CHAIRPERSON JAMES: What I would like to do and what we’re trying to do is finish up the recommendations from the last meeting, then do the new recommendations, and then move to the chapter discussions. Commissioners were working on changed language, particularly on campaign finance reform and several others, and it is being typed and Xeroxed as we speak, but we will do that as soon as it is available.

Commissioners, if you have in front of you -- if you could take out the paper that was supposedly put in your hand, the top one is alternative recommendation on Indian gambling regulation. Do you have that in front of you? The next one then would be there’s an option two and proposed recommendations on unattended minors. If would could take those in the order that are there, that would be great. Then as the other materials becomes available, we will do that. The current 6.1 you see at the top of the page, Paul, who is recommending the replacement, this language here?

COMMISSIONER LOESCHER: Madam Chair, I am.

CHAIRPERSON JAMES: Thank you, Bob. Bob, would you like to speak to that and offer it as a motion?

COMMISSIONER LOESCHER: I’d like to speak to it. This was considered favorably at the last meeting as 6.1 current language, but since then we’ve had second thoughts. It doesn’t really say what we really want to say in terms of encouragement to Native American tribes to undertake the accountability that this Commission is searching for, and also to assist those tribes who are struggling to keep going forward with minimum standards and participating in regulatory structure.

So what we did, Madam Chair, the current language that
the commission recommends to the President and Congress and NIGC that federal laws concerning Native American tribal gambling should be strengthened to insure adequate regulatory oversight fiscal accountability. One vehicle for this would be increase funding and authority for the NIGC.

The proposed language applies to the intent a lot better. It reads, the Commission acknowledges that the central role of the National Indican Gaming Commission as a lead federal regulator of the tribal government gambling, the Commission encourages the Congress to assure adequate NIGC funding for proper regulatory oversight. To insure integrity in fiscal accountability, the commission supports the NIGC’s new minimum internal control standards developed with the help of the National Tribal Gambling commissioners and regulators as an important step to insure such fiscal accountability.

We recommend that all tribal gaming commissions work to insure that the tribal gaming operations they regulate meet or exceed these minimum standards and that NIGC focus special attention on tribal gambling operations struggling to comply with these and other regulatory requirements.

COMMISSIONER LANNI: I’ll second that motion.

CHAIRPERSON JAMES: Discussion?

COMMISSIONER LANNI: Move for question.

CHAIRPERSON JAMES: Move for then question. All in favor? Opposed? I think we have just broken with the precedent that we set about not pointing out particular entities or organizations, and we did that in this motion, where it acknowledges the central role of the NIGC and the lead -- we hadn’t done that in any others.
COMMISSIONER LOESCHER: This instance is --

CHAIRPERSON JAMES: Well, it’s irrelevant because we passed it.

COMMISSIONER McCARTHY: This is a statutorily created agency versus a private groups.

CHAIRPERSON JAMES: As long as there’s no inconsistency there because we don’t want to establish a precedent that someone will come back with tomorrow. So that passes. This option two that you have in front of you?

COMMISSIONER McCARTHY: Madam Chair, the language is a provision in our recommendations. The marked-out language currently exists. Anyway, the language says the Commission recommends that classes of gambling must be clearly defined so that there’s no confusion as to what gambling constitutes a Class II and Class III gambling activities. Previous language included further the Commission recommends that Class III gambling activities should not include any activities that are not available to other citizens of the state, regardless of technological similarities. Indian gambling should not be inconsistent with the state’s overall gambling policy.

CHAIRPERSON JAMES: Is there a second?

COMMISSIONER LANNI: I have a question. What’s it mean by option two?

COMMISSIONER McCARTHY: Madam Chair, I had struggled with the language last time around and I had some of my friends write several options. I just happened to choose this one because I like it.

COMMISSIONER LANNI: I see. So there’s no option one?

CHAIRPERSON JAMES: There is no option one. This is
COMMISSIONER LOESCHER: Madam Chair, before you entertain a motion, I need to explain why I’m concerned about this and Commissioner Bible and I exchanged a colloquy last time, and not that I’m revisiting it, but I’m trying to revisit the focus of what’s occurred here. By deleting this sentence we would at least leave alone the existing law, IGRA law, which recognizes persons and entities and organizations. This language here only recognizes citizens, entities, and organizations. The other two are left out.

Then the language, technological similarities, is a matter of dispute that is in court right now, and rather than having these ambiguities in the recommendations which tend to enter the debate that’s occurring in other forums, and also limiting, we’re sending a sense from this Commission that we’re trying to limit what is occurring, what is established in law, which I don’t think is the intent of this Commission. If it is the intent of this Commission, then I think the Commission should be more specific as to recommended changes in the statutory language.

So this sentence is a problem from those two perspectives. Rather than having the problem, I recommend to the Commission that we delete this sentence and still have the language that Indian gambling should not be inconsistent with the state’s overall gambling policy and leave it at that.

CHAIRPERSON JAMES: Are you prepared to offer that as a motion?

COMMISSIONER LOESCHER: I’d like to offer it as a motion.
CHAIRPERSON JAMES: Is there a second?

COMMISSIONER BIBLE: I second and ask for discussion.

CHAIRPERSON JAMES: It’s been moved and properly seconded. Discussion?

COMMISSIONER LANNI: I would move a friendly amendment, just to clarify. When you say so that there is no confusion as to what, I would add forms of gambling constitute. Forms of I would add in there so that it’s not confusing as to what gambling is.

COMMISSIONER LOESCHER: Madam Chair, I accept the friendly amendment.

