbons' questions in follow-up to the Committee's recent hearing on "off-reservation" gaming. It was a privilege to testify before the House Resources Committee to present our view that the Indian Gaming Regulatory Act should not be amended to preclude tribes from establishing "off-reservation" gaming facilities. We hope that our testimony was useful in establishing that there are many good reasons to leave the door open to Indian gaming in cities such as ours that would welcome a tribe such as the Eastern Shawnee to re-establish a presence in its aboriginal homeland. In our view, the complete elimination of such opportunity benefits neither tribal or state and local governments. As the law stands today, the opportunity exists, but may only be realized if the ends are desired by tribal, local and state governments. Accordingly, it is my pleasure to respond to the questions posed by Congressmen Gibbons.

1. This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe. Do you have any specific suggestions on how Congress should proceed in this regards?

In our view, the law as currently in place, is appropriate and should not be changed. We believe that it is important for Congress to understand that the proposed changes in the legal framework not only restrict opportunities for Indian tribes, but also those of state and local governments. In addition to the economic benefits that a distressed city such as ours would derive from the establishment of a gaming operation generally, Indian gaming provides certain advantages that are absent in the context of commercial gaming.

From a public policy perspective, a major issue in relation to commercial gaming is the question of how to limit proliferation. While some communities might embrace the establishment of a gaming destination, many of these same communities would not approve of multiple sites or the introduction of gaming machines in every bar or restaurant. Moreover, the greater the number of gaming locations, the greater the regulatory burden and the potential for abuses. However, it is more difficult to place legislative parameters on the proliferation of commercial gaming given Constitutional and other legal constraints.

If you were to proceed with changes, I would suggest an allowance for off reservation gaming if approved by the local government or even a vote of the citizens of a local government.

- **Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming will have on communities across the country.**

Use of the term "reservation shopping" presumes that tribes are unilaterally seeking to establish gaming operations outside of their present geographic locations. In the case of the Eastern Shawnee, it was the City of Lorain that made the initial contact with the Tribe. The fact that the law provides a means for a tribe to return to its aboriginal homeland also provides a means for cities and states to reach out to tribes to establish political and economic relationships of mutual benefit to both

parties. I again would suggest allowing the local government to have a choice in the matter.

2. When tribes seek to enter already established gaming areas, doesn't that create an uneven playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do pay not state taxes; etc.?

As there are no federally recognized Indian tribes located within the State of Ohio, the issue of having a tribe enter an established gaming market of another tribe is not applicable to our particular situation. Ohio state law, however, does provide for a state lottery, horse racing, and charitable gaming. Since the establishment of Class III tribal gaming requires a tribal-state compact, however, the state has a means to work with the Tribe to resolve any issues that may arise in relation to competition among the various gaming interests in Ohio. As to state regulation, the requirement for a tribal-state gaming compact in the IGRA serves as a mechanism for the tribe and a state to mutually agree upon the scope of state regulation, hence IGRA does provide a mechanism for state regulation in relation to tribal gaming. On the tax issue, it is true that tribes may not be taxed by state and local governments, but tribes as a routine matter compensate state and local jurisdictions for the delivery of governmental services by means of payments in lieu of taxes and IGRA permits revenue sharing with states to off-set the regulatory costs associated with tribal gaming facilities pursuant to mutual agreement through the compacting process. Moreover, tribes and states and local governments routinely enter into additional compacts to address other taxation issues, such as the collection and remittance of state taxes on employees of tribal gaming operations as tribal employees are not exempt from state and federal income taxes as a general rule. In our case, we have addressed these concerns with the Eastern Shawnee Tribe to our mutual satisfaction.

3. What criteria should be used by the Department of the Interior in its determination of land-into-trust?

We understand that the Interior Department has a longstanding regulatory framework for taking land into trust for tribes and has issued a proposed rule governing the taking of land into trust for tribes for purposes of gaming under Section 20 of IGRA. We believe that the policies reflected in the existing regulatory framework as well as in the proposed Section 20 regulation adequately address concerns in this regard.

- **Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why or why not?**

We understand that the Interior Department at least informally already requires such a connection and can readily address this issue through the rulemaking process.

- **How near in time should the historical connection be? 100 years? 200 years?**

Our view is that any specific requirement for a historical connection should not be subject to an arbitrary timeframe, but rather be focused on whether the area constitutes the aboriginal territory of the tribe. We understand that the Indian Claims Commission decades ago established a map demarcating the aboriginal territories of tribes based on archeological and anthropological data. This information could be used as a basis for determining an historic nexus between tribes and particular sites.

