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New Mexico State Senate, District 38

Testimony
Before the Committee on Resources
United States House of Representatives

Hearing on The Second Discussion Draft of Legislation
Regarding Off-Reservation Indian Gaming

November 9, 2005

Mr. Chairman, members of the committee, thank you for inviting me to testify before you today on an important issue of fairness and the rights of duly elected state officials.

I am here to testify today in support of Chairman Pombo's Second Discussion Draft of Legislation Regarding Off-Reservation Indian Gaming and his intent to increase state and local input in the two-part determination process. I am a Democrat state senator from southern New Mexico and have served in the state legislature for five years.

Let me say at the outset that I support Indian gaming. Indian gaming generates tens of millions of dollars annually for the New Mexico treasury. It has created jobs in casinos, both on the reservation and off the reservation in supporting industries. It generates revenue for Native American governments that has been used to finance infrastructure and fund education, health care and public safety programs on Indian reservations in New Mexico.

I also support non-Indian gaming in New Mexico. (For the purposes of my testimony today, I am not including machine gaming at fraternal clubs when I refer to non-Indian gaming in New Mexico.) The horse racing industry and gaming machines at the tracks likewise generates tens of millions of dollars in revenue for the state and it, too, has created jobs both at the tracks and in the supporting industries. The businessmen and women who operate New Mexico's tracks are good corporate citizens, donating generously of their time and money to worthy community causes.

The Indian gaming and non-Indian gaming industries are good industries in New Mexico, providing jobs, entertainment and revenue to state and tribal governments and worthy causes. The Indian and non-Indian gaming industries coexist in New Mexico in a delicate balance that includes, recognizes and respects Native American sovereignty, fair competition among businesses, and good business practices and regulation. It is true that there are important differences between Indian gaming and non-Indian gaming and the two are treated differently.

Indian casinos in New Mexico offer gaming machines, table gaming and can operate an unlimited number of gaming machines and are self regulated. Racetracks are not allowed to offer table games, are limited in the number of machines they can operate, are limited in the times they can operate and are connected to a central monitoring system which is overseen by the New Mexico Gaming Control Board. Racetracks pay a gaming tax of 26% on the net win from gaming machines which is more than three times the revenue sharing rate that Indian casinos pay on the net win from gaming machines. They additionally pay 20% of the net win to the Horsemen's purse fund and one quarter of one percent to gaming addiction funds.

Part of this delicate balance is the understanding that Indian gaming will be conducted on Indian lands for the benefit Indian tribes, and non-Indian gaming will be conducted at racetracks, whose opening and siting is regulated by the state. The possibility of an Indian tribe or pueblo opening a casino off-reservation as if it were on the reservation threatens to upset this delicate balance by undermining its foundation of fairness. Simply put, it is unfair to allow an Indian tribe or pueblo to compete with another business by opening a casino that can offer more gaming machines, that can offer table gaming and shares 8 percent of its net win with the state on its gaming machines only they pay nothing on their table games compared to the 26 percent that the horse racetracks pays to the state.

That's just not fair and it is not good for the state of New Mexico.

In the area of southern New Mexico that I represent, Jemez Pueblo and their non-Native American casino developer are proposing to construct a casino in the town of Anthony, which borders Texas. The proposed casino would be within just a few miles of an existing racetrack. Jemez Pueblo is located northwest of Albuquerque, approximately 300 miles from its proposed casino and their non-Native American developer partner lives approximately 360 miles from the proposed casino. The pueblo and its non-Native American casino developer argue that it is not economically feasible to build a casino on its reservation. They may or may not be right but rest assured that this Jemez Pueblo proposal is highly controversial in my state. In fact, the largest Indian casino in New Mexico, Sandia Pueblo, has recently come out publicly opposing the Jemez

Pueblo proposal and the President of the only Indian casino in Southern New Mexico, the Mescalero Apache Tribe, voiced "serious concerns and questions" regarding the Jemez proposal in a recent public meeting. Our Attorney General also opposes the Jemez proposal.

The more important issue is whether Congress intended, when it enacted the Indian Gaming Regulatory Act (IGRA), to allow Native Americans in concert with non-Native Americans to compete with existing gaming establishments, both Native American and non-Native American, on more favorable terms and conditions. I'd suggest that was not Congress' intent. Congress did not intend to allow non-Native Americans to open and operate Indian casinos on private land simply by shopping around for a tribe willing to co-venture. The situation I described with the Jemez Pueblo is one of the most blatant examples of reservation shopping that exists today.

I believe Congress wisely enacted IGRA to provide tribes with an opportunity to raise revenue and achieve economic success.

It would be appropriate, fair and completely within IGRA's intent to prohibit Indian tribes that have Indian land from offering Indian gaming outside their reservations. At a minimum, IGRA should be amended to require that the approval of the "state"--not just of the governor--be required before an Indian casino opens outside of the tribe's reservation. Additionally, requiring passage by county referendum allows the citizens most impacted by an off-reservation casino to have a voice. Just as IGRA allows each state to determine what constitutes state approval of Indian gaming compacts, so too should IGRA allow each state to determine the extent of off-reservation Indian gaming it wishes to approve, and not leave that decision solely to the governor. For these reasons, I support the Chairman's bill and appreciate his efforts and the efforts of his colleagues to bring some reasonableness to this situation. I do believe that any changes to IGRA should include any application that is currently pending before the Department of Interior that has not been acted upon by the Secretary of Interior.

This is an important issue and one that can be resolved fairly. Indian gaming and non-Indian gaming establishments should be allowed to compete and coexist, but they should be allowed to do both fairly. Governors and legislatures should decide the extent and nature of off-reservation gaming within individual states jointly as state laws provide. A public policy decision of this magnitude should include all its state elected officials with real input from the states' citizens.

Mr. Chairman, members of the committee, thank you for this opportunity.