

**Statement of Congresswoman Carolyn C. Kilpatrick  
Before the  
House Judiciary Committee  
Regarding  
H.R. 2176 and H.R. 3038**

**March 13, 2008**

Chairman Conyers, Rahall, Ranking Minority Member Smith, and Members of the House Judiciary Committee:

Thank you for holding this hearing today. I also want to thank Chairman Conyers, Ranking Minority Member Smith, and Speaker Pelosi for allowing these bills to be consecutively referred so that the Judiciary Committee can do their due diligence on these bills. In essence, both of these bills will allow two Native American tribes located in Michigan's Upper Peninsula to build casinos 350 miles from their reservations and near the City of Detroit.

My reasons for opposing these bills, which will allow land to be taken into trust for gambling purposes for the settlement of proposed land claims, are actually very simple. These bills set a dangerous precedent for Congress; they contravene Michigan state law; they are very controversial among the Tribes in Michigan and throughout Indian Country; it is not clear that these land swaps are valid; and finally, Congress has not had a comprehensive review of the Indian Gaming Regulatory Act (IGRA) in nearly **two decades**. Furthermore, it is important to note that these land claims have never been validated by the U.S. Government or any court of law. In fact, the courts have ruled **against** the Bay Mills Tribe on their claim on two separate occasions.

The people of Michigan have spoken at the ballot box about gaming expansion in our state. In 1994, they voted to allow three casinos in the City of Detroit. In 2004, the people voted to limit any more expansion of gaming unless there was a statewide referendum. In addition, the Michigan Gaming compact specifically prohibits off-reservation gaming unless all of the Tribes in Michigan agree to a revenue-sharing plan.

These two bills are simply an attempt to circumvent both the will of the people of Michigan and the compact the Michigan State Legislature has made with the Tribes in Michigan.

Instead, these bills would have Congress mandate not one, but two off-site reservation casinos located over 350 miles away from the reservations of these Tribes. Moreover, the disputed land is located near the two Tribes reservations in the Upper Peninsula but yet the land they want for a “settlement” is located 350 miles away near the City of Detroit. If these bills were to become law, what would prevent other Tribes from seeking a land claim anywhere in the United States for off-site reservation gaming? Is this the real intent of the Indian Gaming Regulatory Act?

It is indeed ironic that in the 109<sup>th</sup> Congress, the House Resources Committee, on a bi-partisan basis, passed legislation by an overwhelming margin to restrict off-site reservation gaming. Yet today, it now seeks to expand Native American gaming in an unprecedented manner.

Congress passed the Indian Gaming Regulatory Act in 1988 that allows Tribes to conduct gaming on lands acquired before October 17, 1988. In 1993, former Governor John Engler negotiated a gaming compact with the seven federally-recognized Tribes in Michigan, including the Bay Mills and Sault Ste. Marie Tribes.

In order to prevent a proliferation of Indian gaming across the state, a provision was added to the compact that required any revenue generated by off-reservation gaming be **shared** among the Tribes who signed the compact. This provision has worked well for over 15 years. The two bills before the House Resources Committee would simply nullify this critically important provision of the Michigan Gaming Compact. Both of these bills would allow the Tribes to; 1) settle a land claim that has never been validated and is located near their reservations in the Upper Peninsula of Michigan and 2) acquire lands 350 miles from their reservation to build casinos. Furthermore, these bills actually include gaming compacts in them that were never approved by the Michigan State Legislature who has approved every other gaming compact. It is important to note that Congress has **never** passed a gaming compact in the history of Indian gaming. IGRA specifically grants that authority to the states.

In 2004, the voters of Michigan spoke again in a state-wide referendum and overwhelmingly approved a ballot initiative that would restrict the expansion of gaming in the state of Michigan. This referendum would require local and state-wide approvals for any private expansion of gaming in Michigan.

The people and the elected officials of Michigan already have a solution to this matter – the ballot box. There is nothing in the referendum that would prevent the two Tribes and their non-Indian developers from initiating a statewide referendum to get casinos in Port Huron and in Romulus. In fact, both of those cities have already passed local referendums. But the Tribes and their developers decided to short-circuit the vote of the

Michigan people and come to Congress to get a casino on a proposed land claim that is located near the Tribes reservation lands in the Upper Peninsula of Michigan.

I am aware that the Governor of Michigan has sent the House Natural Resources Committee a letter supporting these bills. You should know that there is no legal basis for the State to support these agreements because, in fact, the State has already won this case in the Michigan Court of Claims and the Bay Mills Tribe appealed it all the way to the U.S. Supreme Court. The Supreme Court subsequently declined to hear the case.