- **What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?**

Such a limitation on distance would preclude the Eastern Shawnee Tribe from establishing a gaming facility in the City of Lorain or any other site in Ohio. Accordingly, we would not be supportive of a distance restriction.

- **Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]**

In our view, it is true that the City of Lorain would likely derive greater direct benefits from the establishment of an Eastern Shawnee tribal gaming facility than will the Eastern Shawnee Tribe in terms of increased employment, jobs, related business development, increased tourism, and the income tax on employees of the facility. However, the benefit to the Tribe is that the revenue potential from a facility in the City of Lorain or any site in Ohio is vastly greater than possible if the

Tribe were restricted to gaming in its current largely rural and underdeveloped location.

While the City would welcome members of the Tribe and anticipate that some may desire to relocate to work at the facility, we view it as highly unlikely that the entire general membership would relocate to Ohio. Our view is that the Tribe will more likely invest its revenues so as to improve the quality of life and economy of its members residing in Oklahoma. Moreover, we believe that achieving a higher level of prosperity will strengthen, not weaken the tribal community.

4. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health services?

See previous answer. We believe the Eastern Shawnee have an opportunity not only to dramatically improve its own economic conditions, but those of non-tribal communities in both Oklahoma and Ohio. Therefore, we believe such restrictions would not be good and prevent Lorain from improving its own condition.

5. If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that?

In our view, all communities want to maximize their economic potential. Such desire, however, is not determinative of whether a tribe will succeed in establishing an "off-reservation" gaming site. The IGRA contains checks and balances that restrict the capacity of tribes to establish off-reservation facilities where such facilities are not welcome by the state and local community. The question, thus, is not one of what a tribe may wish, but rather whether it is able to meet all the legal requirements and establish the political relationships essential to the establishment of an off-reservation gaming site. Under existing law both tribes and states have the opportunity to establish mutual beneficial relationships; but there is no guarantee that such opportunity will be realized in the absence of willing parties to the relationship.

- **What about tribes that played by the rules and have their casino on their reservation land even though it may not be the best gaming location?**

All tribes must comply with the law and implementing regulations. The IGRA does not restrict the opportunity for tribes with existing on-reservation sites from seeking to establish off-reservation gaming sites as well. Again, however, it does not guarantee any particular tribe success in such endeavor. We feel an Indian Casino in Lorain, Ohio would not negatively impact any gaming facilities on any reservations.

6. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

We respectfully decline comment as we are unfamiliar with the law in this regard. Thank you again for the opportunity to provide additional comments.

**Response to questions submitted for the record by John Warren Kindt,
Professor, University of Illinois**

Question 1: This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.

- **Do you have any specific suggestions on how Congress should proceed in this regard?**
- **Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.**

Response: The honorable Member raises salient questions concerning the extensive and rapid spread of tribal gambling facilities and their negative impacts upon the U.S. economy and population. One option for Congress is to enact legislation eliminating land-into-trust and prohibiting reservation shopping. Experts have maintained that eliminating land-into-trust is the only workable solution.

Another option which would eliminate the many abuses of the Indian Gaming Regulatory Act (IGRA) would be to repeal this problematic legislation. For a recent example, the case of *Dalton v. Pataki*,—N.E.2d—, 2005 WL 1017641 (N.Y. Ct. App., May 3, 2005) is currently scheduled for appeal to the U.S. Supreme Court, because it apparently held that IGRA preempted and superseded the ban on

gambling mandated in the New York Constitution (see N.Y. Const., Art. I, sec. 9). Congressional hearings on the option of repealing IGRA would also provide opportunities to delimit practical alternatives to IGRA.

Jointly and severally to acting on eliminating land-in-trust and/or IGRA, Congress should enact the National Tribal Gambling Impact Study Commission as proposed by U.S. Representatives Christopher Shays, Frank Wolf, et alia.

Economics codifies that a nation cannot gamble itself rich. Furthermore, summary analyses of the socio-economic costs of gambling have continued over the years to conclude that the cost/benefit ratios for gambling activities are \$3 in costs for every \$1 in benefits (see Table of Studies from 22 Manag. & Decision Econ. 143, 153 (2001) which is attached to Prof. Kindt's testimony of April 27, 2005). In this context, proposals to spread tribal casino gambling would be rejected by objective analysts.

