STATEMENT OF
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SAGINAW CHIPPEWA TRIBE OF MICHIGAN

House Resources Committee
Hearing on H.R. 2176 and H.R. 4115
February 6, 2008

Mr. Chairman, Members of the Committee, my name is Fred Cantu and I am the Chief of the Saginaw Chippewa Indian Tribe. I appreciate the opportunity to testify today against H.R. 2176 and H.R. 4115, two bills that will undermine the Indian Gaming Regulatory Act, cause great harm to our tribal specifically, and set a negative precedent for Indian Tribes across the country.

Mr. Chairman the two bills before the committee would allow the Bay Mills Tribe and the Sault Ste. Marie Tribe to build two casinos, each 350 miles from its reservation, in the historic and aboriginal territory of my Tribe, the Saginaw Chippewa Indian Tribe of Michigan.

It is important to understand both Indian gaming history and the treaty history of the Michigan Indian Tribes to truly grasp the effect of these two bills.

Between 1795 and 1864 the United States negotiated several treaties with the Michigan Indian Tribes. Beginning in 1795, a group of my ancestors, who descend from the Saginaw, Swan Creek and Black River Chippewa Bands, began negotiating and entering into treaties with the United States of America. They signed these treaties on their own, or with a group of Ottawas and Potawatonis, whose lands were located adjacent to our lands in southeast Michigan. On November 17, 1807, the Treaty of Detroit (7 Stat. 105), a land cession treaty, was signed by the group of Chippewas, Ottawas and Potawatomis and ceded most of the lands in southeastern Michigan, including the lands surrounding the Port Huron area, to the United States. However, this treaty specifically reserved the area of Port Huron, along with three other areas to the Chippewa. These areas were later ceded to the United States by the Treaty of May 9, 1836 (7 Stat. 503).

These are the lands that my ancestors hunted and fished for hundreds of years. It is the land my ancestors sold to the United States government nearly 200 hundred years ago. And these are the lands that Bay Mills and Sault Ste. Marie Tribes want to build casinos despite the fact that their reservations are several hundred miles away in the Upper Peninsula. That is why my Tribe and so many other tribes oppose these bills.

In 1986, Congress passed the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act ("Saginaw Judgment Funds Act"), for claims in southeast Michigan, including the lands in Pt. Huron and Romulus, to provide compensation for

claims the Saginaw Chippewa Tribe made and won before the Indian Claims Commission. The Bay Mills and Sault Ste. Marie Tribes were not participants in the settlements legislation, even thought they attempted to claim these lands before the Indian Claims Commission. This is because the Indian Claims Commission found their claims to be totally without any supporting evidence and threw them out (a copy of the Indian Claims Commission decision is attached to this testimony). This is because the Bay Mills and Sault Ste. Marie tribes were not signatories to the 1795 Treaty of Greenville, the 1807 Treaty of Detroit, nor the Treaty of 1819, which ceded the area to the United States. The Saginaw Judgment Funds Act clearly defines the Saginaw Tribes Settlement Area (the basis for the ICC claim) lands in southeast Michigan, including Port Huron and Romulus.

In 1997, Congress approved the Michigan Indian Land Claims Settlement Act, an $80 million dollar plus settlement for five Michigan Tribes, including the Bay Mills and Sault Ste. Marie Tribe for claims in the northern and western portion of the Lower Peninsula and the Eastern Upper Peninsula., based on treaties that were signed in 1836 and 1855. The Saginaw Chippewa Tribe was not, and did not seek to be, a part of that settlement agreement because the lands that were the subject of the legislation are not the ancestral lands of the Saginaw Chippewa.

Both settlement agreements were very clear on the ancestral and historical lands of each Tribe. In the case of the Saginaw Chippewa, the Indian Claims Commission specifically rejected claims by the Bay Mills and Sault Ste Marie Tribes, in two successive cases dealing with areas in southern Michigan, including the area surrounding Port Huron, stating that there was no evidence to support their assertions. (the decisions are attached) Based on the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act and the Michigan Indian Land Claims Settlement Act, the Saginaw Chippewa ancestral territory encompassed central and southeastern Michigan and the Bay Mills and Sault Tribe ancestral territory was located in the northwestern portion of lower Michigan and the Upper Peninsula.

The Saginaw Tribe does not believe that the land claims exception to the Indian Gaming Regulatory Act was meant to allow tribes to assert land claims in one area in exchange for lands and casinos hundreds of miles away from the area where the land claim occurs. This view is also shared by the founders of the Congressional Native American Caucus and they have shared those views with the committee in previous years.

The Indian Gaming Regulatory Act, 25 U.S.C. §2719, identifies which lands can be used for Indian Gaming, and is divided into two sections. The first identifies that tribes may game on Indian lands and reservation lands prior to October 17, 1988, the date IGRA was enacted. The second section deals with exceptions to that limitation. The exceptions are also divided into two categories: 1) Off-reservation acquisition, and 2) Acquisitions which place tribes who might not otherwise be allowed to game because they did not have lands in 1998 on an equal footing with tribes who did have land.

