

Committee on Resources

Witness Testimony

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National Congress of American Indians
Prepared Statement on the Removal of the
Narragansett Tribe's Rights by Appropriations Rider
To the United States House of Representatives
Committee on Resources
May 1, 1997**

I. Introduction

Greetings Chairman Young and distinguished members of the Committee on Resources. I would like to thank you for holding this oversight hearing regarding a provision contained in the 1997 Omnibus Appropriation Act which removed the Narragansett Tribe's settlement lands from the Indian Gaming Regulatory Act (Section 330 of Pub. L. 104-208). My name is W. Ron Allen. I am the Chairman of the Jamestown S'Klallam Tribe of Washington and President of the National Congress of American Indians (NCAI), the oldest and largest national organization of Indian tribal governments and Alaska Native Villages.

As I speak today, I am reminded of the purpose for which NCAI was founded. The NCAI was organized in 1944 in response to termination and assimilation policies that the United States forced upon native governments in contradiction of their treaty rights and status as sovereigns. Then, as now, NCAI stressed the need for unity and cooperation among native governments for the protection of their treaty and sovereign rights. I am reminded of NCAI's beginnings because the Congressional action reviewed by the Committee today, the removal of the Narragansett Tribes's sovereign rights by a budgetary rider, bears a striking resemblance to the termination actions of the 1940's and 50's. With this sense of history, I find it to be my great honor to bear a message from over 200 member tribes of NCAI. In unity, we resoundingly condemn this unconscionable abrogation of the rights of the Narragansett Tribe and strongly support the efforts to have the budget rider repealed. I have attached a copy of a recent NCAI resolution stating our position on this issue.

II. The Section 330 Rider Offends Tribal Sovereignty

The question before the Committee today is not merely the ability of a tribe to engage in gaming, but a question of the rights of tribes to be self-governing. Native governments have possessed the right to self-government and self-determination and since before the formation of the United States. In the seminal Supreme Court case of *Worcester v. Georgia*, 31 U.S. (6 Pet.) 559 (1832). Supreme Court Justice John Marshall found that "Indian nations had always been considered as distinct independent political communities, retaining their original natural rights, as the undisputed possessors of their soil." The federal government formed solemn agreements with independent native governments and, in return for a tremendous amount of land, the federal government has agreed to protect the tribes' right to self-government. This compact between the federal government and native governments must be zealously guarded from those who would like to extend the laws of state governments onto Indian lands.

In recent years, the Supreme Court has found that tribal governments possess the inherent right to regulate and engage in gaming so long as there is no state criminal law prohibiting gaming. California v. Cabazon and Morongo Bands, 480 U.S. 202 (1987). These Supreme Court decisions were codified in the Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701, (*et. seq.*). In the waning days of the 104th Congress, Senator Chafee from Rhode Island pushed through an amendment to the 1997 Omnibus Appropriations Act which removed the Narragansett Tribe's settlement lands from the Indian Gaming Regulatory Act, and thus extended state gaming law onto the lands of the Narragansett. This action was a clear violation of the federal government's responsibility to protect tribes' right to self-government and must be reversed. This appropriations rider poses a great threat to tribal government rights. In the past, NCAI has enjoyed a working relationship with Senator Chafee, and we will look forward to working with him again on other issues, but on the matter before us today we disagree sharply with Senator Chafee.

NCAI has defended tribal sovereignty for more than fifty years. We are continually working to enlighten the public toward a better understanding of Indian people, to preserve Indian cultural values and to promote the welfare of all Indian people. With each passing Congress, however, there are fewer members who truly understand what Indian sovereignty and autonomy are all about. There is no better recent example of this threat than the treatment the Narragansett tribe of Rhode Island received in the 104th Congress.

II. Substantive Indian Legislation Should Not Be Determined in Appropriations Riders

This appropriations rider and the process by which it was enacted into law set an unacceptable precedent for Congress' dealings with Indian tribes. The rider singled out a tribe for removal of its sovereign rights, was attached to an appropriations bill late in the process, and became law without any hearings, without any public discourse, with no vetting of the issues to the committees of jurisdiction, and all without any consultation with the Narragansett Tribe. This is an issue that is much broader than a single tribe and its right to engage in gaming.

