

1 CHAIRPERSON JAMES: Mr. Scheppach.

2 MR. SCHEPPACH: Good morning, Madam Chairman and
3 distinguished members of the Commission. I appreciate the
4 opportunity to appear before you today to provide the Governor's
5 position on four critical Indian gaming issues. First, the scope
6 of Indian activities subject to negotiation under IGRA and state
7 law; second, the implementation and enforcement of IGRA in
8 particular giving states the power to seek injunctive relief
9 against illegal gaming; third, the constitutional issues raised
10 by Indian gaming; and fourth, the effect of Indian gaming at the
11 state and local levels, including environmental, economic and
12 social impacts to both tribal members and non-tribal patrons.

13 First a couple comments on the background; in passing
14 the Indian Gaming Regulatory Act of 1988 Congress struck a
15 balance between state and tribal sovereignty and granted
16 governors a critical role in regulating the emerging Indian
17 gaming industry. In particular Congress established a process
18 through which states and tribes shall negotiate the terms under
19 which tribes could operate Class III gaming on Indian lands. In
20 the years since enactment of IGRA, the vast majority of
21 negotiations between states and tribal governments have resulted
22 in successfully completed compacts.

23 As of today 146 tribes have concluded 171 compacts
24 with 24 states. With states and tribes continuing to negotiate
25 new compacts and renew existing compacts every year the nation's
26 governors do not feel that IGRA needs to be significantly
27 altered. The governors have recently announced their intention
28 to negotiate with tribes and the U.S. Department of Justice and

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1 Interior for improvements and clarifications in IGRA that would
2 benefit all parties. Staff meetings will begin later this summer
3 in preparation for a meeting of principals in November.

4 The primary and number one concern for governors
5 continues to be clarifying the scope of gaming activities
6 permitted to tribes under IGRA. Much of the confusion and
7 conflict that has arisen out of IGRA implementation centers
8 around determining which gaming activities and devices are
9 permitted by a state. The governors assert that permitted gaming
10 must be determined by reading a state's laws and regulations.
11 Amendments to IGRA must define the scope of gaming activities and
12 devices subject to negotiation under the law.

13 It must be made clear that the tribes can negotiate
14 to operate gaming of the same type and subject to the same
15 restrictions that apply to all other gaming in the state. The
16 governors firmly believe that it is an inappropriate breach of
17 state sovereignty for the Federal Government to compel states to
18 negotiate tribal operations of gaming activities that are
19 prohibited by state law.

20 The U.S. Court of Appeals for the Ninth Circuit
21 reached a decision consistent with the National Governors'
22 Association policy in the case of Rumsey. In Rumsey, the Court
23 found that IGRA neither compels a state to negotiate for gaming
24 activities or devices that are prohibited by state law, nor
25 requires a court to refer to the U.S. Supreme Court's decision of
26 Cabazon to interpret the law. The Supreme Court denied the
27 tribe's request for review of the Rumsey decision effectively
28 endorsing the Ninth Circuit's interpretation of IGRA.

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1 Not all forms of Class III gaming are the same.
2 States have a fundamental public policy interest and
3 responsibility to distinguish among different gaming activities
4 and devices, choosing to legalize some and prohibit others. The
5 Governors agree with Rumsey that a state need only allow Indian
6 tribes to operate games that other in the state can operate but
7 need not give tribes and others -- that others cannot have.
8 Moreover they believe that the Rumsey decision reflects what
9 states believe to be the original intent of Congress.

10 The second perhaps most important issue for governors
11 is the whole question of enforcement and I second what Tom Gede
12 had said earlier is that IRGA should be amended to grant states
13 the right to seek injunctive relief in federal court to enforce
14 this law. What we have seen recently is a substantial growth in
15 illegal gaming on reservations and states really need the right
16 to go into court to stop this. Third, there are a number
17 of constitutional issues raised by Indian gaming. There has been
18 -- as mentioned previously the Secretary of Interior now has a
19 pending rule that would, in fact, bypass state authority.
20 Governors oppose any effort by Congress or the Administration
21 that would allow a tribe to avoid negotiation with a willing
22 state in favor of a compact negotiation with another entity such
23 as the Secretary of the U.S. Department of Interior.

24 We also have considerable problems with the so-called
25 good faith negotiation requirement. IGRA currently places a good
26 faith negotiation requirement on the states but not on the
27 tribes. The good faith negotiation standard should be clarified
28 and applied to both states and tribes. The burden of

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1 establishing lack of good faith should be on the party making
2 such an assertion.

3 There is also a couple of other issues with respect
4 to trust land acquisition. Currently IGRA does require the
5 governors to concur with bringing new lands for gaming. We not
6 only need that continued in IGRA but we'd like to expand it
7 because now more and more tribes are trying to bring land for
8 non-gaming purposes that would be exempt for taxes and this is,
9 in fact, a growing problem.

10 Finally, I'd say although many Indian gaming
11 establishments provide substantial financial support to tribes
12 and surrounding communities, these enterprises often have
13 significant environmental, social and economic impacts both on
14 and off Indian lands. Recognizing this, several states have
15 begun to include provisions within state/tribal compacts that
16 address these concerns. The governors support the IGRA process
17 and believe that these compacts are an appropriate vehicle for
18 addressing these legitimate environmental, social and economic
19 concerns.

20 Madam Chair, this concludes my formal comments. I'd
21 be happy to answer any questions.

22 CHAIRPERSON JAMES: Thank you, Mr. Scheppach and for
23 the benefit of those of you who are in the audience, it's not
24 necessarily that our Commissioners can see into the future but
25 they do have the written testimony in front of them and sometimes
26 will ask questions based on the testimony that they have even
27 though it may not have been presented orally by our panelists.

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