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Joe Grayson, Jr.
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United States House of Representatives
Committee on Natural Resources
Oversight Field Hearing on "Oklahoma Indian Issues:
Proposed Regulations Governing Economic Development"
Northeastern Oklahoma A&M College
Student Ballroom
200 I Street, NE
Miami, Oklahoma
20 February 2008
8:30 a.m.

Testimony of:

Chadwick Smith, Principal Chief
Cherokee Nation

Good morning Chairman Rahall and Distinguished Members of the Committee. My name is Chad Smith, and I am the Chief of the Cherokee Nation, We are the second largest Tribe in the United States (278,000 citizens). We are a sovereign nation within a nation, a tripartite government, our jurisdiction covers a 14 county area in northeast Oklahoma (over 7,000 sq mi.), the Cherokee Nation is the largest employer in northeast Oklahoma (6,500) and our Capitol is located in Tahlequah, Oklahoma. The Cherokee Nation existed before the United States and the State of Oklahoma and has been in existence since time immemorial. I am honored to be here.

On behalf of the Cherokee Nation, I thank you for the opportunity to appear before you today to discuss a matter of the utmost importance to the people of the Cherokee Nation. This is an issue that also impacts Indian Nations across the country engaged in the business of tribal gaming. Today's hearing is evidence of the Committee's acknowledgement of the magnitude of the challenge being faced by tribes in light of the regulations being proposed by the National Indian Gaming Commission (NIGC).

Nearly twenty years ago, the Cherokee Nation launched one of its most successful economic development ventures when it opened its first gaming facility. Though small, this business produced substantial revenues and provided approximately 200 jobs to Cherokee citizens. Through hard work and determination, the Cherokee Nation built upon this success and now operates nine gaming facilities throughout its fourteen county jurisdiction in northeast Oklahoma, providing employment opportunities for over three-

thousand thirty-two hundred Cherokee citizens, members of other Nations, and non-Indian Oklahomans.

Cherokee Casinos contribute 100 percent of their revenues towards vital government programs and job growth initiatives. These contributions have enabled the Cherokee Nation to translate this economic success into the development of other economic development business ventures. Likewise, successful non-business economic development ventures – those designed to improve the quality of life of our citizens – were made possible and are a direct result of the revenues produced by our gaming facilities. Through gaming revenues, the Cherokee Nation has been able to provide much needed health care programs and facilities to the Nation's youth and elderly; has been able to provide opportunities for higher learning through education scholarships, and; has been able to create infrastructure through the building of roads, bridges, and housing that will allow our citizens to live and work and remain in the communities of their childhood.

These initiatives have helped multiply Cherokee jobs more than thirty-fold over the last 20 years and greatly aided our ability to address social concerns. The implementation of the NIGC proposal would eliminate more than \$23 million in direct services and the jobs the services have helped create in Cherokee communities. The causal relationship that gaming revenue has with other businesses and the planning in the context of infrastructure development and Native peoples access to necessary health care would suffer if the current NIGC policy proposal actualized.

The integration of our communities benefits all citizens in the State of Oklahoma in a way that is unparalleled in Indian country due to the non reservation status. All of our neighbors benefit through contributions made to local Boys and Girls clubs, Fire Departments, Road partnerships and Self help Waterlines. The Income and sales taxes of our many employees, the purchase of goods & services, utilities, taxes paid by businesses contributes to the effect of the money multiplier and makes the gaming revenues that the Cherokee Nation generates turn over 3 to 5 times in our communities and this helps drive and sustain the Oklahoma economy. In other words Mr. Chairman a rising tide lifts all ships and for the Cherokee Nation, a better quality of life in our communities and for our citizens means a better quality of life for all Oklahomans. The overall effect the Cherokee Nation has on northeast Oklahoma is simply Common Values – Common Ground.

