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Written Testimony re: HR 2938

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I have been a lawyer for 40 years. During my career, I frequently dealt with statutory construction issues. I learned over time that our lawmakers try to redress grievances, enact just legislation, and serve the public good. Yet, in spite of their best intentions and their careful attention to the wording of legislation, there are times when the meaning of the law is perverted and twisted. When that occurs, our legislators are dismayed by the unintended consequences of their work. More importantly, public respect for our institutions is diminished.

Today we find ourselves dealing with the Gila Bend Indian Lands Replacement Act. This Act was passed in order to compensate the Tohono O'Odham Nation for flood damage to its farming property caused by the federally constructed Painted Rock Dam. Congress had benevolent intentions. It voluntarily agreed to pay the Nation $30 Million in exchange for damaged farm land and allowed the Nation to purchase replacement property in certain areas that would be put into its reservation system. But this right to put property into trust was not limitless. The Act excluded lands located within cities or towns.

Now anyone with commonsense knows that, in this context, "within" means inside the geographical boundaries of the city or town. And I say commonsense because no member of Congress would allow a tribe to acquire property in the middle of a city and then tell that city: "you have no power to ever regulate the land, collect taxes, impose zoning requirements, require pollution control, or provide for the safety of your citizens; that you cannot do any of these things and more because there is a new sovereign government in town and you are helpless to do anything about it." The Gila Bend Act was not intended to lead to such nonsensical results.

And yet the unthinkable happened. The Nation, in the sole pursuit of money, and without caring one whit about the sensibilities of its fellow tribes and the citizens of Glendale, secretly purchased an unincorporated parcel surrounded by the City of Glendale and announced that it would add this land into its reservation and then construct and operate a huge casino. It argued that "within" did not mean a "geographical boundary" but instead referred to a "jurisdictional boundary."

Even more remarkable, the Department of Interior bought into the Nation's interpretation of "within" and decided it would accept the land into trust. It gave its imprimatur to an interpretation of a statute that led to absurd consequences and surely up-ended the original intentions of Congress. The possibility now looms that a twisted interpretation of the Act will permit a casino to be operated on a new tribal reservation located in the middle of a city and next to a high school and residential neighborhoods.

The prospect of a casino in Glendale would not only cause untold harm to the City and people of Glendale, it also betrays the promises the Nation made to the State and People of Arizona.

As you know, Congress enacted a comprehensive statutory scheme to regulate Indian gaming in 1988. The essential thrust of the Indian Gaming Regulatory Act is that Class III gaming – that is, casinos – will be permitted to operate only pursuant to tribal-state compacts. It was thought that states and tribes, negotiating in good faith, would reach balanced agreements that would protect each other's legitimate interests.

IGRA has been a resounding success from an economic perspective. Before IGRA was passed in 1988, there were 108 gambling facilities on Indian lands spawning some $100 million in revenues. By 2007, 226 tribes offered gaming at 419 sites generating gambling revenues of $26B. Gaming on tribal lands constitutes big business!

The economic juggernaut of casino style gaming did not pass Arizona by. By the early 2000's, the dog and horse racing industries sought to siphon off a large portion of Indian gaming revenues and asked voters to allow race tracks, located in urban areas, to operate thousands of slot machines. This led to a ballot initiative, Proposition 201, that was submitted to the voters in 2002.

At the same time that the dog and horse racing industries were gathering signatures for their ballot initiative, state officials under the leadership of Governor Hull negotiated a compact with 17 of Arizona's 21 Indian Tribes. This compact, known as Proposition 202, was submitted to the voters in November 2002 as an alternative to Prop 201. State officials opposed the racing track initiative and strongly supported the comprehensive agreement set forth in Prop 202.

Prop 201 was defeated and Prop 202 was enacted into law over 8 years ago. What did Prop 202 do? First and foremost, it protected Arizona's Indian tribes from non-Indian gaming competition – the only casino gaming in Arizona is conducted by Indian tribes. It also reduced and limited the number of gaming facilities that could be operated on tribal lands, while expanding the types of games that could be operated.

The policy objectives of Arizona's government officials were clear. The State recognized that there existed a strong aversion to gambling. It understood that casinos can impose costs on the State and on local governments, both in terms of lost revenues and by social ills such as crime, bankruptcy, and pathological gambling behaviors. At the same time, there was a recognition that Indian tribes, for generations, had been mired in poverty and that gaming offered them a real opportunity to create jobs, rebuild their communities and provide their members with decent schools, roads, water facilities, and other vital services. Prop 202 forged a compromise between these competing interests.

All of the parties to the compact understood the delicate nature of the compromise. The State made it clear that it did not want large scale gaming facilities to expand into its heavily populated and urban areas. Indeed, it rejected any such efforts. That is why it opposed and campaigned against the horse and dog racing track initiative. That is why it reduced and limited the number of casinos on Indian tribal lands. Official statements in favor of Prop 202 spoke in terms of "limited Indian gaming," that "no new casinos will be built in the Phoenix metropolitan

area," that gaming was to be kept "on Indian reservations" and not be allowed "to move into our neighborhoods." Every signatory to this compact, including the Nation, understood that the compact entered into by the parties and sold to the voters of Arizona limited the number of facilities each tribe could operate and would not allow for any additional casinos in the Phoenix area. Had there not been this mutual understanding, there would have been no compact.

When the compact was being negotiated and as the campaign to pass Prop 202 proceeded, no one from the Tohono O'Odham Nation stated a contrary understanding. No one from the Nation told its fellow tribes that it was eyeing a piece of property in the heart of Glendale. No one from the Nation said a word that it could or that it intended to purchase such property under the Gila Bend Act and put a casino on it. The State was left in the dark. Fellow tribes were left in the dark. The citizens of this State, and most important, the citizens of Glendale, were left in the dark. The Nation allowed Prop 202 to be signed and passed without uttering a word of its intentions to its negotiating partners.

So now we have the specter of the Nation secretly purchasing this 134 acre parcel in 2003, not in its own name, but in the name of a foreign corporation ("Rainier Resources LLC"). Two years ago, it announced its intention to put this property into trust under the Gila Bend Act with the avowed purpose to place a casino on the site. It knew, in doing so, the casino would be located next to a public high school and surrounded by residential homes. It cared not a whit about the solemn understanding reached with the State and its fellow tribal partners. Nor did it care about the broad public concerns regarding the deleterious effects of gambling and how those effects might harm cities such as Glendale in both social and economic terms. It did not even care about its fellow tribes and how a casino in the middle of Glendale would threaten their collective economic interests. In short, it was not concerned with the balancing of interests that had been so delicately carved out in 2002. It was concerned about one thing: profit.

The State of Arizona, by its Attorney General, supports HR 2938. The bill protects the integrity of the Prop 202 compromise between the State and the Indian tribes within its borders, and corrects the distortion of the Gila Bend Act that has brought us here today. Thank you.