CHAIRPERSON JAMES: Mr. Scheppach.

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

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

As of today 146 tribes have concluded 171 compacts with 24 states. With states and tribes continuing to negotiate new compacts and renew existing compacts every year the nation's governors do not feel that IGRA needs to be significantly altered. The governors have recently announced their intention to negotiate with tribes and the U.S. Department of Justice and
Interior for improvements and clarifications in IGRA that would benefit all parties. Staff meetings will begin later this summer in preparation for a meeting of principals in November.

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

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

The U.S. Court of Appeals for the Ninth Circuit reached a decision consistent with the National Governors' Association policy in the case of Rumsey. In Rumsey, the Court found that IGRA neither compels a state to negotiate for gaming activities or devices that are prohibited by state law, nor requires a court to refer to the U.S. Supreme Court's decision of Cabazon to interpret the law. The Supreme Court denied the tribe's request for review of the Rumsey decision effectively endorsing the Ninth Circuit's interpretation of IGRA.
Not all forms of Class III gaming are the same. States have a fundamental public policy interest and responsibility to distinguish among different gaming activities and devices, choosing to legalize some and prohibit others. The Governors agree with Rumsey that a state need only allow Indian tribes to operate games that other in the state can operate but need not give tribes and others -- that others cannot have. Moreover they believe that the Rumsey decision reflects what states believe to be the original intent of Congress.

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

We also have considerable problems with the so-called good faith negotiation requirement. IGRA currently places a good faith negotiation requirement on the states but not on the tribes. The good faith negotiation standard should be clarified and applied to both states and tribes. The burden of
establishing lack of good faith should be on the party making such an assertion.

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

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

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

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