The Supreme Court has held that the exercise of Congressional power over Indian affairs must "be tied rationally to the fulfillment of Congress' unique obligation toward the Indians." Delaware Tribal Business Comm. V. Weeks, 430 U.S. 73, 85 (1977), *reh'g denied*, 431 U.S. 960. The appropriations rider before us today does not meet this test in that it singled out one particular tribe for unfair treatment in a grossly discriminatory fashion. Additionally, it is NCAI's position that the use of appropriations riders for substantive Indian legislation is never appropriate, for these riders defy a rational approach to making decisions about the federal relationship with native governments. Without hearings in the committees of jurisdiction, only one side of the story will be told and only a few Senators and Congressmen will even hear that one side before the vote. In the 104th Congress, tribal governments were forced to fight against at least a dozen appropriations riders that would have abrogated tribal sovereignty, and it appears that we will have to continue this fight into the 105th Congress. I have attached an NCAI resolution stating our opposition to the use of appropriations riders that negatively impact tribal governments.

I am very grateful to the Resources Committee for holding this hearing today because we need to squarely address the notion that Congress may use the budget process to remove any tribe's rights, without a hearing, whenever those rights conflict with the wishes of a powerful minority. Federal lawmakers have enormous power over Indian affairs but most often have little understanding of the impact of their decisions on the lives of Indian and Native people. Because of this, Indian country relies on leadership from the Resources Committee to ensure that the concerns of tribes are properly aired at Congressional hearings and that legislation concerning tribes is thoughtfully considered before becoming law. We are confident that you will provide that same leadership as you have in the past. As always, we appreciate your extraordinary

commitment and leadership on Indian and Native issues.

III. Indian Gaming is a Tool for Native Self-Government and Economic Recovery

Like all governments, native governments have a responsibility to care for their citizens and ensure adequate education, health care and housing. As the Resources Committee is well aware, there has historically been a grossly inadequate supply of these services for Indian people. Tribal governments are beginning to step up their effort to meet this need and become self-sustaining, and Indian gaming is the economic development tool that many tribes are using to create tribal revenues and begin the economic recovery of the country's most impoverished communities.

Indian gaming is the most regulated in the industry and is without a doubt the most positive context in which gaming now occurs. The Tribal government programs and infrastructure funded by gaming bring hope and opportunity to some of the most desolate places in America. Crime rates go down, alcoholism and drug abuse go down, and individual initiative goes up. Despite our right to self-determination and self-government, and despite our desperate economic situation, federal policy makers are working hard to set up new stumbling blocks to Indian gaming, and the appropriations rider that prohibits this economic opportunity to the Narragansett Tribe is a prime example.

The media hype about Indian gaming leads the public and Congress to believe that Indian tribes are using Indian gaming to get rich. This viewpoint was evident in a highly inaccurate opinion-editorial that appeared in yesterday's Washington Post. Nothing is further from the truth. After years of failed government programs, Indian reservations have a 31% poverty rate-- the highest poverty rate in America. Indian unemployment is six times the national average; and Indian health, education and income statistics are the worst in the country. The reality is that Indian gaming accounts for only 9% of the gambling activity in the country and it occurs on only one-third of the country's reservations. Only a relatively small number of Tribes have been fortunate enough to have very successful gaming operations; and for the most part, the revenues are just beginning to address these Tribes' needs for essential services and infrastructure needs.

Indian Tribes are governments, and, like state and local governments, the revenues accruing to tribal governments are used as a tax base to fund essential tribal services, such as education, law enforcement, tribal courts, economic development, and infrastructure improvement. In fact, tribal governments are required by the Indian Gaming Regulatory Act to use gaming revenues for these purposes. Much like the revenues from state lotteries, Tribal governments also are using gaming profits to fund social service programs, scholarships, health care clinics, new roads, new sewer and water systems, adequate housing and chemical dependency treatment programs, among others.

Indian gaming holds a tremendous promise for self-sustaining native governments and economically healthy native communities. This promise will never be fulfilled, however, if Congress does not respect tribal self-governance, including the right to engage in the Indian gaming. It is unfathomable that Congress would single out the Narragansett Tribe and remove both the sovereign right and the opportunity to become self-sustaining. Congress should not only allow the Narragansett Tribe the opportunity to raise revenues to meet the needs of its people, Congress should encourage this opportunity.

IV. Conclusion

Section 330 of the Omnibus Appropriations Act of 1997 removed the sovereign rights of the Narragansett Tribe in a clear violation of Congress' responsibility to native governments and in a manner that threatens

the sovereignty of all Indian tribes and Alaska Native Villages and offends the jurisdiction of the Committee on Resources. As a matter of conscience and conviction, we ask that the Committee on Resources introduce and mark up legislation that will restore the rights of the Narragansett Tribe and quickly remove this dark stain from the federal relationship with native governments.

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