



July 21, 2010

*Testimony of Tribal Chairwoman Lynn Malerba
Mohegan Tribe of Connecticut*

Good afternoon Chairman Frank, Ranking Member Bachus, and Members of the Committee. My name is Lynn Malerba, and I am the Chairwoman of the Mohegan Tribe. It is a great honor to be with you here today to present testimony on H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act.

Mr. Chairman, the Mohegan Tribe has a long and proud history going back many thousands of years. During the 1600s, one of our greatest leaders, Sachem Uncas, was confronted by the challenges of protecting our tribe's sovereignty, traditions, and people in the face of European colonization, disease, and new technologies previously unknown to our people. The decision he would make in how to deal with these challenges was of vital importance to our future.

Sachem Uncas chose the path of cooperation, rather than conflict in the face of these challenges. This path served him and our people well, and started a tradition known as 'The Mohegan Way'. This tradition has been passed down through the generations by our ancestors to the present day, where our people continue to live and work cooperatively both within the Tribe and the non-Indian community.

The technology of Internet gaming presents both an opportunity and a challenge to tribes engaged in gaming – similar in some ways to the rapid changes Sachem Uncas once faced in his world long ago. Chairman Frank, we at the Mohegan Tribe are grateful that since the day you introduced H.R. 2267, you have shown your great respect for tribal sovereignty by actively seeking the input of tribes in your legislation to ensure that we are treated fairly. In doing so, you have shown your desire for cooperation, rather than conflict, and we sincerely thank you for this stance.

As you know, Indian gaming has been the biggest single economic development success story in tribal history. Since the enactment of the Indian Gaming Regulatory Act of 1988, tribes have opened 419 gaming facilities across 28 states, creating over a half a million new jobs. These tribal casinos are currently generating nearly \$27 billion in much-needed revenue, which is used to fund urgent tribal priorities such as housing, health care for our elders, and education for our youth. I would also add that tribes nationwide also share a significant portion of the revenue they earn from gaming with state and local governments, helping them meet the needs of their residents as well.

I am proud that the Mohegan Tribe has been part of the success story of Indian gaming. Our tribal government runs one of the largest and most successful tribal casinos in the United States. Our

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extensive experience in regulating gaming activities, protecting consumers, and exercising our sovereign rights as a tribal nation gives us unique insights into the impacts of H.R. 2267 on tribal gaming.

In response to your request for input from Indian Country on HR 2276, a coalition of tribes, including the Mississippi Band of Choctaw, the Barona Band of Mission Indians from California, the Mohegan Tribe, and all the member tribes of the California Tribal Business Alliance, which include the Lytton Band of Pomo Indians, the Pala Band of Mission Indians, the Paskenta Band of Nomlaki Indians and the Viejas Band of Kumeyaay Indians, have come together to present ideas and work with you and your staff on this legislation. The Mohegan Tribe and our coalition partners agree with your vision that regulating Internet gaming can work if done properly.

As you may know, not all tribes nationwide agree on all the issues surrounding Internet gaming, and many are still forming their opinions on the topic. The National Indian Gaming Association and the United South and East Tribes are currently undertaking a comprehensive study of the issues involved.

However, I believe there would be universal agreement among all tribes that if Internet gaming were to be permitted, Indian tribes must have the ability to participate on a level playing field with other gaming interests, and the gains that we have made as tribal nations under IGRA must not be endangered.

After extensive analysis of H.R. 2267, we believe that in general, the legislation is on the right path. However, it is our opinion that the bill can be further enhanced from its current form. **The most important improvement from our perspective is a provision that makes it clear that Tribal Governments and Tribal Gaming Facilities should be clearly authorized to operate Internet gaming sites.** The licensing standards should be modified to ensure application to a tribal government or its designated tribal agency or entity operating the site.

The following are our suggestions for additional improvements:

- **Limitations under the Indian Gaming Regulatory Act (IGRA) on acceptance of wagers by tribes.** Under IGRA, tribal government gaming operations are only allowed to accept wagers which are placed by individuals who are physically located on Tribal lands at the time the wager is placed. In the area of Internet gaming, this is problematic as tribes would desire to operate their Internet gaming sites on the reservation, as a function of the tribal government gaming operation, but accept bets from any state or other jurisdiction in the United States that has not opted out of the federal regulatory framework. In order to do so, there would have to be a change to H.R. 2267 which makes it clear that tribes will not be subject to the Indian Gaming Regulatory Act to the extent they are conducting Internet gaming under federal licenses pursuant to H.R. 2267. Without such a change, tribes would face two bad choices – either they would not be able to accept wagers

from the vast majority of Americans who do not live on reservations, placing them at an extreme and unfair competitive disadvantage with other gaming entities, or they would have to set up their operations somewhere off of the reservation, subject to state laws and taxation. Being restricted to operating under state laws is a situation that virtually all tribes would reject as a violation of the sovereign rights of a tribal government, as it runs counter to long-established legal doctrines of tribal sovereignty and would place them inappropriately in a subordinate position to state government. It would also negate many of the internal controls, safeguards, and experienced regulatory systems that tribes have developed to regulate gaming under IGRA and state gaming compacts if Internet gaming operations must be moved off of Indian lands. Many states simply do not have the experience in regulating gaming and also testing and certifying of equipment which Indian gaming tribes have developed. The position of our coalition of tribes is that this change would be absolutely critical in order to gain widespread tribal support for H.R. 2267 to clarify that tribes may conduct internet gaming under federal license on or off- reservation notwithstanding any provision of IGRA to the contrary.