Gaming profits are helping save lives in the Cherokee Nation. Take Tod McBrien of Muskogee for example. He was Twenty-three years old when he was first diagnosed with a rare cancer of the eye. The doctors in his area told him that they would most likely have to remove his eye, severely disfiguring him in the process. His doctors agreed that there were better treatments, but only outside of Oklahoma. Tod knew he could count on the Cherokee Nation to make sure he got the best health care possible, and he was right. A program funded by gaming money helped send Tod to Detroit, then to Columbia Medical Center in New York City. Today, Tod is cancer free and he and his wife are raising two young children.

Not only are Cherokee Nation funds able to assist in saving lives with the help of gaming money, we are helping integrate these people back into the workforce. Thirty-six year-old Daryl Bailey of Roland was crushed on his motorcycle by a motorist who didn't have insurance. Due to his extensive injuries, he wasn't able to keep a job and having trouble getting services from a hospital that would agree to treat him without a guarantee of payment. Daryl was discharged from the hospital where he developed a blood infection in his leg and nearly died. But thanks to a program funded by gaming revenues, not only was the Cherokee Nation able to have money allocated that was used to help save Daryl's life, the Nation was able to get him well enough to go back to work. Today, he has a steady job working for the city in Roland and has medical insurance.

Finally, for another example of gaming revenues helping our Cherokee citizens, look no further than the Eagle family of Stilwell. Mike and Erica Eagle were raising seven children in a two bedroom mobile home. Their youngest son, Mykel (Michael) was born blind. Their housing was sub-standard and certainly not accommodating for a disabled three-year old. Mike Eagle works two jobs, just so they can get by and keep their family together, and Erica works part-time and cares for the children. But life is getting better for the Eagles. Through the Cherokee Nation self-help housing program, which is paid for with gaming revenues, the Eagles and members of their community are building a home that is warm, clean, stable and most importantly, safe for three-year old Mykel. When the Eagles are finished with their home, they will come together with other members of the community and help *them* build their homes. Not only are these citizens of Stilwell building homes, they're creating change through building stronger communities.

The Cherokee Nation knows that without jobs, a nation can not sustain itself. That's why we reinvest much of our gaming profits in good jobs, located in Cherokee communities. Tamara Cooksey, one of our longest-term gaming employees, began working for Cherokee Casinos in 1990. She was 19 years-old and began as a secretary. Now, almost 20 years later, Tamara has climbed the ladder as a junior accountant, senior accountant and now serves as a business processes analyst. She's also taken advantage of the company's tuition reimbursement program to earn her college degree. Tamara has been able to secure a corporate level management position, all while living and raising her children in her hometown of Marble City. That's what gaming profits have done for the Cherokee Nation—improved the lives of all these people and thousands and thousands of others.

These efforts began with and are sustained by the revenues produced from our gaming facilities. Now, however, the NIGC has promulgated proposed rules that threaten the Cherokee Nation's ability to empower its journey along the path of economic success. The effects of the proposed game classification standards and the proposed change to the definition by which all games offered under the Indian Gaming Regulatory Act (IGRA) will be measured presents the single most dangerous threat to tribal gaming economic development that has confronted tribes in many years.

In 2007, gaming revenues kept stoves on throughout Indian country, put more than one-million dollars toward waterlines and funded substance abuse programs. The services and programs funded through gaming revenues reaches Native and non-Indian communities through increased community-building and human development. This is adding to the increasing quality of life throughout the Cherokee Nation. Similar Indian Nations are experiencing trends of economic development that posture them for more culturally appropriate decision-making.

In 1997, the Cherokee Nation began its venture into the modern gaming age with the offering of the first electronic bingo machines. Shortly after their introduction, the machines were shut down in a midnight raid launched by the local United States Attorney. These machines ultimately became the focal point of a Supreme Court ruling that upheld the tribal interpretation of the IGRA with respect to using modern methods for playing the game of bingo and applying the maximum flexibility in which to offer these games as it was envisioned at the time of the IGRA's passage. Many other federal court decisions would be handed down in later years that also recognized the tribe's capacity for discerning what games could be legally offered under the IGRA.