Activities which are commonly termed "reservation shopping" and "off-reservation gaming" coalesce as attempts to locate close to major population areas with as many slot machine/electronic gambling devices (slots/EGDs) as can be negotiated. These machines constitute 70 to 100 percent of casino gambling revenues—except most notably in Las Vegas where this percent has had traditional limits (e.g., 50 percent) to keep card games with a viable market share. The Final Report of the 1999 National Gambling Impact Study Commission noted that these machines were delimited by the psychological community as the crack-cocaine of gambling addiction (see, e.g., NGISC Final Report at 5-5) and recommended that these machines not be located convenient to the public and that states "should cease and roll back existing operations" (NGISC recommendation 3.6).

The honorable Member notes that there are currently "over 300 tribes seeking recognition and presumably gaming," but these 300 tribes would only be the first wave of off-reservation gambling. Accordingly, reservation shopping and off-reservation gambling would be extremely detrimental to the host communities in the casinos' feeder markets and to the entire U.S. strategic economy.

Question 2: When tribes seek to enter already established gaming areas, doesn't that create an uneven playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do not pay state taxes; etc.?

Response: This question lists only some of the competitive advantages which tribal gambling establishments have over nontribal gambling establishments and also over nongambling businesses trying to compete for consumer dollars. Regarding one topic of the Committee's April 27 hearing, local business and community opposition was evidenced by 9,000 petitions against the Ho-Chunk casino proposal for the Lansing/Lynnwood area of Illinois (Chicago Tribune, Oct. 16, 2004, at 16). On February 17, 2004, a similar Ho-Chunk casino proposal was defeated by a 65 to 35 percent vote of the University of Wisconsin academic community in Madison, Wisconsin—despite a \$1.3 million Ho-Chunk campaign against little organized opposition (see, e.g., Judith Davidoff, Defeated, Ho-Chunk to Refocus, Capital Times (Madison, Wis.), Feb. 18, 2004, at A1).

Tribal leaders with gambling operations have been outspoken about protecting these competitive advantages via expanding the scope of tribal sovereignty. States such as Minnesota have experienced difficulties and friction in their dealings with tribes over their casinos and the practical inability to adjust compacts. The National Gambling Impact Study Commission complained about the "unwillingness of individual tribes, as well as that of the National Indian Gaming Association (the tribe's lobbyists) and the National Indian Gaming Commission (the federal agency that regulates tribal gambling), to provide information to this Commission, after repeated requests and assurances of confidentiality, ." (NGISC Final Report at 7-9). If enacted, the proposed legislation for a National Tribal Gambling Impact Study Commission could address these issues.

Question 3: What criteria should be used by the Department of the Interior in its determination of land-into-trust?

- **Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?**
- **How recent should the historical connection be? 100 years? 20 years?**
- **What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?**
- **Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of**

employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

Response: This question poses many of the issues which arise involving the Department of Interior's determination of land-into-trust. One option for serious consideration would be legislatively to eliminate land-into-trust because it is an unworkable concept when linked with gambling. Each of the honorable Member's questions raises definitional issues which have inherent ambiguities, such as: What constitutes a "substantial historical connection"? The lobbying power of tribal gambling interests vis-à-vis social welfare groups almost guarantees that the ambiguities inherent in land-into-trust issues will be decided in favor of expanding tribal gambling to the public detriment. Legislatively eliminating land-into-trust (or at least, prohibiting gambling on any land-into-trust properties) would appear to eliminate these issues.

With regard to jobs for Native Americans via tribal gambling facilities, a study sponsored by the Associated Press has raised significant doubts about job benefits to most Native Americans (see, e.g., Assoc. Press, *Casino Boom a Bust for Most Members of Indian Tribes*, News-Gazette (Champaign, Ill.), Sept. 2, 2000, at A1). The issue of a tribal casino's distance from the tribe's main population base would argue for less impact on tribal unemployment, particularly since middle and upper management positions reportedly tend to be filled by nontribal employees. However, the main job impact involves lost jobs in the consumer economy "feeder markets." These lost jobs to the pre-existing consumer economy significantly outnumber the jobs created by the tribal casino (because of the reliance of tribal casinos, in particular, on slots/EGDs). These lost jobs in the consumer economy correlate to the numbers of slots/EGD machines.

