Statement of
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Chickasaw Nation
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Committee on Natural Resources
Field Hearing on Tribal Economic Development

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Mr. Chairman and Distinguished Members of the Committee:

On behalf of the Chickasaw Nation, I would like to extend our deepest appreciation to the Committee for this opportunity to testify today. Allow me also to convey on behalf of Governor Anoatubby a warm welcome. We are so pleased that the Committee has elected to conduct this hearing in Oklahoma and grateful for your interest in matters of such importance not only to the Chickasaw Nation, but all of Indian Country.

Since 1988, the Chickasaw Nation has undergone an economic transformation of a magnitude hardly imaginable. Just eighteen years ago, the Nation's entire staff consisted of a mere handful of tribal employees. Today, the Nation employs more than 8,000 workers in permanent jobs with fair wages, excellent benefits, and opportunities for the continued advancement of our employees. Where once, most of the Nation's funding was provided through the BIA or other federal agencies, the vast majority of the Nation's funding comes from the Nation's economic ventures, which range from gaming operations to a chocolate factory. We also own and operate numerous other businesses, including two radio stations and a bank among others.

Our governmental institutions have undergone an equally dramatic transformation and we are delivering essential governmental services that today far exceed what were

once our most ambitious goals. Take, for example, the Nation's law enforcement capacity: the Lighthorse Police Department (LPD), which must cover over thirteen (13) counties, has twenty five (25) full-time officers, six (6) reserve officers and seven (7) support personnel. This past year, nearly two-thirds (2/3) of the LPD's budget was funded directly by the Nation, with only about thirty-eight percent (38%) of its funding from federal aid.

Since the tribe assumed the law enforcement functions of the Bureau of Indian Affairs, police manpower in Chickasaw Indian Country has increased by more than three hundred and fifteen percent (315%), and the average response time to calls has decreased by about two-thirds (2/3), meaning the LPD responds in an average of about thirty five (35) minutes, compared to the previous response time of over ninety (90) minutes when the BIA administered the program with less than five (5) people. As part of its efforts to reduce crime, the LPD The department now has developed K-9 units with two (2) dogs trained in drug-detection and one in explosives detection. We provide school and community crime and substance abuse prevention programs, including Drug and Alcohol Resistance Education (DARE) and the Gang Resistance Education and Training (GREAT) programs.

The establishment of these and many many other programs are services would not have been possible were it not for the Nation's gaming revenues, which have fueled the Nation's growth and provided us the means to educate our people, care for our elders, and improve health care services for all. The investments we have made, in turn, have made an immense difference in the lives of our people and the communities in which they reside, and I would add have also saved lives and fostered the safety and well-being of our families and communities.

Given the critical importance of the Nation's gaming revenues to the well-being of our people, we are deeply troubled by the National Indian Gaming Commission's (NIGC's) determination to promulgate regulations which according to the NIGC's own experts will produce a negative annual economic loss of more than one billion dollars. These rules, particularly the proposed classification standards and the changes it proposed in its definitions will fundamentally alter the legal underpinning of Class II gaming and render unlawful Class II gaming as we know it today.

Even more troubling, the NIGC has elected to proceed with its proposals over the virtually unanimous objections of the tribal leadership and the industry at large. We have seldom encountered circumstances in which two sides remain as deeply polarized at the end of a process as at the beginning, but such has been the case with the NIGC for nearly five years. In our experience, it is nearly always possible to find a common ground upon which an acceptable compromise can be achieved. Initially, we were confident that the NIGC's establishment of Tribal Advisory Committees, and later a working group comprised in part by leading game manufacturers would result in at least minimally acceptable rules, particularly given that four federal circuit courts had provided clear guidance in relation to the outstanding questions pertaining to electronically aided Class II gaming. It was, therefore, deeply disturbing to discover that the proposed rules are not in line with these decisions in spite of the fact that literally millions of dollars have been invested in reliance on these circuit court decisions and literally a billion dollars in future earnings will be lost annually if these regulations are adopted. It is simply unreasonable for a federal agency to knowingly jeopardize tribal economies and deprive tribal governments of the full benefit of a law specifically designed to promote tribal sovereignty and advance economic development.

As an independent agency of the United States, the NIGC possesses the authority to interpret IGRA independently of other federal departments and agencies, but it does not possess the power to reverse the federal judiciary, which is the branch of government invested with the power to interpret the law. In the proposed rules, the NIGC has opted for the least favorable, most injurious interpretation of the law from the tribal perspective. On the contrary, the NIGC has an obligation to adhere to the interpretation of the courts; to consult meaningfully with tribal governmental officials; and to apply the law fairly. As the Supreme Court has stated, "when we are faced with two possible constructions [of a statute], our choice between them must be dictated by a principle deeply rooted in the Court's Indian jurisprudence: [statutes] are to be construed liberally in favor of the Indians, with all ambiguous provisions interpreted to their benefit." County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251, 269 (1992) (quoting Montana v. Blackfeet Tribe, 471 U.S. 759, 767-768 (1985).