- **Extend the exclusion from IGRA to Tribal-State Gaming Compacts Pursuant to IGRA.** As you are aware, IGRA requires that tribes and states must enter into a compact if any type of Class III gaming (house-banked games) are to be offered by the tribe. These compacts usually require the tribe to share revenue from Class III activities with the state. H.R. 2267 would allow a very broad range of Class III games to be offered online by tribal and non-tribal gaming operators, while most tribal-state compacts currently allow only selected Class III games to be offered by tribes. In some states, existing compacts actually preclude tribes from offering any form of Internet gaming whatsoever. A provision needs to be added to H.R. 2267 that clarifies that all games offered under its auspices are exempt from IGRA compacting or revenue sharing provisions, allowing tribes to compete on a level playing field with non-tribal competitors and pay the same federal tax. Adding this measure would ensure that no conflicts would occur between states and tribes under existing compacts, and that these compacts would not need to be re-negotiated or amended, which could be costly and disadvantageous to existing tribal brick-and-mortar gaming operations. Without such a measure, support for H.R. 2267 in Indian Country would evaporate.
- **The Tribal Nations respectfully request meaningful consultation before this statute is enacted on how best to regulate Internet gaming.** For over twenty years, the system of tribal gaming regulation has worked exceedingly well. The Mohegan Tribe and its coalition partners are nationally renowned, as are many other tribes, for our strong and successful gaming regulatory programs. We have direct experience in enforcing the license suitability standards which are outlined in H.R. 2267. We would respectfully suggest that H.R. 2267 be modified to strengthen the potential role of Tribal Gaming Authorities.
- **Restrictions on unlicensed competitors.** As I mentioned before, our tribes have been a gold standard for many years in meeting and exceeding all regulatory requirements for tribal

government gaming. As part of our commitment in this area, we have strictly complied with current U.S. laws prohibiting the acceptance of Internet wagers, as have all other tribes and commercial gaming entities in the United States. Failure to do so would have resulted in breaches of our compacts and closure of our gaming facilities. We would ask that in fairness to tribes and domestic commercial casinos who have had to comply with U.S. law, H.R. 2267 be modified in regard to licensing of foreign operators to require some period of lawful operation under license by a reputable foreign government as a prerequisite for seeking licensure on the same footing as U.S. applicants.

- **Enhancements to licensing and regulatory provisions.** As stated above, we agree with your belief that Internet gaming can be successfully licensed and regulated. Currently, H.R. 2267 does not require that Internet gaming facilities be located in the United States, which could severely hamper regulatory efforts. Requiring facilities to be located domestically would greatly aid regulation, and quiet potential criticisms of the legislation.

Additionally, H.R. 2267 requires that only the top five officers of the gaming entity be licensed. At our tribal government gaming facility, every employee from the CEO down to janitorial help must be licensed, with higher scrutiny for key employees and others in sensitive positions. This protects our facility from being penetrated by unsuitable persons at all levels, ensuring the security of our operations. We would suggest that H.R. 2267 be modified in a similar manner, with language allowing for the expedited review of those individuals holding licenses or gaming entitlements from other qualified state or tribal regulatory agencies, provided there is access to relevant licensing information and cooperation with the licensing agency. Finally, one additional area we would like to see addressed more explicitly in H.R. 2267 is the testing and certification of software and other equipment used for Internet gaming referenced above. At our brick-and-mortar facilities, every piece of equipment used for gaming, be it slot machines, gaming tables, chips, or video terminals, must be tested and certified by regulators prior to use. This certification process assures players that the games they are wagering on are fair and honest. With Internet gaming, we believe that such an equipment testing and certification process is vitally important to build consumer confidence in the product, and measures providing for these activities should be included in the legislation.

- **Prohibition of Internet Casino Parlors.** H.R. 2267 should provide prohibitions or restrictions on networking or grouping terminals in one physical place for play of internet gaming otherwise authorized. While this would prevent internet café casinos, it would also deter or prevent kick-back schemes and other criminal behavior, particularly in light of no requirements for security, surveillance, patron dispute resolution, physical facility licensing, or safety standards as currently written. H.R. 2267 should provide for effective and meaningful enforcement of this provision.

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- **Strict enforcement against unlicensed sites.** One of the reasons that tribal and commercial brick-and-mortar gaming facilities are successful is that any unlawful or unregulated facilities are immediately shut down. We believe that similar measures in Internet gaming will be even more vital to the success of legalized and regulated sites. If unlicensed and unregulated sites are able to offer their product to American citizens, free of the obligation to pay taxes and obey regulations, these sites will flourish at the expense of those who play by the rules and honor the intentions of your legislation. Therefore, we would like to see strict enforcement of regulations to disrupt and shut down these sites upon passage of your legislation to protect newly licensed domestic competitors. In our opinion, these provisions would provide great assistance to achieving your goal of secure and soundly regulated Internet gaming that protects consumers, combats problem and compulsive gambling, and realizes real tax revenue generation for state, tribal, and federal governments.
- **Introduce poker only in Phase I.** Perceived competition to state lotteries and brick-and-mortar facilities from internet slots would create powerful opposition to full Internet gaming. It is our belief that a poker only introduction would allow the U.S. market to establish appropriate regulatory schemes and realize the popularity of online gaming for possible expansion.

Once again, the Tribe greatly appreciates your interest in tribal input on H.R. 2267. It is our hope that you will strongly consider the enhancements we have suggested in our testimony to your legislation.

We look forward to working with you closely on H.R. 2267 in the coming weeks and months, and hope to together achieve your goal of safe, secure, regulated, and taxed internet gaming.