COMMISSIONER LANNI: It’s the second line. So that there’s no confusion as to what forms of gambling constitute. If you say what gambling I think it’s a little less specific.

COMMISSIONER LOESCHER: Madam Chair, I accept the amendment.

CHAIRPERSON JAMES: Further discussion? Commissioner McCarthy?

COMMISSIONER McCARTHY: As I read this, this goes to the heart of that much-disputed section of the federal law which presently seems to give states the power to prohibit gambling from tribal gambling operations if it is not allowed to any other citizens of that state. Am I correct on that, Mr. Loescher?

COMMISSIONER LOESCHER: You are partially correct. The law says citizens -- there’s three things, citizens, entities, and organizations. There’s three and you’ve left out the other two by just limiting our language to citizens. What I want is the broader language that is included in IGRA’s law. I don’t think that should be objectionable in this context.

COMMISSIONER McCARTHY: Does the effect of your
striking these lines diminish the authority, current authority of
a state government under federal law --

COMMISSIONER LOESCHER: No.

COMMISSIONER McCARTHY: To prohibit gambling by any
tribal casino if they do not allow other citizens of their state
the right, the privilege, to operate gambling?

COMMISSIONER LOESCHER: Madam Chair, I believe not,
because the last sentence of this proposal, Indian gambling should
not be inconsistent with the state’s overall gambling policies.

COMMISSIONER McCARTHY: The way I interpret the
language that’s being proposed stricken is that that language
would not allow tribes to operate other forms of gambling not
available to the citizens of that particular state. For instance,
here in California, since we don’t have slot machines, tribes
would not be allowed to operate slot machines. Then there’s the
argument that they’re technologically similar to lotteries.

CHAIRPERSON JAMES: Commissioner Wilhelm?

COMMISSIONER WILHELM: I’m trying to listen carefully
to Commissioner Loescher’s comments here. I think it’s fair to
say that the Indian gambling subcommittee worked quite hard to try
to fashion a set of recommendations that the subcommittee could,
and in fact did, as you know, unanimously agree upon. Secondly,
that we tried to write a set of recommendations that we felt
hopefully would be able to be supported by most or all of the
commissioners. In fact that’s what happened.

So I’m, from the perspective of having devoted a great
deal of time, as did the other two members of the subcommittee, to
that balancing effort, if you will, I’m reluctant to try to begin
to try to unravel these things. So I have some difficulty with
the revision as proposed. I do think, however, that Bob makes a
good point, which he made in our last meeting and which I failed
to get my arms around mentally, and that is that in the second
sentence, the one he’s proposing to strike, it really should say,
I think he’s right, citizens, entities and organizations. I think
Bob’s 100 percent right about that. And so to that extent, I’d be
willing to entertain, or rather to support an amendment that would
fix that particular problem.

CHAIRPERSON JAMES: Bob, would you be prepared to
accept a friendly amendment that changes that to citizens,
entities and organizations?

COMMISSIONER LOESCHER: Madam Chair, I think the
progression should be to consider this motion, and if it fails
then entertain that one.

COMMISSIONER WILHELM: I think Bob’s right, and again,
I -- just speaking for myself as one member of the subcommittee,
I’m reluctant to substantively undo the balancing act that we
worked --

CHAIRPERSON JAMES: The motion that we have before us
is the motion which has been seconded. It’s the motion to strike
that language. Are you ready for a vote? All in favor of
striking the language? Any opposed? The motion fails. Two
abstentions.

COMMISSIONER BIBLE: I would move, Madam Chair, to
amend the second sentence to reflect this, as Bob has suggested,
citizens, entities and organizations.

COMMISSIONER WILHELM: I would second the motion. Call
the question.

CHAIRPERSON JAMES: That sentence would -- go ahead,
your voice is better than mine.

COMMISSIONER WILHELM: Further, the Commission recommends that Class III gambling activity should not include any activities that are not available to other citizens, entities or organizations, I guess it should be in the state, regardless of technological similarities. I think what it means is available in the state.

COMMISSIONER LANNI: Shouldn’t it be "a" state instead of "the" state?

COMMISSIONER WILHELM: Yes.

COMMISSIONER McCARTHY: It’s your feeling that this does not diminish in any way current authority of states to prohibit gambling proposals by tribal casinos, for that matter non-tribal casinos, if that form of gambling is not allowed to other citizens, entities, corporations, etcetera, of that state?

COMMISSIONER BIBLE: The answer to the question would be yes. I think Bob’s point is that if we limit it only to citizens, we might -- in a particular sense, as Bob says, we’re not tracking IGRA, that limiting it only to citizens and not encompassing other entities and organizations, we might inadvertently be recommending a narrower range of opportunities to tribes than to others in that states.

COMMISSIONER MOORE: Probably should be further amended so that it would be on the same term, because if you expand it into organizations, for instance if you have Las Vegas nights in the State of Connecticut where you offer roulette once a quarter, would that entitled you to operate roulette 24-7?

COMMISSIONER WILHELM: For the same reason that I opposed the deletion of the second sentence, I would oppose trying
to rescramble this. I think we’ve done as good as we can do with this except for this conforming --

CHAIRPERSON JAMES: The question has been called. The sentence as it currently stands is -- would you read it one more time?

COMMISSIONER WILHELM: Further, the Commission recommends that Class III gambling activities should not include any activities that are not available to other citizens, entities and organizations in a state, regardless of technological similarities.

CHAIRPERSON JAMES: All in favor? All opposed? Motion carries.

COMMISSIONER LOESCHER: Thank you, Madam Chair.

CHAIRPERSON JAMES: Thank you, Commissioner Loescher.