

UNITED STATES SENATOR GEORGE V. VOINOVICH
OVERSIGHT HEARING ON IGRA EXCEPTIONS AND OFF-RESERVATION
GAMING
SENATE COMMITTEE ON INDIAN AFFAIRS
JULY 27, 2005

Mr. Chairman, I thank you for holding this hearing today. As you know, I am increasingly concerned about the subject of today's hearing – the move to take gambling off-reservation by Indian tribes across the country.

As you know, this explosive growth of Indian gambling is becoming a problem in my home state of Ohio and a number of other states nationwide.

Currently, there are over 400 tribal casinos in 30 states. The tribes who run these casinos have seen a substantial financial benefit to their tribes. Last year, the annual revenue of Indian casinos had grown to almost \$19.5 billion – with the continued expansion of Indian casinos, that annual revenue will continue to grow.

To build on this financial success of tribal casinos, some Native American tribes are aggressively seeking to take gambling off reservations and into local communities all across the country – from states like California to New York, Oregon to Florida, and my home state of Ohio.

In this practice, commonly referred to as “reservation shopping,” tribes are looking to acquire new, non-contiguous land to open casinos near large communities or next to major roads with easy access.

A loophole in the law that regulates Indian gaming, the Indian Gaming Regulatory Act, allows the Department of Interior to take land into trust for a tribal casino, even at great distances from their home reservation.

While some casinos on tribal reservations have been very successful, many reservations are located in rural areas at great distances from population centers. These tribes are looking at lands hundreds of miles from their reservations and near population centers like Cleveland, Chicago, Miami and the Bay Area of California.

In early 2003, a tribe secretly began courting communities in Ohio with the lure of financial gain from casinos. Since then, agreements have been reached between the tribe and four separate mayors in the state to site casinos in their communities under the pledge that a casino complex would bring new jobs and increase the tax base. All of this has been done without any land claims filed or before any determination has been made that a land claim will be successful. The Eastern Shawnee, and the developers behind their casino plans, are so confident they can pull off their land claim, they are garnering political support for casinos in my state.

Last month, the Eastern Shawnee Tribe of Oklahoma filed a land claim in federal court for the rights to 146 square miles of land and hunting rights to 4 million acres of land throughout the state. To put this in perspective, 146 square miles is almost the size of Cleveland (77 square miles) and Cincinnati (78 square miles) combined. This claim is against the State of Ohio, 36 counties in the state, a number of cities and private landowners.

As indicated in this article from *The Columbus Dispatch*, the Eastern Shawnee's lawyer has stated that the tribe will drop the land claim in exchange for the right to put casinos in these communities throughout the state. Mr. Chairman, I ask unanimous consent that this article be made a part of the record.

The Eastern Shawnee, and the groups financing their efforts in Ohio, are clearly blackmailing the State and they are not even being subtle about it. The reality here is that they were looking at location and then looking at the legality of bringing in a casino.

By filing this claim, the Eastern Shawnee tribe is exploiting loopholes in existing federal law. The Indian Claims Commission Act of 1946, which was created expressly to resolve land claims against the federal government, required that any claims be filed within five years of enactment. Because the tribe is now precluded from suing the federal government, they are suing the state.

The Eastern Shawnee was successful in pursuing a claim against the federal government in the Indian Claims Commission. In the 1970s, the Commission concluded that the claims against the government were valid and Congress appropriated funds to pay these claims.

Mr. Chairman, I respectfully request that, as you develop legislation in your committee, you consider that tribes are now using land claims against state and local governments as well as private landowners as leverage for casinos. The real goal behind this land claim is to site casinos, not to seek financial restitution. As you consider this, also consider the need to strengthen IGRA to specifically prohibit tribes from moving across state lines, hundreds of miles from their reservation. Clear language such as this would prevent frivolous lawsuits like the one pending in Ohio.

Another loophole that the Eastern Shawnee is taking advantage of is the ambiguity in how the provision in the Indian Gaming Regulatory Act (IGRA) which determines which gambling activities are permitted.

As you know, IGRA defines casino-style gambling as Class III which includes:

- slot machines,
- black jack,
- craps,
- roulette,
- some lotteries and
- pari-mutuel racing.

This class of gambling activity on Indian lands can only be, and I quote, “located in a State that permits such gaming for any purpose by any person, organization or entity.”