It has also been postulated that absent tribal gambling, none of the aforementioned definitional issues is really an issue. These concerns argue for the enactment of the proposed National Tribal Gambling Impact Study Commission.

Another legislative option would be to repeal the Indian Gaming Regulatory Act and transform the existing gambling facilities into educational and practical technological facilities. Such an option may have to survive a challenge to the U.S. Supreme Court, but given the many abuses linked to IGRA and the socio-economic arguments, *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) may be ripe to be overturned. Since IGRA was drafted and enacted on a fast track the year after Cabazon, IGRA's multiple defects should have been expected. Congress should consider repealing IGRA in anticipation of new legislation tempered by two decades of problematic experience.

Question 4: If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

Response: It would seem logical that land-into-trust should be restricted to where the tribe is located if the tribe is landless, but how is the "location" of a landless tribe initially to be delimited? Given the historical roaming of many tribal bands, it would be unusual if a band could not find some historical connection to one or more of today's population centers.

The more important problem with landless tribal members is that tribal members can claim that individual bands should have tribal status or that even individual Native Americans should be recognized as a tribe.

Theoretically, numerous Native Americans could eventually claim distinctions under their tribal law that argued for tribal status as separate bands, and it would be reasonable to anticipate new landless small bands or even individuals involved in future reservation shopping. Prodding this trend would be millions of dollars in incentives to establish Native American gambling facilities as close as possible to population centers. Tribes with three members or a few dozen members have already been recognized (see, e.g., Donald L. Barlett & James B. Steele, *Look Who's Cashing In At Indian Casinos: Hint: It's Not The People Who Are Supposed To Benefit*, Time, Dec. 16, 2002, at 46 (cover story)).

In the instance of the Ione Band of Miwok Indians, the Bureau of Indian Affairs (BIA) reportedly opened the membership roles in 2004 and "Among the new members are several BIA employees and dozens of their relatives." (Don Thompson, Assoc. Press, *Seattle Times*, Feb. 23, 2004).

Question 5: If some tribes are permitted to select the “best gaming” locations, wouldn’t all tribes want to do that?

- **What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?**

Response: From the perspective of the operators of tribal gambling facilities, the U.S. population centers constitute the prime gambling locations. By whatever justification or rationale, the “fairness” of allowing one tribe vis-à-vis another tribe to conduct gambling in the U.S. population centers needs to be weighed against the overall detriment to the consumer economy and increased criminal costs (summarized previously as \$3 in costs for every \$1 in benefits).

Related problems involve many tribes with gambling who are diverting their surplus cash (or even cash which should be used to benefit their own members) to seek out and use other tribes as conduits for reservation shopping. For example, the Iowa tribe of Kansas and Nebraska, a small Kansas tribe with a few hundred members, is proposing to move their casino 236 miles from their reservation in northeast Kansas to Park City, which borders Wichita, the largest city in Kansas. Approximately 700,000 people live within the 50-mile feeder market of the proposed casino. However, the Mashantucket Pequot tribe of Foxwoods, Connecticut, will provide the necessary \$270 million financing and operate the casino. To date, the Kansas legislature, the Wichita City Council, and the Sedgwick County Commission have shown no interest in this proposed casino. Kansas Governor Kathleen Sebelius has therefore refused to engage in compact negotiations with the tribe—despite the efforts of the casino promoter retained by the tribe, a former Wichita mayor (see generally, Glenn O. Thompson, *Casino Plan a Threat to Community*, *Wichita Eagle* (Kan.), May 12, 2005).

Question 6: Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

Response: The honorable Member notes “that tribes are exempt from overall donor limits and can give directly from their treasuries.” The potential abuses have increased exponentially since the article in 556 *Annals of the Am. Acad. of Political & Soc. Sci.* 85 (1998). See also, e.g., Editorials, *N.Y. Times*, Mar.1, 2002 & Apr. 4, 2002; Susan Schmidt, *Wash. Post*, Feb. 22, 2004. These types of concerns argue further for the need for a National Tribal Gambling Impact Study Commission and for the elimination of land-into-trust gambling acquisitions.

NOTE: Responses to questions from Wade Blackdeer, Vice-President, Ho-Chunk Nation, and William Blind, Vice-Chairman, Cheyenne and Arapaho Tribes of Oklahoma, have been retained in the Committee’s official files.

