



# NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

## **NATIONAL INDIAN GAMING ASSOCIATION RESOLUTION 1 ABQ 4-4-2006**

### **Preserving The Integrity Of The Indian Gaming Regulatory Act**

**WHEREAS**, the National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes established to protect Indian gaming and defend Indian sovereignty; and

**WHEREAS**, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

**WHEREAS**, in treaties, the United States pledged to protect Indian Tribes and guaranteed the right of Tribal self-government; and

**WHEREAS**, in *California v. Cabazon* (1987), the Supreme Court reaffirmed the inherent right of Indian Tribes to conduct Indian gaming as an essential element of Tribal self-government, free from State interference; and

**WHEREAS**, in 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to promote Tribal economic development, self-sufficiency and strong Tribal Governments; and

**WHEREAS**, Congress determined that only Tribes and States would regulate Class III gaming through the Tribal-State compact process, except for the authority of the National Indian Gaming Commission (NIGC) to approve management contracts for Class III gaming; and

**WHEREAS**, Congress established the NIGC to oversee Class II gaming, to approve Tribal gaming ordinances, to review background checks, and to review audits; and

**WHEREAS**, Indian Tribes conduct Indian gaming as an exercise of inherent sovereign authority to fund Tribal government functions and services and to provide for the general welfare of Tribal members; and

**WHEREAS**, under IGRA, many Indian Tribes have successfully created jobs and economic opportunity, and are rebuilding their communities through enhancement of educational and cultural opportunities, thereby fulfilling the goals of the IGRA; and

**WHEREAS**, Tribal gaming operations are governmental, not commercial, activities, and Tribal Governments have the inherent sovereign right to determine what information should be disclosed for governmental purposes; and



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**WHEREAS**, since the Supreme Court's decision in *Seminole Tribe v. Florida* (1996), some State governments have ignored their obligations to negotiate or renegotiate Tribal-State gaming compacts in good faith; and

**WHEREAS**, the Eighth, Ninth, Tenth, and D.C. Circuit Courts of Appeal have held that technologic aids to Class II gaming are not subject to the Johnson Act; and

**WHEREAS**, Senate Bill 2078, the Indian Gaming Regulatory Act Amendments of 2006 (S. 2078), as reported out of the Senate Indian Affairs Committee on March 29, 2006, fundamentally changes the structure of the IGRA and infringes on Tribal self-government by: 1) granting the NIGC new authority to regulate Class III gaming over and above the Tribal-State Compact process and the approval of Class III management contracts; 2) granting the NIGC broad new authority to regulate and approve development, consulting, financial, and gaming-related contracts; 3) striking the Section 20 two-part process for off-reservation gaming and burdening the process for landless, restored and newly recognized Indian Tribes to take land into trust for Indian gaming; 4) infringing on the sovereign authority of Tribal Governments to determine the confidentiality of governmental information; 5) failing to address the US Supreme Court decision in *Seminole* that destroyed the balance of Tribal-State compact negotiations; and 6) failing to require the NIGC to comply with federal negotiated rulemaking procedures when engaging in any rulemaking; and

**WHEREAS**, in 2005 Tribal Governments invested over \$370 million on regulation, including over \$300 million on Tribal regulation, over \$60 million to reimburse State governments for their role in regulating Tribal gaming operations, and \$12 million to fund the NIGC; and

**WHEREAS**, the negative impact of a new burdensome bureaucracy has not been studied and the costs and benefits of S.2078 are unknown; and

**WHEREAS**, the new authority for NIGC to regulate Class III gaming would upset the balance in the Tribal-State compact process and would hinder, not help, the regulatory process; and

**WHEREAS**, the new gaming-related contract provisions would create a huge and unworkable bureaucratic impediment to lawful economic activity, and would replace the business judgment of Tribes' gaming enterprises with that of a federal regulatory bureaucracy; and

**NOW, THEREFORE, BE IT RESOLVED**, that the National Indian Gaming Association opposes S.2078 as reported out of the Senate Committee on Indian Affairs because it infringes on Indian sovereignty and tribal self-government, unnecessarily burdens economic development and lawful business transactions, and creates new bureaucratic roadblocks and mandatory agency reviews that even the NIGC admits it does not have the capability or resources to implement;



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**BE IT FURTHER RESOLVED**, that S. 2078 must be amended to clarify that: Tribal gaming commissions are the primary regulators of Indian gaming; NIGC regulations must be consistent with the terms of Tribal-State compacts; and the NIGC's regulatory authority must be limited to gaming activities only;

**BE IT FURTHER RESOLVED**, that S. 2078 must be amended to ensure that its approval standards for gaming-related contracts are consistent with those contained in existing Tribal-State compacts and to be more narrowly written to avoid sweeping in thousands of contracts that are not directly related to gaming;

**BE IT FURTHER RESOLVED**, that S. 2078 must be amended to respect the primacy of Tribal lawmaking authority, Tribal ordinances, and Tribal-State compacts;

**BE IT FURTHER RESOLVED** that NIGA calls upon Congress to delete the provision that abrogates Tribal sovereignty by requiring Tribal Governments to reveal governmental information relating to their gaming operations;

**BE IT FURTHER RESOLVED**, that NIGA calls upon Congress to include a provision that resolves the inability of Tribal Governments to enforce the obligation of State governments to negotiate tribal-state compacts in good faith and thereby addresses the Supreme Court *Seminole* decision;

**BE IT FURTHER RESOLVED**, that S. 2078 must be amended to include a provision codifying the holding of the Federal Courts of Appeal that technologic aids to Class II gaming are not subject to the Johnson Act;

**BE IT FINALLY RESOLVED**, that S. 2078 must be amended to require the NIGC to engage in negotiated rulemaking when promulgating any new regulations.