Testimony of

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The Committee on Resources

United States House of Representatives

Oversight Hearing on

Minimum Internal Control Standards (MICS)

For Indian Gaming

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Good morning Mr. Chairman, Vice-Chairman Rahall, and Members of the Committee. Thank you for providing the Colorado River Indian Tribes with the opportunity to testify this morning. My name is Raymond Aspa, Sr. and I am a member of the Tribal Council of the Colorado River Indian Tribes (CRIT).

Our Tribe has more experience with the NIGC's Minimum Internal Control Standards ("MICS") than we might like. As you know, the Tribe has successfully challenged the Commission's mandatory imposition of its MICS on the Class III gaming conducted at our BlueWater Casino in Parker, Arizona.

The very first thing I would like to share with the Committee is that CRIT did not seek this challenge; it came to us. Like every other tribe in the country, we questioned the Commission's statutory authority to mandate Class III MICS. In January of 2001, the NIGC began an audit of our compliance with its MICS. We attempted to discuss with the audit team the statutory basis for its audit. Tempers flared, the audit team left with its audit unfinished, and the NIGC issued a notice of violation and assessed a fine against us.At that point, we had no choice but to defend ourselves. Our defense was the simple legal position that we shared with most other tribes: the Commission does not have the authority under the Indian Gaming Regulatory Act to mandate Class III MICS. An administrative law judge agreed with us, and then, last August, the federal district court agreed with us as well.

CRIT has never taken the position that Class III gaming should not be regulated. Nor has CRIT ever denied that the MICS are not a valuable tool to ensure the integrity of our gaming operation. To the contrary, we believe they are essential. No one has a greater interest than we do in making sure that the games we offer are fair and honest, and that the public has confidence in that fairness and honesty. For that reason, our tribal Gaming Code required internal control standards many years before the NIGC first promulgated its MICS.

Our only argument with the NIGC these past five years has been over which government has the statutoryauthority to require and enforce those standards. The federal district court agreed with us that under the statute as it is now written, it is the tribes and the states – through their tribal-state compact – that have that authority. It is not the NIGC.

Class III gaming, certainly in our case, is strictly regulated. Our Tribal Gaming Office has a staff of over 30 employees and an annual budget of over $ 1.2 million dollars. Moreover, our tribal-state compact with the State of Arizona is probably the most rigorous in the country. The state shares broad authority with our tribal regulatory agency, with what we frankly sometimes view as intrusive rights to monitor, certify, and inspect. Most importantly in the context of this hearing, our compact with the State of Arizona has adopted the MICS as the baseline for the governing internal control standards in our casino.

Given this intense regulatory environment, a third, federal layer of direct regulation is unnecessary. It wouldalso add an unnecessary layer of expense to an already costly regulatory scheme. In addition to the $ 1.2 million we budget for tribal regulation, we also pay almost one-quarter of a million dollars annually to the state to cover the cost of the state's oversight responsibility under our compact. Were the NIGC to assume direct responsibility for imposing and enforcing Class III MICS, its budget would explode, and the tribes would be the source of its funding. Strict regulation is necessary. Unnecessary regulation would divert funds that are desperately needed for the very purposes IGRA was enacted – to fund vital tribal governmental programs, encourage self-government, and seed non-gaming economic development.

Direct federal regulation through the mandatory imposition of internal control standards would eviscerate the compacting system that was the centerpiece of IGRA when it was enacted eighteen years ago. IGRA represents a legislative compromise among three levels of sovereign governments, each of which has alegitimate interest in the fair and honest conduct of tribal gaming. The tribes were rightfully viewed as the primary regulator of all three classes of gaming activity. The compromise balance struck was to give the NIGC a participatory role in regulating Class II, and the states a participatory role in Class III, through means of negotiated compacts. If Congress rushes willy-nilly to "fix" the CRIT litigation by simply giving the NIGC broad regulatory authority over Class III gaming, the entire statutory scheme would be thrown out of balance and rendered essentially meaningless.

If Congress believes it is necessary for IGRA to address the MICS, it should do so in a way that is deferential to the regulatory scheme negotiated between tribes and states in their compacts, and that recognizes the core framework of the statute.

Senator McCain has proposed to "fix" the statutory MICS "problem" by expressly giving the NIGC the authorityto impose and enforce mandatory MICS for both Class II and Class III gaming. There are other ways to ensure that every gaming tribe imposes meaningful internal control standards on its gaming operation, and those other ways intrude far less on tribal sovereignty and the carefully balanced statutory scheme.

If Congress must amend IGRA to address the MICS, our preferred alternative is to incorporate the requirement through the tribal gaming ordinances. The statute currently sets forth a list of specific subject matters that must be included in a tribal gaming ordinance, such as background investigations, annual audits, and the permissible uses of gaming revenues. It would be a simple matter to add the requirement that every tribal gaming ordinance must provide for the tribal enactment of internal control standards. This approach would be faithful to the principle that tribes, through their own laws, are the primary regulators of tribal governmental gaming.A second alternative would be to require all tribal-state compacts to address the subject of internal control standards, and to permit the Secretary of the Interior to reject a compact that did not address the standards adequately. This approach would eliminate the complaint so often heard about the inconsistency of regulatory rigor from state to state.

Of these two approaches we frankly prefer the first. Tribal governmental gaming should be governed first and foremost by tribal law. Mandating the terms of the compacts would undoubtedly given the states even more leverage to hold the tribes hostage to unreasonable – and unprecedented – state regulatory intrusion. Nonetheless, either of these suggestions is infinitely preferable to direct, heavy handed regulation by the NIGC, which would essentially preempt both tribal and state authority on the subject.

It bears repeating that CRIT has never suggested that Class III gaming go unregulated. Only the willfullyuninformed accuse us of that. We firmly believe that internal control standards are essential to the integrity of our gaming operation. We respectfully ask this Committee and Congress not to upset the balance so masterfully achieved eighteen years ago by giving the NIGC regulatory authority to directly impose and enforce Minimum Internal Control Standards on Class III tribal gaming activities.

Thank you again for the opportunity to testify on this important matter. If we can be of further assistance to the Committee, we would be pleased to answer any questions or provide additional information.