The Governor ignored the fact that the city of Detroit will be the main victim of the states largess in these casino deals. The city of Detroit will lose hundreds of millions of dollars as a result of the competition of these new casinos and that will cause irreparable harm. Harm to whom? Harm to the current investors of the casinos in the City of Detroit, who have invested more than \$1.5 billion in the construction of the three casinos in the City of Detroit. Harm to the thousands of jobs that have been created and the tax revenue that those jobs generate for the City of Detroit and the State of Michigan. Ultimately, this will harm the State. When compared to their private counterparts, Native American gaming sites, because they are sovereign nations, and must share their revenue with other Native American tribes, do not bring in the tax revenue of private investors.

In the end, these two Tribes are seeking to do an end-run around two statewide referendums and the Michigan Gaming Compact of 1993. Rarely have voters in any state in this country spoken so clearly on gaming issues. In light of all of this, it would be a travesty for Congress to mandate two off-site reservation gaming casinos that would have such negative impact on the people in Michigan.

But, for the moment, let us ignore the impact that these bills will have on the City of Detroit. Let us ignore the precedent that these bills will set, allowing any Native American tribe to claim any piece of land hundreds of miles away, as their native tribal land. Let us ignore the fact that IGRA has not been reauthorized in more than two decades, and clearly needs to be revisited and revised by Congress. What I cannot ignore is the strong possibility that the very integrity of Congress is in jeopardy.

On October 10, 2002, in testimony before the Senate Committee on Indian Affairs, The Chairman of the Sault Ste. Marie Tribe, Bernard Boushor, said “ the Bay Mills case was a scam from the start.” In testimony and information provided to the House Natural Resources Committee in February of this year, Saginaw Chippewa Chief Fred Cantu cited Chairman Boushor’s testimony, stating that the original lawsuit on the land claim was a collusive lawsuit. I have provided Chairman Boushor’s statement to be included as part of today’s testimony.

I would strongly encourage the Committee to carefully read these documents on how this land claim actually began. The proponents of this legislation have repeatedly stated that these bills are simply to address the aggrieved landowners in Charlotte Beach. But according to the Sault Ste. Marie Tribe “the Charlotte Beach claim did not originate with Bay Mills. It was a product of a Detroit area attorney who developed it specifically as a

vehicle to obtain an IGRA casino...the goal was never to recover the Charlotte Beach lands.”

How was this originally a collusive lawsuit? The Bay Mills Tribe sued Mr. James Hadley on October 18, 1996 who entered into a settlement in which he gave land to the Bay Mills Tribe 300 miles from their reservation to build a casino in Auburn Hills, Michigan. That plan was rejected by the Department of Interior. The point is that Mr. Hadley was not an aggrieved landowner, he was an active participant in what the Sault Tribe described as “a collusive lawsuit” and “a scam.”

I strongly encourage all of you to read the testimony of the former Sault Ste. Marie Chairman before the Senate Committee on Indian Affairs, the testimony of the Saginaw Chippewa Chief Fred Cantu, and review the documents Chief Cantu provided to the Committee, which was provided to the House Natural Resources Committee at its hearing in February.

There is a way to save the integrity of Congress. The Saginaw Chippewa Tribe has requested that the U.S. Department of Interior investigate the land claims made by these Tribes, and determine whether they are valid claims, worthy of federal resolution. It is my understanding that the Department of the Interior is reviewing the validity of these land claims. I would urge the Committee to wait until this investigation is complete until it rushes into passing legislation that mandates off-reservation gaming.

I thank the Committee for its time. Congress should not be in the business of handing out off-site reservation gaming casinos. It is my hope that the wisdom of the Committee and of Congress is the rejection of both of these bills for the following reasons:

- These bills set a dangerous precedent for Congress by approving a compact which is a state, not a federal, responsibility;
- They contravene Michigan state law;
- They are controversial among the Native American tribes in Michigan; indeed, nine out of Michigan’s 12 tribes oppose these bills;
- The City of Detroit would lose thousands of jobs and hundreds of millions of dollars in the investments made by the three casinos currently operating in Detroit;
- The Bureau of Indian Affairs has already rejected a similar application for gaming in Romulus, Michigan;
- These bills would involve the removal of valuable land from the tax rolls of the State of Michigan, resulting in the potential loss of even more revenue;
- It is uncertain that these land swaps are legitimate, possibly jeopardizing the integrity of the U.S. Congress;
- The Committee should allow the Department of Interior the time to do their due diligence to determine if these are valid land claims; and
- Congress needs to revisit, revise and reauthorize the IGRA, which has not had a comprehensive review in nearly two decades.

Again, I thank the Chairman and the Ranking Minority Member for this hearing. The Committee must reject these bills based on the merit of the will of the people of the City of Detroit and the State of Michigan.