The off-reservation section, 25 U.S.C. §2719(b)(1)(A) is very clear in its requirements. A tribe who chooses to game outside of its reservation, may do so if it satisfies two requirements. First, the Tribe must make a showing to, and the Secretary of the Interior must find, that the off-reservation proposal is in the best interest of the Tribe and is not detrimental to the surrounding community. Second, the Governor must concur with the Secretary's determination. The law doesn't pose any limitations on the distance a tribe may go from its reservation or whether it is even limited to stay within a specific state. As long as they satisfy those two requirements, they could potentially game anywhere in the United States.

The second set of exceptions are different, located 25 U.S.C. §2719 (b)(1)(B)(i)-(iii), and relate to righting past wrongs for tribes who may not otherwise be able to game. These exceptions tie the land on which the tribe can game to the historical territory of the Tribe. These exceptions allow tribes to game on lands acquired after 1988 when a tribe is recognized when they establish their reservation, allow a tribe that has been restored to Federal recognition to acquire lands on which to game, and also allows a tribe to acquire lands in settlement of a land claim. In every case the Department of Interior reviews where a tribe is seeking to use one of these exceptions to acquire land for gaming, they seek to assess whether the tribe in question has historical and cultural ties to the land in question. With regard to restored lands and initial reservations, the Department has developed rigorous tests for determining whether a tribe is within its aboriginal and historic territory. With regard to the land claims exception, there has only been one time a tribe has used this exception to acquire land for gaming. In that case, the land at issue was within the tribe's land claim area and was confirmed as such by the Department of Interior. We believe this is what Congress truly intended, that a tribe using this exception would acquire lands in or near the land claim area for gaming, when they created the land claims exception.

That is not only our view, but as we mentioned earlier, it is the view of the founders of the Native American Caucus who has expressed the same view in letters to the Committee.

Mr. Chairman, if the Congress passes this legislation, every tribe in the United States with a potential land claim could petition Congress to settle the claim, and allow them build a casino anywhere in the United States where gaming is viable. The Saginaw Tribe does not believe Congress should endorse such tactics because they are contrary to the intent of the Indian Gaming Regulatory Act.

The passage of this legislation will encourage tribes to create or exploit a land claim by seeking to replace lost lands with lands in profitable gaming markets, without regard to whether they are entering into the territory of other another tribe. This was never the intent of the Indian Gaming Regulatory Act.

In addition, in 1993 the Governor of Michigan signed a gaming compact with seven federally-recognized Tribes in Michigan, including the Bay Mills Tribe, the Sault Ste. Marie Tribe and the Saginaw Chippewa Tribe. Section 9 of that compact stated that no

tribe could conduct off-reservation gaming unless all the tribes agreed to a revenue sharing plan. This provision has worked well to prevent the proliferation of off-reservation gaming in the state.

Unfortunately, today we find the Bay Mills and Sault Ste. Marie Tribes trying to circumvent this compact provision by coming to Congress to settle a land claim that has never been validated. In fact, the Bay Mills Tribe has lost this land claim in both federal and state courts on both the merits and on procedural grounds. The Bay Mills Tribe lost in federal court because the court ruled that the Sault Ste. Marie Tribe was an "indispensable party" to the lawsuit since they both were the same Tribe at one point and had the same claim to Charlotte Beach if one was ever proven. In the state court, the Bay Mills Tribe lost on the merits and it was eventually denied hearing by the U.S. Supreme Court. At this time, no valid land claim has ever been proven in these cases. Not one.

Moreover, these bills would have Congress for the first time pass a gaming compact in federal legislation. Under IGRA, the states and tribes negotiate compacts and in the state of Michigan, these compacts are approved by the Michigan State Legislature. Under these two bills, gaming compacts would be approved after being negotiated by the Governor but not having been approved by the Michigan State Legislature. This would be unprecedented and undermine the authority of the Michigan Legislature and the spirit of the Indian Gaming Regulatory Act.

These bills are highly controversial within the State of Michigan. Numerous legislators within the state are opposed to the bills, and they have sent you correspondence to confirm that fact. The City of Detroit is opposed to this legislation and they have sent you a letter to state their position. Numerous Members of the Michigan delegation are opposed to this legislation.

These bills are opposed by tribes across the country. The tribes that oppose these bills recognize the dangerous precedent these bills would set for Indian Country. In addition, the practice of one tribe going into the historic and aboriginal territory – treaty territories – is so roundly rejected in Indian Country that the National Congress of American Indians and the National Indian Gaming Association have issued a joint resolution urging tribes not to conduct themselves in this manner.

Not only are these bills controversial, they are bad policy.

On behalf of the Saginaw Chippewa Indian Tribe of Michigan, I ask the Committee to reject these bills and stop every effort to get them enacted into law.