



GUIDE TO THE ISSUES

Regulating Tribal Gambling

Background

Tribal Sovereignty and Indian Gambling: According to the U.S. Census Bureau, Native Americans have the highest rate of poverty and the second highest rate of unemployment of any ethnic group in the nation, while their average per-capita income and level of academic attainment scores are the second lowest.¹ To help improve these statistics, recent administrations in the 1980s and 1990s adopted a policy of encouraging tribal economic self-determination. It was within this context that large-scale Indian gambling emerged.

Native Americans have a unique form of sovereignty, protected by the U.S. Constitution and subsequent laws and treaties. Differing perspectives on the nature and extent of Native American sovereignty, in particular the relationship of Indian tribes to the state governments in which they reside, lie at the heart of nearly all disputes over Indian gambling. What is not disputed is the federal government's responsibility for the welfare of the Indian tribes and their members. Specifically, the federal government is obligated to protect the tribes' status as self-governing entities, including protecting tribes' rights under the Constitution, an arrangement known as a "trust responsibility."

The Growth of Indian Gambling: In order to provide a regulatory framework for Indian gambling, Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA). IGRA gives Native American tribes the privilege of matching any existing form of "Class III" gambling which is the statutory term for games such as craps, blackjack and various types of slot machines on tribal lands by negotiating a compact with the host state.² Thus, if the state legalizes any game of chance, Indian tribes could petition the state for a compact allowing gambling on their lands.

From 1988 to 2009, tribal gambling revenues grew from \$212 million to \$26.4 billion. At present, 419 tribal casinos are in operation.³ Less than half of all eligible Indian tribes operate gambling facilities on their reservations; of the 561 federally recognized tribes in the United States, approximately 240 had

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Throughout 2009 and 2010, as gambling supporters tried to pass legislation to bring the legality of electronic bingo machines to a vote of the people, Gov. Riley attempted to roll back the expansion of gambling.

At present, the office of the Attorney General is working with the NIGC to determine what influence the state may have to encourage the removal of the electronic bingo machines on tribal lands.

Class II or Class III gambling facilities as of March 2011.⁴ Some tribes have rejected Indian gambling in referenda, while others are in the midst of policy debates on whether to permit gambling on their reservations.

For the majority of tribes with gambling facilities, the revenues have been modest yet nevertheless useful. However, not all gambling tribes benefit equally. In 2009, the 21 largest Indian gambling facilities accounted for 38.7 percent of all revenues, with the next 50 accounting for another 30.8 percent. By comparison, the 139 smallest casinos accounted for less than two percent of all revenues.⁵

State-Tribe Compacts: According to IGRA, if a state has a public policy of complete prohibition against Class III gambling, then tribes within the borders of the state may not initiate such gambling. However, if the state has no completely prohibitive policy against Class III gambling, then the federal courts have held that the state may not prohibit gambling on reservations. This ruling has been the source of