The tribal interpretation of the IGRA stated that the statutory criteria for determining what constitutes the game of bingo was applied to the games offered in tribal gaming facilities. The consistent application of this simple interpretation was repeatedly accepted by the federal courts. The NIGC interpretation, on the contrary, inserted arbitrary beliefs that were not founded in any statute or court decision.

The proposed regulations now threaten to undo those Supreme Court and federal court rulings. The NIGC is attempting to insert the same erroneous interpretation of the IGRA that was rejected by the federal court system. Simply stated, the NIGC is seeking to legislate through regulation.

Through the proposed regulations, the NIGC has stated that it seeks to provide a "bright line" for determining legal Class II games to be offered under the IGRA and to provide a stable playing field that tribes and others can rely on for the development of Class II games. Achieving this desire does not seem possible given the results of the most recent economic impact study commissioned by the NIGC. This stated that the NIGC's own expert conservatively predicts that to implement the proposed rules would result in the financial loss to tribes of over \$1.2 billion dollars. The fiscal impact can not be weighed exclusively in dollars, but in the shared experiences of Cherokee people who will have less opportunities to pursue the empowering programs currently funded by gaming revenues.

The negative impact of the proposed regulations stated above is only for direct gaming dollars and I am concerned that it is but the first ripple in a much larger scenario. The lingering effects of the proposed regulations extend the loss into the hundreds of millions on lost non-gaming revenues. Indian and non-Indian businesses alike that rely on business with tribal gaming facilities would also be casualties of the proposed regulations.

Equally important, if not more so, is the estimated loss of over three thousand jobs, at a minimum. The loss of these jobs and their associated payroll would have a devastating effect on tribal communities, many of which already exist at or below national poverty levels.

The proposed rules, if implemented, would further create confusion and raise concerns amongst Class II gaming investors by dramatically impacting the economic viability of existing Class II games and will make uncertain the development of a game that would be accepted by the public at the same level as existing games. As a result, the NIGC will be destabilizing the Class II market and will hinder the further development of Class II gaming. This further renders the ability of tribes to use gaming revenues to fund business diversification efforts beyond gaming.

The negative impact on tribal sovereignty is also a widely acknowledged effect of the proposed rules. If implemented, the NIGC would be effectively eliminating the only viable alternative to Class III gaming and would place tribes in a much diminished capacity to negotiate compact terms. For those tribes that have successfully negotiated compacts, the removal of this vital option would impede a tribe's ability to renegotiate on equal footing with its respective state. Class II gaming continues to play a vital role in the gaming industry even though Tribes have Class III compacts with States. The revenue from Class II gaming ALL goes to services within their respective Nation. The benefit goes back to the communities where the revenue was earned. In revenue sharing compact agreements, we can make no such assurances.

Further, the position of tribes under the IGRA is that of the primary regulator of Class II gaming. Tribes are currently tasked with reviewing and approving all Class II games. Under the proposed rules, however, tribes would be stripped of this responsibility, which would then be placed under the direct control of the NIGC. I do not believe the framers of the IGRA had this arrangement in mind in 1988.

In September 2006, after receiving the results of the first economic impact study conducted using the first draft of the proposed regulations, the NIGC recognized that the regulations as proposed were inadequate. This realization, along with the NIGC's decision to revisit the regulations, led to their withdrawal in February 2007. The results of the second and most recent economic impact study still paint a stark picture, one that cannot be ignored. I therefore urge the NIGC to withdraw the proposed regulations, return to the drawing board, and consult with tribes on ways to meet the mutual goal of protecting the most robust economic development tool available to tribal governments.

I sincerely thank the Chairman and members of the Committee for their thoughtful consideration of the concerns of the Cherokee Nation. I look forward to the opportunity to meet with you in the future and address any of your specific concerns.