The Indian Gaming Regulatory Act was enacted as a means to facilitate and strengthen tribal governmental capacity and economic development. It is unreasonable to construe IGRA as requiring Class II gaming to be substantially less lucrative than Class III gaming, which appears to be a primary objective underlying the NIGC's proposed regulations. The Committee Report accompanying IGRA at the time of enactment specifically stated that: "The Committee specifically rejects any inference that tribes should restrict Class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting Class II games and the language regarding technology is designed to provide maximum flexibility." Committee Report, 1988 U.S.C.C.A.N. at 3079. Nonetheless, the policy choice reflected in the proposed rule is to so restrict the use of technology as to strip electronically aided Class II gaming of its economic viability.

In our view, it is unreasonable to classify an electronically aided Class II game as Class III gaming based on superficial features. Under IGRA, the game of bingo is bingo so long as the game meets the statutory elements. Class II bingo does not become a Class III game just because the cabinet does not have a sign stating that the game is a game of bingo as is the case in the proposed classification regulation. Nor does a player terminal transform the game of bingo into a facsimile just because there is an entertaining display simulating spinning reels. The amount of the prize is not an element of the game of bingo. A requirement that a game must be prolonged for at least eight or ten seconds in order to qualify as Class II bingo is not an appropriate criteria for classification. In fact, none of these criteria represent appropriate legal elements determinative of the class of a game under IGRA

. To the extent that the NIGC now seeks to revisit the 2002 definitions and issue regulations contrary to the analysis in the game classification decisions of the federal courts, we believe that the agency's proposed rules will produce losses of a magnitude that will ripple through our communities with the force of an earthquake. There is nothing in the preamble of the proposed rule justifying or explaining why or how the legal analysis offered by the Commission in the preamble of the 2002 definitional revisions is flawed. In fact, two federal circuit courts have considered the 2002 definitions and remarked favorably upon them. We further note that since 2002, there

have been no enforcement actions or Johnson Act prosecutions, which is contrary to expectations if the 2002 definitions were legally deficient.

Legal and regulatory stability is essential to any industry. It is contrary to principles of responsible governance for agencies to wholly reverse prior interpretations of law in the absence of a legitimate need or reason. After nearly a decade of litigation, the 2002 revision of definitional regulations produced a level of clarity and certainty that resulted in the stable legal environment we enjoy today. We are bewildered by the agency's commitment to regulations that will restore an environment of uncertainty and instability, and which, at the same time, will produce immense economic harm to tribal governments.

To its credit, the NIGC withdrew its first proposed Class II package based on the economic impact analysis demonstrating devastating financial losses. Unfortunately, the ensuing revisions have done little to rectify or even mitigate the projected losses. The impact of the current proposed rules is projected to exceed a billion dollars and could well prove twice that amount. Federal law recognizes a negative impact of one-hundred million dollars as significant: here we are facing losses at ten times such amount or more, and this is without factoring in the economic ramifications to tribal governments and communities or the readily foreseeable social costs. Neither does the analysis factor in the full impact on local, county, state, and federal governments or schools and charities. Lost jobs and reduced spending directly translates into decreased tax revenue and increase demands on other governments for governmental programs and services.

We view legal and regulatory stability as essential to the ultimate success of tribes in permanently transforming the desperate conditions prevalent in so many tribal communities. We look to the Congress to facilitate our desire to work collaboratively with the NIGC to ensure this much needed stability. Effective communications through the consultation process is an essential ingredient in resolving differences and fostering mutual cooperation. We have a mutual interest with the NIGC in ensuring the integrity of the tribal gaming, and we both bring a unique perspective to the table. We have always welcomed the NIGC's efforts to reach out to tribal officials at this critical crossroad and look to the NIGC to stand with tribes in preserving the present legal and regulatory framework.

Although not a regulation, the NIGC's consultation policy published on March 31, 2004, laid the framework in which any consultation with tribes ought to take place. We are concerned that the NIGC's efforts to send out letters to tribes giving them the opportunity to meet in person, the creation of a Tribal Advisory Council, the meetings for comments across the country, and the September 19, 2006 hearing are for naught because none of the involved parties' suggestions are reflected in the NIGC's final proposed rules. Going through procedural motions to give a consultation the appearance of

To the extent practicable and permitted by law, the NIGC will engage in regular, timely, and meaningful government-to-government consultation and collaboration with Federally recognized Indian tribes, when formulating and implementing NIGC administrative regulations, bulletins, or guidelines, or preparing legislative proposals or comments for Congress, which may substantially affect or impact the operation or regulation of gaming on Indian lands by tribes under the provisions of IGRA. Consultation is not meaningfulness if the agency fails to accommodate the views and concerns of tribal governments in the final product. We know we are not the only tribe or nation to feel this way. When regulations are likely to have an impact of over $1 billion on Indian gaming, a proper consultative process is essential.

We sincerely thank you for the opportunity to express our concerns to you.