

**The Hon. Charles D. Enyart
Chief
Eastern Shawnee Tribe of Oklahoma**

**Testimony
Before the Committee on Resources
United States House of Representatives**

**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**

April 27, 2005

**Written Testimony of Chief Charles D. Enyart
Eastern Shawnee Tribe of Oklahoma**

**Before the Committee on Resources
United States House of Representatives**

April 27, 2005

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 miniscule 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.