It is unclear whether this means that the statutory language should be read and applied in a class-wide or categorical sense or whether it should be read and applied on an activity-by-activity basis.

District and circuit federal courts have both considered this question. In 1991, a District Court in Wisconsin ruled that if a state permits one type of class III gaming, then all other types of class III gaming can be conducted in that state under the IGRA.

On the other hand, in 1993 and 1994, the Eighth and Ninth Circuit Courts of Appeals construed the language of the IGRA to mean that class III gaming in a particular state is limited under the federal law to the specific activities that are permitted under that state's laws.

Earlier this month, the 10th Circuit revealed that these uncertainties continue by finding in favor of the Northern Arapaho tribe who wants to build a casino in Wyoming. Gambling is illegal in the State of Wyoming, except for social and charitable gambling. In this instance, the tribe contended that it is entitled to offer full, casino-style gambling on its reservation because the state allows casino-style activities for social or nonprofit purposes.

In Ohio, gambling for commercial purposes is prohibited by the State Constitution. However, pari-mutuel racing and lottery are both permitted as well as charitable gambling on a very limited and controlled basis.

The Eastern Shawnee and the developers they have partnered with recognize this ambiguity in existing federal law. In order to address this loophole, I will be introducing legislation today that clarifies congressional intent that the provision in IGRA permitting class III gambling only applies on an activity by activity basis and not the full gamut of casino gambling.

Mr. Chairman, I respectfully request that you hold a hearing on the questions that are raised by the ambiguity in the law and that you consider my bill as you develop legislation to address the unintended consequences of the Indian Gaming Regulatory Act.

The Eastern Shawnee already operates a casino on the reservation at the border of Oklahoma and Missouri. Chief Enyart testified before the House Resources Committee earlier this year that their economic potential is limited by the rural character of where the casino and reservation are located.

This tribe has been courted by investors with the attraction that they can find dollar signs out of state - dollar signs that they will make at the detriment of my constituents. Ohio is

a much larger and more populated state. In fact, the population of Ohio is more than three times the size of the population of Oklahoma.

The Eastern Shawnee and the financial backers of their proposals are promising local communities in Ohio that casinos and gambling will address the economic problems Ohio is facing right now.

Mr. Chairman, that is another issue that I encourage you to consider as your committee continues to investigate this issue – who is actually funding the efforts to bring Indian casinos off-reservation and across state lines. In Ohio, it is well recognized that the Eastern Shawnee efforts are being paid for by a number of unnamed private investors.

With private investors such as these, Indian gaming and its consequences have gone far beyond what was originally intended by Congress when IGRA was passed. This has become a gigantic shell game, instead of righting earlier wrongs against tribes. We are no longer looking at giving tribes the self-sufficiency needed for economic gain, but rather lining the pockets of investors with large sums of money.

Mr. Chairman, this issue is ultimately a public policy question. I oppose gambling in all forms, whether commercial or Indian. To me, this is ultimately a question of states' rights – one that our founding fathers addressed in the 10th amendment. I believe that states should have the authority over whether or not to allow for gambling within their borders. However, in Ohio we are facing blackmail by Indian tribes and the financial backers who are funding these efforts.

Some of my colleagues may ask why I am opposed to the prospect of gambling in Ohio. The answer is simple. This issue is really about families. Back when I was a state representative and just beginning my career in government, I was asked how I would confront the problems of Ohio if I had a magic wand.

My answer then was the same as it is now: I would use it to reconstitute and protect the family, which is the foundation of this country and the reason why most of us get up in the morning, go to work and hurry to get home at the end of the day.

Proponents of casino gambling never mention the taxes that will be taken *off* the table by casino gambling. Casinos are most destructive to those citizens least able to cope with financial loss. National statistics underscore that every tax dollar that comes from casino gambling results in \$3 in social welfare costs. These are lousy odds when compared to the cost of tax dollars from other things the people would do with their money.

That doesn't address the devastating social costs of gambling. Gambling leads to spikes in violent crime, embezzlement and fraud. Bankruptcy rates in casino counties around the U.S. are 18-35 percent higher than in casino-free counties. Divorce and suicide rates are higher for addicted gamblers than non-gamblers.

Mr. Chairman, as you continue your oversight of the Indian Gambling Regulatory Act, I encourage you to look closely at the issues I've raised today. Thank you for the opportunity to testify before your committee.

###